

Timeline of Events

June 19 – President Greenwood inquires with Chancellor Hinshaw about knowledge of the concert. Hinshaw has no knowledge of concert so she inquires with Jim Donovan and provides response to Greenwood via email. Greenwood did not ask any questions regarding the concert or tickets in response to Hinshaw's email

June 23 – Ticket sales for the concert began

June 25 – Howard Todo emailed from Ryan Akamine regarding contracts

June 26 – Wire transfer of \$200,000 was made

June 28 – Todo raises concerns about concert and contracts

July 2 – Meeting between Howard Todo & President Greenwood in which "Greenwood and I concluded that at that point all we could do was hope the concert would be successfully conducted"

July 9 – President Greenwood receives email from Robert Light, managing partner of Creative Artists Agency, informing her that he is Stevie Wonder's agent and that he and Mr. Wonder have no knowledge of the concert

July 10 – Todo is informed of cancellation in meeting with President Greenwood, Jim Donovan, Rich Sheriff, Rockne Freitas, and Tom Apple

July 10 – Donovan makes public statement

July 11 – Letters sent to Jim Donovan & Rich Sheriff informing them that they are being put on leave with pay indefinitely while the investigation takes place

July 11 – Press conference to announce that Donovan & Sheriff were put on leave, held by President Greenwood, Chancellor Apple and Rockne Freitas, who was named Acting Athletic Director

July 16 – Letter sent to President Greenwood and Chancellor Apple from David Simons, attorney for Jim Donovan, requesting that Donovan be publicly reinstated as Athletic Director by July 19

August 11 – Memorandum and Agreement to Donovan from Chancellor Apple reinstating Donovan to a new position in the Chancellor's office

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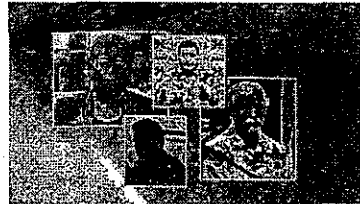
WEB EXCLUSIVE: UH-Stevie Wonder Concert Chronology

Posted: Sep 04, 2012 2:17 PM

Updated: Sep 04, 2012 10:10 PM

By Keoki Kerr - bio | email

MANOA (HawaiiNewsNow) - The chronology is based on the University of Hawaii's fact-finding report, Hawaii News Now stories, and UH news releases and statements.



March 19: Stan Sheriff Center Manager Rich Sheriff informed University of Hawaii Athletics Director Jim Donovan that Oahu-based promoter Bob Peyton had contacted him about hosting a Stevie Wonder concert at the end of July or in early August.

March 27: Sheriff advised Peyton that he had spoken to Donovan and Donovan approved the concert idea.

April 3: An initial date of Aug. 11 was set for the concert.

April 16: Peyton sent Sheriff a draft of the concert booking contract.

May 18: Sheriff organized a meeting of UH staff to discuss the concert. "Attendees were asked whether there was anything that would prevent the concert from occurring. No one raised concerns," according to a UH fact finding report completed by lawyers from the Honolulu firm Cades Schutte.

May 24: UH Attorney Ryan Akamine sent Sheriff and Donovan a draft of the facility use agreement for the concert.

May 31: Sheriff sent an email to key UH officials saying Stevie Wonder had accepted another engagement Aug. 11 because no one had sent Wonder's organization a deposit or "binder" for the UH event. Wonder was available Aug. 18 instead, Sheriff reported.

June 14: Akamine sent the final draft of the agreement to Donovan and Associate Athletics Director Carl Clapp for their execution.

June 18: UH announced pre-sale tickets for the concert.

June 19: UH President MRC Greenwood sent a message inquiring about the concert. "This appears to be the first time President Greenwood ... knew about the concert," the fact-finding report said.

June 26: The UH wired \$200,000 to an escrow account in Florida as a deposit.

June 29: UH Chief Financial Officer Howard Todo expressed his concerns about the engagement memorandum. "Akamine said he had already advised athletics not to sign the Engagement Memorandum. Akamine added that insurance would protect the university, that he had requested the insurance policy and that he was told 'they are working on it.' Todo responded that the answer was insufficient and the insurance policy needed to be in place before the pre-sale of tickets," the UH fact-finding report said.

July 9: Akamine informed Sheriff, Donovan, Clapp and UH General Counsel Darolyn Lendio that the liability insurance obtained for the concert did not comply with the agreement, because it did not name the UH as "additional insureds."

UH Associate Athletic Director for External Affairs John McNamara received a call from someone who said Stevie Wonder had no knowledge of the concert, that it was unauthorized and that the concert would not go forward.

At 3:56 p.m. someone claiming to be Wonder's agent for the past 18 years emailed Greenwood. He said no one knew about the concert and it was not a confirmed engagement.

July 10: Top UH officials met to discuss the concert earlier in the day and Donovan held a 4 p.m. news conference announcing the cancellation of the concert because Wonder was not available. Refunds would be given to those who purchased tickets, UH said.

July 11: Greenwood and UH Manoa Chancellor Tom Apple held a late-afternoon news conference to announce the UH was placing Donovan and Sheriff on paid leave and was launching an investigation into the failed concert. UH tapped Rockne Freitas, a longtime UH administrator, as acting athletics director.

July 16: David Simons, attorney for Donovan, wrote Greenwood and Apple a four-and-a-half page letter threatening the UH with a lawsuit and demanding Donovan be reinstated as athletics director.

July 18: Nine Neighbor Island state representatives wrote Greenwood asking her to reinstate Donovan, whom they credit with bringing games, workshops and scrimmages to Kauai, Maui and Hawaii counties.

July 19: The UH Manoa Letterwinners Club sent Apple a letter asking him to immediately reinstate Donovan and Sheriff.

July 24: Hawaii News Now reported Peyton, the promoter, had faced financial problems in recent years, filing for Chapter 7 liquidation bankruptcy and having his Kailua home foreclosed upon in fall 2011.

August 11: Apple and Donovan signed a "return from leave with pay" agreement in which Donovan agreed not to sue the UH in exchange for giving Donovan a public relations job in the UH Manoa chancellor's office, keeping his \$240,000 salary the same through March when his AD contract expires and then dropping his pay to \$211,200 for the next three years. UH also agreed to pay \$30,000 in Donovan's legal fees.

August 12: UH announced an investigation found Donovan committed "no wrongdoing," and while he will lose the athletic director's post, he will return to work in a newly-created communications job in the UH Manoa chancellor's office the next day.

August 13: Donovan returned to work at UH in his new position in the Manoa chancellor's office. At a news conference, Apple said Donovan did a "fantastic" job as AD, but was removing him because "it's time to move forward in new areas." Apple said the two men had still not worked out a job title or exact duties for Donovan. Neither of them told reporters at the news conference Donovan had threatened to sue UH or the job was part of a settlement to avoid a lawsuit.

August 21: Greenwood sent an email blast to the UH ohana saying the "UH Manoa administration" had determined that four-and-a-half years into Donovan's five-year contract, "it was time to search for a new director of athletics." And Greenwood claimed the decision to not retain Donovan as AD was unrelated to the canceled concert. Former UH Manoa Chancellor Virginia Hinshaw later said she asked Greenwood unsuccessfully for five- and three-year extensions for Donovan, and sources said Greenwood proposed a one-year extension on Donovan's contract shortly before the Stevie Wonder concert fell apart, a proposal Donovan did not accept.

August 22: The UH Board of Regents held a day-long executive session behind closed doors, spending five hours discussing the failed concert and its aftermath. The regents released a 57-page investigative report into the incident along with a demand letter from Donovan's lawyer and Donovan's return-to-work agreement. In a statement, UH Regents Chairman Eric Martinson said the board apologized "for the university's handling of this matter," but emphasized "our strong support for the leadership" of Greenwood and Apple.

August 23: State Sen. Donna Mercado Kim said she and other senators were considering holding investigative hearings into the canceled concert and its aftermath, responding to complaints and questions from constituents.

UH appointed a 14-member search advisory committee to begin a search to replace Donovan as athletics director. UH Head Football Coach Norm Chow will serve as co-chair, and two other UH coaches will be on the panel, helping to choose their next boss.

August 24: The UH faculty union said there was a "loss of confidence" in the UH administration because of its handling of the concert fiasco.

August 28: A group of 40 UH head coaches and their assistants signed a petition to Apple calling for UH to immediately appoint Acting Athletics Director Rockne Freitas as Athletics Director. Among those who signed the document were coach Norm Chow, women's volleyball coach Dave Shoji and women's basketball coach Laura Beeman. All three of them serve on the search committee for a new AD.

August 29: The State Senate appointed a special committee on accountability to hold hearings into the Stevie Wonder blunder. State Sen. Kim said she planned to call Greenwood, Apple, Donovan, Martinson and other UH officials to testify.

August 31: Two members of the UH AD search committee said the three coaches who signed the petition for Freitas should resign or be removed from the committee, since they endorsed a candidate before the search process had even begun.

September 4: The UH AD search advisory committee held its first meeting, deciding that the three coaches who signed a petition backing Freitas can remain on the committee. Sources said the 15-member committee felt they could balance any conflicts the three coaches might have and did not ask for their removal. The committee disregarded the coaches' request to immediately appoint Freitas AD and instead approved going ahead with a search for the position.

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**TORKILDSON, KATZ, MOORE,
HETHERINGTON & HARRIS**

SEP 19 2012

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September 19, 2012

Via Hand Delivery

Senator Donna Mercado Kim
The Senate
State Capitol
Honolulu, Hawaii 96813

Re: Responses to Document Requests

Dear Senator Kim:

We are delivering with this letter the information and documents you requested from Board of Regents Chair Eric Martinson and University of Hawaii President M.R.C. Greenwood in your letters to them dated September 5 and 7 and your oral request for the so-called "Cunningham Report" with the following notations:

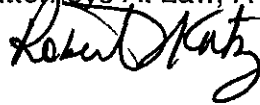
1. As we advised you by letter dated September 14, 2012 we are including both a redacted and an un-redacted set of the attachments to the August 21, 2012 Fact Finders Report. The redacted set is in binders 1 through 4, and the un-redacted set is in binders 5 through 8. As you requested in your responsive letter dated September 18, 2012, the un-redacted set is also marked "Confidential" and provided with the University of Hawaii's request that it not be disclosed publicly to avoid any possible impairment of the FBI's ongoing investigation or the privacy rights of innocent third parties.
2. While every reasonable effort was made to locate, reproduce and deliver all of the information and documents requested by you from Chair Martinson and President Greenwood in the limited time provided it is possible, given the lack of specificity in some of the requests, that some information or documents desired by you may not have been produced. If there are any specific documents or information you were expecting that were inadvertently missed please advise me at your earliest convenience so that it may be obtained if available for the contemplated October 2, 2012 briefing.

Senator Donna Mercado Kim
September 19, 2012
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Thank you for your cooperation and the assistance of your staff in the transmittal of the numerous documents and information to the Senate Special Committee on Accountability.

Very truly yours,

TORKILDSON, KATZ, MOORE,
HETHERINGTON & HARRIS
Attorneys At Law, A Law Corporation



Robert S. Katz
Jeffrey S. Harris
Attorneys for University of Hawai'i System
Board of Regents, President M.R.C.
Greenwood

RSK/JSH:lh

**Responses to September 5, 2012 Request for Documents
and Information, and September 7, 2012 Follow Up Request for
Documents and Information Issued to M.R.C. Greenwood and Eric K. Martinson**

September 5, 2012 document request to M.R.C. Greenwood and Eric K. Martinson

1. All attachments referenced in the Report of Factfinders Regarding the Stevie Wonder Benefit Concert dated August 21, 2012, from Dennis W. Chong Kee (Chong Kee) and Calvert G. Chipchase (Chipchase) to James H.Q. Lee, Vice Chair of the University of Hawai'i Board of Regents, and M.R.C. Greenwood, President of the University of Hawai'i System (Factfinders Report).

Binders 1, 2, 3 and 4 contain the redacted Attachments, bates stamped: University-1 to University-1253.

Binders 5, 6, 7 and 8 contain the un-redacted Factfinders Report and Attachments bates stamped: University-1254 to University-2560. These binders are considered confidential and we ask that these records not be released to the public.

2. A. Any and all records, documents, or communications that relate to any potential contract extension, dismissal, or decision to renew or not renew Donovan as the University of Hawai'i Athletic Director (AD).

Binder 9 contains responsive documents, bates stamped: University-2561 to University-2572.

B. Any severance/separation packages executed by the University during the last twelve years.

Binder 9 contains responsive documents, bates stamped: University-2574 to University-2646.

3. Any and all documents, records, or communications relating to the University of Hawai'i's search for and recruitment of an AD to replace Donovan as AD, including any documents, records, or communications, outlining any process or procedures being followed by the University of Hawai'i in this regard.

Binder 9 contains responsive documents, bates stamped: University-2573, and University-2647 to University-2800.

Binder 10 contains responsive documents, bates stamped: University-3147 to University-3152.

4. Any and all documents, records, or communications demonstrating whether or not the University of Hawai'i conducted a cost-benefit analysis to determine whether holding the Stevie Wonder Benefit Concert would raise funds that would be used to support the University of Hawai'i's educational mission.

None was prepared. However, a budget was prepared and submitted to the Athletic Department. See Factfinder's redacted Attachment bates stamped: University-918 and University-922, in Binder 3.

5. Any and all documents, records, or communications, including invoices, contracts, or memoranda of agreement, relating to the costs incurred by the University of Hawai'i for the Factfinders Report and the related investigation conducted by Chong Kee and Chipchase.

No invoices have been received as yet. A copy of the Contract is bates stamped: University-3118 to University-3136, in Binder 10.

6. Any and all records, documents, or communications concerning the scope of work to be performed by the law firm of Cades Schutte LLLP, including but not limited to the Letter of Engagement, and all records, documents, or communications given to the law firm of Cades Schutte LLLP to assist with the investigation.

See Factfinder's redacted Attachment bates stamped: University-8, in Binder 1.

7. Any and all records, documents, or communications relating to the decision by the Board of Regents to give President M.R.C. Greenwood the sole responsibility to represent the University of Hawai'i at Manoa in the transition from the Western Athletic Conference to the Mountain West Conference, including the time frame of the President's representation during the transition period, as well as the decisions relating to the representation of the University of Hawai'i at Manoa in its transition to the Big West Conference.

The documents that give President Greenwood initial lead responsibility are in Binder 9, bates stamped: University-2801 and University-2802.

September 5, 2012 additional document and information request to M.R.C. Greenwood and Eric Martinson

1. A comparison of the cost of the University of Hawai'i at Manoa's Office of the Chancellor since it was first established separately from the Office of the President in 2001, to its current cost to the University of Hawai'i system.

See Binder 10, document bates stamped University-3141.

2. The number of University of Hawai'i employee contract/agreement buyouts, including the cost of the buyouts, the Board of Regents has approved over the last twelve years.

Six for a total of \$2,529,160.00. Binder 9 contains responsive documents, bates stamped: University-2574 to University-2646.

3. A listing of all public relations positions within the University of Hawai'i System, including a list of salaries by position, for the last ten years; and

Binder 10 contains the responsive documents, bates stamped: University-3142 to University-3146.

4. Copies of all contracts/agreements for public relations-related services between the University of Hawai'i System and any third parties for the last ten years.

Binder 9 contains the responsive documents, bates stamped: University-2803 to University-2968.

September 7, 2012 document and information request to M.R.C. Greenwood and Eric K. Martinson

1. The names of all other attorneys, besides those from the law firm of Cades Schutte LLLP, hired by the University of Hawai'i to assist or advise the University with any and all matters relating to the Stevie Wonder Concert

Mark Bennett, Esq., and the law firm of Torkildson, Katz, Moore, Hetherington & Harris.

2. A list of all consultants contracted by the Board of Regents or the Office of the President during the last five years, including a description of the scope of work detailing the purpose for which the consultants were contracted.

Binder 9 contains the responsive documents, bates stamped: University-2969 to University-3025.

3. The total amount of money spent by the University of Hawai'i to hire outside legal counsel for the period from April 2011 through March 2012.

\$2,192,842.20.

4. The University of Hawai'i's budget for the General Counsel for fiscal years 2010-2011 and 2011-2012.

Binder 9 contains the responsive document, bates stamped: University-3026.

5. The names of any outside legal counsel hired by the University of Hawai'i to represent the University's interest during the Committee's informational briefings.

Law firm of Torkildson, Katz, Moore, Hetherington & Harris.

Finally, in response to your verbal request for "The Cunningham Report," see Binder 10 for the responsive documents, bates stamped: University-3027 to University-3117.

END OF RESPONSES

**ATTACHMENTS TO THE REPORT FACTFINDERS
REGARDING THE BENEFIT CONCERT
(August 21, 2012)**

Attachment	Date	Description
Attachment 1 (Appointment)	07/13/12	Memorandum from James Lee to re Appointment as Fact-Finder
Attachment 1 (Policy)		University of Hawaii Policy – Chapter 8, Business and Finance
Attachment 2	Nov. 1997	University of Hawaii Executive Policy – Delegation of Authority
Attachment 3	07/12/12	Memorandum from Marcy Greenwood to Vice Presidents, Chancellors re E8.106 Authority to Execute Contractual Documents for Procuring Goods and Services and Entering into Cooperative Agreements for the Office of Intercollegiate Athletics, University of Hawai'i at Manoa
Attachment 4	Oct. 2011	University of Hawaii Executive Policy – Fund Raising
Attachment 5		University of Hawaii Policy – Chapter 13 – Use of University- Owned Facilities
Attachment 6		University of Hawaii Policy – Chapter 10 – Land and Physical Facilities
Attachment 7	Jul. 2011	University of Hawaii Executive Policy – Policy to Govern the Use of University Owned or Operated Facilities
Attachment 8	Jul. 1983	University of Hawaii Executive Policy – Executive Policy – Delegation of Authority
Attachment 9	Jul. 1983	University of Hawaii Executive Policy – Administration
Attachment 10	Aug. 2002	A8.400 Risk Management
Attachment 11	Apr. 1994	University of Hawaii Executive Policy – Administration
Attachment 12	Jun. 2002	A1.200 General Provisions – Land and Physical Facilities
Attachment 13	Jul. 1982	A8.000 Fiscal Management
Attachment 14	Jul. 1996	A8.800 Disbursing/Accounts Payable and Payroll
Attachment 15	Mar. 2006	A8.800 Disbursing/Accounts Payable and Payroll
Attachment 16	07/19/12	Witness Statements of James Donovan III and Exhibits attached thereto
Attachment 17		Position Description – Director of Athletics
Attachment 18	07/20/12	Witness Statement of Carl Clapp (unsigned)

Attachment	Date	Description
Attachment 19		Position Description – Associate Athletics Director
Attachment 20	07/23/12	Witness Statement of John McNamara and Exhibits attached thereto
Attachment 21		Position Description – Associate Athletics Director for External Affairs
Attachment 22	07/26/12	Witness Statement of Teri Wilhelm Chang
Attachment 23	09/15/11	Position Description – Physical Plant Management / Auxiliary and Facility Services Manager
Attachment 24	07/25/12	Witness Statements of Tiffany Kuraoka and Exhibits attached thereto
Attachment 25	09/13/11	Position Description – Institutional Support / Administrative Services
Attachment 26	07/17/12	Witness Statements of Richard C. Sheriff and Exhibits attached thereto
Attachment 27	09/15/11	Position Description – Physical Plant Management / Auxiliary and Facility Services Office
Attachment 28	07/25/12	Witness Statement of Walter Watanabe and Exhibits attached thereto
Attachment 29	09/15/11	Position Description – Athletics / Athletic Support Staff
Attachment 30	07/23/12	Witness Statement of Howard Shigeo Toto
Attachment 31	01/13/05	Position Description – Vice President for Administration and Chief Financial Officer
Attachment 32	07/23/12	Witness Statement of Paul Kobayashi
Attachment 33	12/03/08	Position Description – Director of Financial Management and Controller
Attachment 34	08/09/12	Witness Statement of Alan Kimura (unsigned)
Attachment 35	06/05/08	Position Description – Institutional Support / Fiscal Specialist
Attachment 36	07/18/12	Witness Statement of Virginia Hinshaw
Attachment 37		Position Description – Chancellor
Attachment 38	07/23/12	Witness Statement of Kathleen Cutshaw and Exhibits attached thereto
Attachment 39		Position Description – Vice Chancellor for Administration, Finance and Operations
Attachment 40	07/31/12	Witness Statement of Ryan Akamine and Exhibits attached thereto

Attachment	Date	Description
Attachment 41	12/11/07	Position Description – University Assistant, General Counsel
Attachment 42	07/26/12	Witness Statement of Vince Baldemor (unsigned) and Exhibits attached thereto
Attachment 43	08/01/12	Witness Statement of _____ and Exhibits attached thereto
Attachment 44	08/10/12	Witness Statement of _____
Attachment 45	03/17/12	Email from Richard Sheriff to _____
Attachment 46	03/19/12	Email from Richard Sheriff to James Donovan
Attachment 47	10/12/10	Ex Parte Motion for Default Judgment (<i>International Alliance of Theatrical Stage Employees, Local 665 v. _____</i> , Civil No. 1RC09-1-12640, District Court of the First Circuit – Honolulu Division, State of Hawaii)
Attachment 48	08/17/12	Hawaii State Judiciary Hoohiki (Court Docket): <i>Deutsche Bank National Trust Co. vs. _____, et al.</i> , Civil No. 11-1-2863, First Circuit Court, State of Hawaii
Attachment 49	03/27/12	Email from _____ to Richard Sheriff
Attachment 50	04/03/12	Email from _____ to Richard Sheriff
Attachment 51	04/05/12	Email from Richard Sheriff to James Donovan III
Attachment 52	04/16/12	Email from _____ to Richard Sheriff
Attachment 53	04/16/12	Engagement Memorandum Agreement between _____ (_____), _____ (_____), and Athletic Department-University of Hawaii
Attachment 54	04/17/12	Email from _____ to Richard Sheriff
Attachment 55	04/17/12	Email from Richard Sheriff to James Donovan
Attachment 56	04/30/12	Email from _____ to Richard Sheriff
Attachment 57	05/03/12	Email from Richard Sheriff to James Donovan
Attachment 58	05/03/12	Email from James Donovan to Richard Sheriff
Attachment 59	05/05/12	Email from _____ to Richard Sheriff
Attachment 60	05/07/12	Email from Richard Sheriff to Ryan Akamine
Attachment 61	05/09/12	Email from _____ to Richard Sheriff
Attachment 62	05/10/12	Letter from James Donovan to _____
Attachment 63	05/04/12	Legal Services Request Form – For Manoa Requests
Attachment 64	07/09/12	Email from _____ to _____

Attachment	Date	Description
Attachment 65	07/09/12	Email from to
Attachment 66	05/10/12	Email from Richard Sheriff to Ryan Akamine
Attachment 67	05/23/12	Email from to Richard Sheriff
Attachment 68	05/24/12	Email from Ryan Akamine to James Donovan
Attachment 69	04/03/12	Email from to Richard Sheriff
Attachment 70	04/19/12	Email from Richard Sheriff to
Attachment 71	04/17/12	Email from to Richard Sheriff
Attachment 72	05/25/12	Financing Agreement between and ()
Attachment 73	05/25/12	American Savings Outgoing Wire Transfer
Attachment 74	05/30/12	Email from Richard Sheriff to Ryan Akamine
Attachment 75	05/31/12	Email from Richard Sheriff to Carl Clapp, Vince Baldemor, Walter Watanabe, John McNamara, Teri Chang, and Jeannie Lee
Attachment 76	06/01/12	Email from to Richard Sheriff
Attachment 77	05/31/12	Email from to Richard Sheriff
Attachment 78	07/01/12	Email from to Richard Sheriff
Attachment 79	06/06/12	Email from Richard Sheriff to Ryan Akamine
Attachment 80	06/06/12	Email from Ryan Akamine to James Donovan and Richard Sheriff
Attachment 81	06/09/12	Email from to Richard Sheriff
Attachment 82	06/12/12	Email from Richard Sheriff to
Attachment 83	06/14/12	Email from Ryan Akamine to Richard Sheriff
Attachment 84	06/14/12	Email from Carl Clapp to James Donovan
Attachment 85	06/15/12	Email from James Donovan to Carl Clapp
Attachment 86	06/14/12	Email from to Richard Sheriff
Attachment 87	06/14/12	Email from to Richard Sheriff
Attachment 88	06/14/12	Email from to Richard Sheriff
Attachment 89	06/14/12	Email from Richard Sheriff to
Attachment 90	06/14/12	Email from to Richard Sheriff
Attachment 91	06/18/12	Email from Carl Clapp to Paul Kobayashi

Attachment	Date	Description
Attachment 92	06/18/12	Email from Vince Baldemor to UH Athletics, Caroline Gouveia, David Estermann, Kelvin Shoji, Kim, Joycelyn Lau, and Wayne Vieira
Attachment 93	06/18/12	Email from Brent Inouye to Richard Sheriff
Attachment 94	06/18/12	Email from _____ to Richard Sheriff
Attachment 95	06/18/12	Email from Carl Clapp to Paul Kobayashi
Attachment 96	06/19/12	Email from _____ to Richard Sheriff
Attachment 97	07/02/12	Email from Marcy Greenwood to Howard Todo
Attachment 98	06/20/12	Email from _____ to Richard Sheriff
Attachment 99	06/22/12	Email from Tiffany Kuraoka to Richard Sheriff
Attachment 100	06/20/12	Email from Tiffany Kuraoka to Richard Sheriff
Attachment 101	06/21/12	Email from Tiffany Kuraoka to Richard Sheriff
Attachment 102	06/21/12	Email from Vince Baldemor to Booster Club Presidents
Attachment 103	06/22/12	Email from Richard Sheriff to Carl Clapp
Attachment 104	06/22/12	Email from Carl Clapp to James Donovan
Attachment 105	06/22/12	Email from Carl Clapp to Paul Kobayashi
Attachment 106	06/22/12	Email from Derek Inouchi to Walter Watanabe and Richard Sheriff
Attachment 107	06/24/12	Email from Walter Watanabe to James Donovan, Carl Clapp, John McNamara, Vince Baldemor, Teri Chang, and Richard Sheriff
Attachment 108	06/25/12	Email from Richard Sheriff to Teri Chang
Attachment 109	06/25/12	Email from Teri Chang to Richard Sheriff
Attachment 110	06/25/12	Email from Carl Clapp to Paul Kobayashi
Attachment 111	06/25/12	Email from Paul Kobayashi to Carl Clapp
Attachment 112	06/20/12	Requisition (University of Hawaii and _____)
Attachment 113	06/25/12	University of Hawaii Wire Transfer Form
Attachment 114	06/25/12	University of Hawaii Authorization for Payment
Attachment 115	06/25/12	UH Transaction Listing
Attachment 116	06/25/12	Escrow Trustee Information
Attachment 117	06/25/12	Invoice to University of Hawaii Athletics (\$200,000.00)

Attachment	Date	Description
Attachment 118	06/25/12	Email from Howard Todo to Ryan Akamine
Attachment 119	06/26/12	Wire Detail Report
Attachment 120	06/26/12	Email from Paul Kobayashi to Carl Clapp and Tiffany Kuraoka
Attachment 121	06/25/12	Memorandum of Record from Alan Kimura re Wire Transfer to
Attachment 122	06/26/12	Email from Stacia Garlach to uhletwin@gmail.com (to Letterwinner Club Members) forwarding message from Aka President Vince Baldemor
Attachment 123	06/26/12	Email from Ryan Akamine to [redacted] and James Donovan
Attachment 124	06/27/12	Email from James Donovan to Carl Clapp
Attachment 125	06/27/12	Email from Richard Sheriff to [redacted]
Attachment 126	06/28/12	Email from Ryan Akamine to [redacted] and James Donovan
Attachment 127	06/29/12	Email from Ryan Akamine to [redacted] and James Donovan
Attachment 128	06/29/12	Email from Carl Clapp to Kathleen Cutshaw
Attachment 129	06/28/12	Email from Howard Todo to Kathleen Cutshaw
Attachment 130	06/28/12	Email from Kathleen Cutshaw to Tiffany Kuraoka
Attachment 131	06/28/12	Email from Virginia Hinshaw to Kathleen Cutshaw
Attachment 132	06/29/12	Email from Kathleen Cutshaw to Howard Todo
Attachment 133	06/29/12	Email from Richard Sheriff to Ryan Akamine
Attachment 134	06/29/12	Email from Carl Clapp to Ryan Akamine
Attachment 135	06/29/12	Email from Richard Sheriff to Ryan Akamine
Attachment 136	06/29/12	Email from Ryan Akamine to Richard Sheriff
Attachment 137	07/05/12	Email from [redacted] to Richard Sheriff
Attachment 138	07/02/12	Email from [redacted] to Richard Sheriff
Attachment 139	07/06/12	Email from Ryan Akamine to Richard Sheriff
Attachment 140	07/05/12	Email from [redacted] to Richard Sheriff
Attachment 141	07/09/12	Email from Richard Sheriff to James Donovan
Attachment 142	07/06/12	Email from Ryan Akamine to Kathleen Cutshaw
Attachment 143	07/06/12	Email from Ryan Akamine to Richard Sheriff

Attachment	Date	Description
Attachment 144	07/06/12	Email from Kathleen Cutshaw to Tiffany Kuraoka
Attachment 145	07/06/12	Email from Tiffany Kuraoka to Kathleen Cutshaw
Attachment 146	07/07/12	Email from Carl Clapp to Kathleen Cutshaw
Attachment 147	07/09/12	Email from Ryan Akamine to Richard Sheriff
Attachment 148	07/09/12	Email from _____ to _____, Marcy Greenwood and Richard Sheriff
Attachment 149	07/09/12	Email from Richard Sheriff to James Donovan
Attachment 150	07/09/12	Email from Marcy Greenwood to James Donovan
Attachment 151	07/09/12	Email from _____ to _____
Attachment 152	07/09/12	Email from _____ to _____
Attachment 153	07/09/12	Email from Richard Sheriff to James Donovan
Attachment 154	07/09/12	Email from _____ to Richard Sheriff
Attachment 155	2000-2001 Edition	Artist Management Rosters
Attachment 156	07/10/12	Email from _____ to James Donovan
Attachment 157	07/10/12	Email from _____ to Marcy Greenwood, James Donovan, and _____
Attachment 158	07/10/12	Email from _____ to Richard Sheriff and Marcy Greenwood re cancellation insurance
Attachment 159		Concert Events Description
Attachment 160	08/03/12	Email from _____ to _____
Attachment 161	Sep. 2006	A8.800 Disbursing/Accounts Payable and Payroll

List of witnesses interview by Factfinders

1. Director of Athletics **James Donovan, III**. (Attach. 16)
2. Associate Athletic Director for Administrative Services **Carl Clapp**. (Attach. 18)
3. Associate Athletic Director for External Affairs **John McNamara**. (Attach. 20)
4. Assistant Athletic Director for Facilities and Events **Teri Chang**. (Attach. 22)
5. Assistant Athletic Director for Business Operations **Tiffany Kuraoka**. (Attach. 24)
6. Center Arena Manager **Richard Sheriff**. (Attach. 26)
7. Ticket Manager **Walter Watanabe**. (Attach. 28)
8. VP for Budget and Finance/Chief Financial Officer **Howard Todo**. (Attach. 30)
9. Director of Financial Management and Controller **Paul Kobayashi**. (Attach. 32)
10. Accounts Payable Disbursing Supervisor **Alan Kimura**. (Attach. 34)
11. Former Manoa Chancellor **Virginia Hinshaw**. (Attach. 36)
12. Vice Chancellor for Administration **Kathleen Cutshaw**. (Attach. 38)
13. Associate General Counsel **Ryan Akamine**. (Attach. 40)
14. _____. (Attach. 42)
15. **Robert Peyton**. (Attach. 43)
16. _____. (Attach. 44)

Note: All attachments refer to the Factfinder Report attachments

Structure of Relevant Organizational Units of the University

Athletics Department

1. **James Donovan** is head of the Athletics Dept. He reports to Manoa Chancellor
2. **Carl Clapp** is the Associate Athletics Director for Administrative Services. He reports to Donovan
3. **John McNamara** is the Associate Athletics Director for External Affairs. He reports to Donovan
4. **Teri Chang** is the Assistant Athletics Director for Facilities/Events. She reports to Donovan or Clapp
5. **Tiffany Kuraoka** is the Assistant Athletics Director for Business Operations. She reports to Clapp
6. **Richard Sheriff** is the Arena Manager of the Center. He reports to Chang. In regards to certain events, Sheriff approached Donovan directly
7. **Walter Watanabe** is the Ticket Manager. He reports to Clapp

Administrative Office for Budget and Finance

1. **Howard Todo** is the VP for Budget and Finance/Chief Financial Officer of the University. He reports to the President
2. **Paul Kobayashi** is the Director - Financial Management and Controller. He reports to Todo
3. **James Kashiwamura** is the Director of Disbursing and Payroll Office. He reports directly to Kobayashi
4. **Alan Kimura** is the Accounts Payable Supervisor in Disbursing. He reports to Kashiwamura
5. **Duff Zwald** is the Director of the Office of Procurement and Real Property Management. He reports to Kobayashi

Office of the Chancellor

1. **Virginia Hinshaw** was the Chancellor for the Manoa Campus through June 2012. **Thomas Apple** succeeded Hinshaw as Chancellor. The Chancellor reports to the President
2. **Katherine Cutshaw** is the Vice-Chancellor for Administration, Finance and Operations for the Manoa Campus. She reports to the Manoa Chancellor



UNIVERSITY OF HAWAI'I

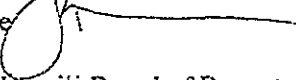
BOARD OF REGENTS

July 13, 2012


MEMORANDUM

TO:

00

FROM: James H.Q. Lee 
 Vice Chair
 University of Hawai'i Board of Regents
 Bachman Hall 209
 2444 Dole Street
 Honolulu, HI 96822

and

M.R.C. Greenwood 
 President
 University of Hawai'i System
 Bachman Hall 202
 2444 Dole Street
 Honolulu, HI 96822

SUBJECT: APPOINTMENT AS FACT-FINDER

We are appointing you to serve as fact-finder to investigate the possible inappropriate management, planning, organization, and administration of the benefit concert scheduled for August 18, 2012 at the Stan Sheriff Center, and/or violations of University of Hawai'i ("University") policies and procedures or other related violations which may involve James Donovan, III, Director of Athletics, Intercollegiate Athletics, University of Hawai'i at Mānoa, and Richard Sheriff, Manager, Stan Sheriff Center, University of Hawai'i at Mānoa, and/or other individuals.

Please meet and interview the relevant parties and appropriate witnesses and provide a report to us of your findings. Upon completion of the investigation, we will determine whether or not the evidence does or does not support the allegations and what appropriate action, if any, should be taken in accordance with the provisions of any applicable collective bargaining agreements and/or University policies and/or procedures.

Thank you for your assistance.

CHAPTER 8
BUSINESS AND FINANCE

Section 8-1 Contracts and Official Documents.

a. General:

Except as otherwise provided herein, the President is authorized to approve, sign, and execute contracts and settlements of claims in accordance with law and Board policy. In addition, the President is authorized to approve or accept all gifts, grants, and contracts involving the University's receipt of extramural funds. Should it be determined, in consultation with the Board, that a contract or settlement is anticipated to have a significant impact on policies, programs, or operations; or result in potential institutional liability the prior approval of the Board shall be required regardless of amount and source of funding. The President may delegate authority for the approval, acceptance, signing, and execution of contracts and settlements to other University officials.

b. Construction Projects:

The President is authorized to act as the Contracting Officer of the University on construction projects, including projects financed in whole or in part from Federal and other grants. Construction projects, including repair and maintenance projects, in excess of and/or totaling more than \$5,000,000 shall require the Board's prior approval. This requirement will not be circumvented through parceling. The President shall provide advanced notice, to the extent practical, of potentially controversial decisions or actions that are within authority delegated to the President. Should it be determined, in consultation with the Board, that a construction project is anticipated to have a significant impact on policies, programs, operations, or generates controversy prior Board approval is required regardless of amount or source of funding.

c. Consultant Contracts:

Contracts to engage consultant services, including but not limited to consultants to study or review University programs and/or operations for the purposes of recommending courses of action, which are anticipated to require changes in Board policies and/or have significant impact on policies, programs, or operations, shall require the prior approval of the Board regardless of amount or source of funding. Consultant contracts which are estimated to be \$1,000,000 or less, consultant expenses included, and are not expected to result in changes in Board policies and/or have a significant impact on policies, programs or operations, shall be approved by the President or the President's designees¹. All consultant contracts in excess of \$1,000,000, expenses included, shall require the prior approval of the Board.

¹ See By Laws, Article II, Section D.g.(6) function of the Standing Committee on University Audits as it relates to an independent auditor.

6. The President or his/her designees are authorized to manage the University's short-term investment program. The Board will review the performance of the short-term investment program at least annually.

Section 8-7 Travel.

The President or his/her designees are delegated the authority to approve on behalf of the Board all travel requests. The President shall establish policies and procedures in implementing this delegation and conditions and criteria for the approval of travel. The President shall provide such travel reports as may be requested by the Board. The President or his/her designees are to insure that all State and Federal laws, rules, regulations and policies are adhered to and that adequate records are maintained for all travel.

Section 8-8 Gifts.

The Board, by statute, shall be the official recipient of all gifts to the University. Gifts or bequests to the University with inappropriate conditions attached to them shall be refused. Gifts without conditions may be accepted by the President on behalf of the Board. Gifts with conditions, regardless of value, shall be considered for acceptance by the Board.

Section 8-9 Fund Raising.

- a. Fund raising campaigns conducted for the benefit of, and in the name of, the University, or any of its affiliate units, for whatever purpose, must be given prior approval in writing by the President. When Board policy appears to be involved, or should the campaign require University funds or have a goal in excess of \$50 million, the matter will be taken to the Board for approval.
- b. The President may process applications from faculty members to local foundations for funds for various purposes if, in the opinion of the administration, the applications are worthy of support from foundations, with the understanding that these applications are not to take the place of the ones submitted by the administration.
- c. The University of Hawai'i Foundation ("Foundation") is a not-for-profit corporation established to raise funds for the University. The President is authorized to serve on the Board of Trustees of the Foundation if requested to do so by the Foundation.
- d. The Board wishes to acknowledge the service of volunteer groups and nonprofit organizations and to encourage their support on behalf of the University. These entities provide valuable assistance in fundraising, public outreach, and other support for the University's mission. The most common forms of such organizations are support groups and alumni chapters.

CHAPTER 8
BUSINESS AND FINANCE

Section 8-1) Contracts and Official Documents.

a. General:

Except as otherwise provided herein, the President is authorized to approve, sign, and execute contracts and settlements of claims in accordance with law and Board policy. In addition, the President is authorized to approve or accept all gifts, grants, and contracts involving the University's receipt of extramural funds. Should it be determined, in consultation with the Board, that a contract or settlement is anticipated to have a significant impact on policies, programs, or operations; or result in potential institutional liability the prior approval of the Board shall be required regardless of amount and source of funding. The President may delegate authority for the approval, acceptance, signing, and execution of contracts and settlements to other University officials.

b. Construction Projects:

The President is authorized to act as the Contracting Officer of the University on construction projects, including projects financed in whole or in part from Federal and other grants. Construction projects, including repair and maintenance projects, in excess of and/or totaling more than \$5,000,000 shall require the Board's prior approval. This requirement will not be circumvented through parceling. The President shall provide advanced notice, to the extent practical, of potentially controversial decisions or actions that are within authority delegated to the President. Should it be determined, in consultation with the Board, that a construction project is anticipated to have a significant impact on policies, programs, operations, or generates controversy prior Board approval is required regardless of amount or source of funding.

c. Consultant Contracts:

Contracts to engage consultant services, including but not limited to consultants to study or review University programs and/or operations for the purposes of recommending courses of action, which are anticipated to require changes in Board policies and/or have significant impact on policies, programs, or operations, shall require the prior approval of the Board regardless of amount or source of funding. Consultant contracts which are estimated to be \$1,000,000 or less, consultant expenses included, and are not expected to result in changes in Board policies and/or have a significant impact on policies, programs or operations, shall be approved by the President or the President's designees¹. All consultant contracts in excess of \$1,000,000, expenses included, shall require the prior approval of the Board.

¹ See By Laws, Article II, Section D.g.(6) function of the Standing Committee on University Audits as it relates to an independent auditor.

This requirement will not be circumvented by parceling the amount of the contract.

d. Settlement Agreements:

All settlement agreements recommended by the University's General Counsel involving payments of \$500,000 or less, or involving workers' compensation claims in any amount and which do not contravene Board policy and do not have a significant impact on policies, programs or operations, shall be approved by the President or the President's designee. Agreements which are anticipated to require changes in Board policies and/or have significant impact on policy, programs, or operations and/or where the Board is named as a party to a suit, shall require the prior approval of the Board regardless of amount. All settlement agreements exceeding \$500,000, except for settlement of workers' compensation claims, shall require the approval of the Board. This requirement may not be circumvented by subdivision of the total amount of the settlement claim. All settlements requiring Board approval shall include a signature line for the Board.

e. Procurement Procedures:

Subject to the provisions set forth herein, the President is authorized to develop internal policies and procedures for the procurement of goods, services and construction in accordance with law and Board policy, provided such procedures are approved by the Board prior to implementation in accordance with Chapter 304A-105, HRS. Except as otherwise provided herein, the procurement of goods or services exceeding \$5,000,000 shall require the prior approval of the Board unless, in consultation with the Board, it is anticipated that such procurement will have a significant impact on policies, programs, or operations, in which case prior Board approval is required regardless of amount and funding source. The specified threshold will not be circumvented by parceling.

Section 8-2 Designation of Depositories, Checks and Vouchers.

- a. The Board shall from time to time, upon recommendation of the Vice President for Budget and Finance/Chief Financial Officer, assign authority and responsibility for designating depositories for University funds and for the signing of checks and vouchers disbursing any and all such funds.
- b. Resolution for Designation of Depositories, Checks, and Vouchers.

The Vice President for Budget and Finance/Chief Financial Officer is hereby authorized to approve, sign, and draw upon letters of credit and other negotiable instruments, and establish federally-insured bank and savings and loan depositories which he/she considers necessary in accordance with requirements or federal contracts and other funding arrangements.

Accounts to serve as depositories for revenues and other receipts including letters of credit and other negotiable instruments shall be established with institutions having main offices on the island of O'ahu.

Checks and savings withdrawals drawn against letters of credit, and other accounts on such depository institutions shall be signed by the Vice President for Budget and Finance/Chief Financial Officer or by other University staff members to whom he/she may delegate his/her authority from time to time.

The Vice President for Budget and Finance/Chief Financial Officer or his/her delegate may manually sign such checks and withdrawal authorizations. In addition, the Vice President or delegate may authorize, in writing, the use of facsimile signature plate for each group of checks to be signed, and he/she may delegate the authority to approve the use of his/her own facsimile signature plate for such groups.

The Secretary shall execute and deliver to said depository institutions a sworn signed statement advising said institutions of the office appointment and signature of the Vice President for Budget and Finance/Chief Financial Officer. He/she shall then advise said institutions in writing of any delegation of his/her signing authority, together with the signatures thereof.

Where required by contractual relationships with other governmental or private agencies, the Vice President for Budget and Finance/Chief Financial Officer may designate an official of such agency as a second signatory on checks which disburse funds from pool accounts established pursuant to said contractual relationships. He/she shall advise the institution concerned in writing of said second signatory.

Vice President for Budget and Finance/Chief Financial Officer is hereby authorized to establish imprest checking accounts and to delegate the necessary check signing authority under the following conditions:

- (1) No such checking account shall exceed \$60,000 in deposits at one time. The Vice President for Budget and Finance/Chief Financial Officer or his/her delegate may make temporary increases to imprest accounts in excess of \$60,000 to provide for short term requirements.
- (2) Each such imprest checking account shall be operated on an imprest basis wherein all deposits to said account shall be made only by replenishment checks from the University or State, which checks shall be in the amount of properly submitted vouchers of disbursement submitted by the custodian of the fund.
- (3) Checks drawn on such accounts shall be by single signature of persons designated by the Vice President for Budget and Finance/Chief Financial Officer to sign such checks, said designation to be made to the institution concerned, in writing.
- (4) The Vice President for Budget and Finance/Chief Financial Officer shall exercise authority over such checking accounts to meet operating needs and maintain proper controls.

In the case of such imprest checking accounts, the Secretary shall execute and deliver to the selected institutions an agreement setting forth the above facts and containing a sworn statement advising said institutions of the official

appointment and signature of the Vice President for Budget and Finance/Chief Financial Officer.

It is further resolved that the Vice President for Budget and Finance/Chief Financial Officer or other staff members to whom the he/she may delegate this authority from time to time, may sign vouchers and payrolls for transmittal to the State Comptroller for the disbursement of the State funds allocated and allotted to the University.

All previous authorizations, inconsistent herewith, including the resolutions of the Board on the 19th day of October 1973 and the 18th day of October 2002, are hereby revoked.

Section 8-3 Biennial Budget (Operating and Capital Improvements).

a. Policy and Governing Principles,

- (1) The President, upon approval by the Board, shall submit to the Governor, the University's proposed biennial budget which shall be designated the "Board of Regents' Budget."
- (2) The proposed biennium budget shall be one component of a comprehensive system of planning, programming and financing the programs of the University. The system shall consist of:
 - (a) The articulation of overall University and campus missions; the development, coordination and review of long-range goals, objectives and directions to achieve these missions; and the development of programs and intermediate plans to implement these goals, objectives and directions.
 - (b) An integrated, orderly system for the continuous review and evaluation of programs which result in the establishment, modification and termination of programs as appropriate. This review shall include the evaluation of alternatives to existing objectives, policies, plans and procedures that offer more efficient and effective use of University resources and the regular appraisal and reporting of program performance.
 - (c) The preparation and implementation of a budget organized to focus on the resources required in the succeeding biennium to undertake programs and program changes necessary to implement the long-range goals and objectives of the University.
- (3) The preparation of the biennial budget shall be characterized as much as possible by openness and collaboration among students, faculty, administrators and policymakers.

b. The Budget Preparation Process,

The major activities of the biennial budget preparation process shall consist of the following:

(1) Preparation of Budget Policy Paper.

Using input from state, university system and campus planning documents, the President shall direct the preparation of a budget policy paper each biennium and approve its submittal for review and approval by the Board. The paper shall set forth the environmental context for budget building and general program, policy and management objectives, and institutional priorities to guide the preparation of the biennial budget.

(2) Preparation and Issuance of Budget Instructions.

Upon Board approval of the budget policy paper, the President shall issue formal instructions and pertinent policy statements for the preparation of the biennial budget. The policy statements shall include, as a minimum, the budget objectives included in the Board approved budget policy paper.

(3) Administrative and Executive Approval of Budgets.

The President shall review and approve for submittal to the Board, the recommended budget requests for UH at Mānoa, UH at Hilo, the Community College System, UH-West O'ahu and university-wide support programs. The chancellors of UH at Mānoa, UH at Hilo, UH-West O'ahu and the vice president for Community Colleges shall review and approve for submittal to the President the budget requests for the programs for their respective units.

(4) Board Approval.

The Board shall review and act on the budget recommended by the President prior to it being submitted to the Governor. Upon Board approval, the budget shall be referred to as the "Board of Regents' Budget" and shall be transmitted to the Governor and the Legislature in accordance with applicable statute.

Section 8-4 University Projects.

- a. Revenue Bond Resolution. The sale of bonds to finance revenue producing projects or facilities shall be subject, as applicable, to the provisions of "A Resolution Creating and Establishing a Network Consisting of a University System, Including Certain University Projects, and University Purposes, of the Board of Regents, University of Hawaii; Creating and Establishing an Issue of Revenue Bonds of the Board of Regents, University of Hawaii, and Providing for the Security for and Payment of Said Bonds and Limiting Such Payment to the Revenues of Said Network; Setting Forth the Terms and Conditions for the Issuance of Bonds; Setting Forth the Terms and Conditions for the Issuance of Additional Series of Said Bonds; Providing for the Rights of the Holders of Said Bonds; and Making Certain Other Covenants and Agreements in Connection with the Foregoing", adopted November 16, 2001.

as amended and supplemented from time to time, or to the provisions of "A Resolution Creating and Establishing an Issue of Revenue Bonds of the Board of Regents of the University of Hawaii, and Providing for the Security for and Payment of Said Bonds and Limiting Such Payment to Moneys Derived from the Ownership and Operation of the University of Hawaii and Certain Other Moneys Made Available to the University Other Than Moneys Heretofore Pledged to Other Obligations of the Board; Setting Forth the Terms and Conditions for the Issuance of Said Bonds; Providing for the Rights of the Holders of Said Bonds; and Making Certain Other Covenants and Agreements in Connection with the Foregoing", adopted May 17, 2006, as amended and supplemented from time to time.

- b. University Revenue Undertakings Fund (URUF). The President shall recommend the use of reserve or surplus revenues involving the transfer of funds between projects which are all within the University Revenue Undertakings Fund.

Section 8-5 Purchases and Equipment Capitalization.

- a. Purchases shall be made in the name of the University and according to law and Board policy. No amounts stipulated in this section will be exceeded by parceling.
- b. Vice presidents and chancellors shall have the authority to make purchases in amounts less than \$25,000 per transaction, which authority may be further delegated.
- c. Vice presidents, and chancellors may authorize the issuance of purchasing cards to be used in lieu of purchase orders for transactions not exceeding \$2,500 provided the unit first establishes appropriate transaction guidelines.
- d. Equipment shall be defined as tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Section 8-6 Investments.

- a. General:

The investment of funds and the purchases and sales of bonds, stocks, and other securities and properties from trust or investment funds shall be made with the approval or on the direction of the Board. The President or President's designee is authorized to take any action and to execute and deliver on behalf of the Board such documents and certificates as may be necessary or desirable in connection with the acceptance, sale or transfer of investment securities issued to the University. This policy sets forth procedures and guidelines for the day-to-day administration of all University endowment investment activities.

b. Investment Management.

- (1) The Board has the basic responsibility of preserving institutional resources, including the endowment in perpetuity. The Board oversee the policies and processes concerning investments and asset management and are subject to certain legal duties including acting prudently and in the interest of the participants and beneficiaries, and the duty to correct or report improprieties of other fiduciaries.
- (2) The Board's Committee on Budget and Finance and Facilities (herein: "Committee") is charged with the responsibility to review matters related to endowment funds. The Committee shall recommend to the Board for approval the engagement, evaluation, and termination of investment consultants, managers, custodial firms, and other investment professionals; policies and guidelines concerning the management of the endowment fund including but not limited to performance objectives, investment guideline, and performance goals for investment managers; and changes and rebalancing of asset allocations.
- (3) The Vice President for Budget and Finance/Chief Financial Officer ("VP/CFO") is charged with carrying out the University's investment policy and coordinates investment monitoring. The VP/CFO shall also serve as the administrative representative on investment subcommittees of the Board, and provides staffing to the Committee and subcommittees on matters concerning the endowment fund.
- (4) The investment consultant (herein also referred to as the "Third Party Monitor" assists the Board in achieving optimal long-term returns consistent with the endowment's acceptable level of risk. Consultants shall be selected through a formal competitive process coordinated by the VP/CFO in consultation with the Committee. The responsibilities of the consultant shall include:
 - (a) Assist in defining the investment objectives of the fund and in establishing investment policy guidelines;
 - (b) Assist in the selection of the appropriate asset classes and percentages to invest in each class based on return expectations and risk;
 - (c) Recommend short-term asset allocation shifts;
 - (d) Assist in the selection of investment managers and other professionals;
 - (e) Recommend performance objectives and other guidelines and policies for investment managers;
 - (f) Assist in the evaluation of investment managers, providing quarterly reports on their performance and recommending actions by the Board; and

(g) Provide other services as specified by the Board and/or Committee.

c. Investment Goals and Guidelines:

The Board shall adopt investment goals and comprehensive guidelines to insure the preservation of capital and adequate growth and income. The long-range investment objective of the University is to achieve an optimal rate of return on assets based on the asset allocation policy to produce current income to meet spending needs of 6% while preserving the real value of the endowment principal.

(1) University of Hawai'i Endowment Fund Investment Goals and Guidelines

(a) Goals,

The investment goal of the University of Hawai'i Endowment Fund ("Fund") is to seek the highest expected total return¹ within reasonable levels of annual volatility to insure the long-term growth of the Fund and the continued annual payout² of not more than 5% of market value.

The University shall provide each investment manager with a schedule of payouts to be made during the year. The payouts will be scheduled as close to the actual expenditures as practicable to maximize the amounts retained and invested by the investment managers.

The Board also requires that actual investment results by each investment manager be placed in the median bracket or higher of a universe comprised of endowment funds nationwide. This yardstick shall apply to at least a three-year period in order to avoid Short-term fluctuations that may reflect temporary out-of-phase investment philosophies of the money managers. The Board expects this goal to be fulfilled within the levels of risk that a prudent person would take under various economic conditions.

(b) Guidelines.

1. The "prudent man rule" shall be followed in the investment of the Fund.

Securities in new and untried enterprises should not be purchased. This basically applies to companies with no public ownership if its stock or those that have only recently gone public. An exception to this rule would be where prudence has

¹ Resulting from income from dividends, interest and option writing, and from realized and unrealized appreciation in securities and other investments.

² The payout rate shall not exceed 5% based on a five-year moving average of market values at fiscal year end without prior approval by the Board.

been exercised through the use of investment vehicles that dramatically reduce the risk factors involved or where special expertise warrants the risk be taken. Therefore, if the investment manager, as a professionally informed and prudent person, recommends purchase of specific securities within an atmosphere of discretion and intelligence, and without speculative intent, then the standard of prudence is upheld.

2. Equity Investments.

Equity investments shall be made in quality common stocks, convertible preferred stocks and convertible bonds, with an emphasis on total return. Investment managers should invest for the longer term; however, this should not preclude the investment manager from making interim changes to meet the investment goal of the fund.

3. Bond Investments.

Investments in nonconvertible bonds shall be managed to take advantage of the changes in the interest rate curves rather than to be purchased and allowed to mature. All nonconvertible bonds should have at least an "BBB" rating or higher and be readily marketable. In addition, no more than 15% of the fixed income investments may be graded with an S&P quality rating below "A."

4. Cash and Cash Equivalent Investments.

All cash, wherever and whenever possible, should be invested in savings accounts or liquid interest bearing securities, including shares of money market funds.

(c) Asset-allocation.

A balanced portfolio will be maintained with a minimum of 30% and a maximum of 70% in either the equity or fixed income investments and a maximum of 40% in cash and equivalents.

This guideline is intended to insure that the portfolio will not be heavily skewed towards one type of investment. The principle of prudence requires that the portfolio be well balanced with respect to fixed income investments such as intermediate and long-term corporate and utility bonds, short-term instruments such as treasury bills and notes, commercial paper, certificates of deposit and savings accounts on one hand and equity investments represented primarily by common stocks on the other. (Existing mortgages may be retained in the portfolio until paid up; however, no new mortgage investments will be made.)

While the foregoing establishes minimum and maximum allocation for different asset classes, an investment manager is not precluded from establishing lower invested levels while raising cash during adverse market conditions if such action is prudent and protects the principal of the fund. Within the minimum and maximum asset allocation guidelines the Board authorizes the Committee to implement short-term tactical asset allocation changes to address the changing market outlook.

The Committee will review the fund's asset allocation and investment manager performance at least annually and shall determine whether the amounts invested with managers should be rebalanced toward the policy allocation targets.

1. Preservation of Principal.

The investment managers shall make reasonable efforts to preserve the principal of funds provided them, but preservation of the principal shall not be imposed on each individual investment.

2. Liquidity.

The Board will be responsible for providing the investment manager with as much advance notice as possible or practical in the event that changes in income payout or principal withdrawals are required.

3. Diversification.

To avoid the risk of concentration of assets, individual bond positions, other than obligations of the U.S. government, should not comprise more than 5% of the total fixed income portion of the portfolio. Individual equities should comprise no more than 5% of the total market value of the stock portfolio. In addition, investments in any one stock are not to exceed 5% of the corporation's outstanding common stock.

The investment manager will not be required to invest in equity securities representing a cross section of the economy. However, the investment manager will be allowed to choose the degree of concentration in any industry up to a maximum limit of 15% of total equities in any one industry at market value and a maximum limit of 10% in any one company.

4. Permitted Investments.

The use of the following investment vehicles is permitted:³

Savings accounts
 Commercial paper with A-1 or P-1 rating
 Certificate of deposit
 Money market funds/common trust cash equivalent funds

U.S. government, its agencies, or its instrumentalities
 Securities guaranteed by or collateralized by securities
 guaranteed by the U.S. government, its agencies, or its
 instrumentalities
 Debt securities and convertible securities of U.S. corporations
 and supranational organizations
 Preferred stocks
 Common stocks
 Publicly- trade foreign securities
 Mutual funds and common trust or commingled funds
 American depository receipts/shares
 Global depository receipts/shares
 The writing (selling) of covered call options
 Real estate, real estate investment trusts, and real estate
 mortgages
 Forward foreign exchange contracts, and bond/currency
 options and futures may be used for the defensive hedging
 of foreign currency exposure
 Limited partnerships
 Securities on margin, short sale of securities, and short
 positions

All investment vehicles selected for the portfolio must have a readily ascertainable market value.

5. Prohibited Investments/Transactions.

Investments in companies which, including predecessors,
 have a record of less than three years of continuous
 operation
 Commodities
 Lettered stock and private placements
 Selling "naked" puts and/or calls
 Derivative securities of any kind
 Adjustable rate issues with coupons which move inversely to
 an index
 Tax exempt securities

³ Investment in mutual funds, limited partnerships or pooled funds may be done so on an exception basis to fully comply with policies established for the Fund. However should the University choose to make such investments, the guidelines established by the mutual fund's prospectus or the pooled fund's guidelines will take precedence, and may not fully comply with policies established for the Fund. The University, through its monitor, shall periodically review the guidelines of any mutual

fund or pooled fund investment in order to determine if they remain appropriate for the Fund.

Securities issued by the managers, their parents or subsidiaries

Assets of the fund in their own interest or for their own account
Transactions involving fund assets on behalf of a party whose interests are adverse to the interests of the fund or its beneficiaries.

Transactions involving third party compensation for their own account from any party in connection with a transaction involving fund assets.

6. Investment Markets for Equities.

The investment manager is authorized to invest in equity securities listed on the New York Stock Exchange, principal regional exchanges, and over-the-counter securities for which there is a strong market providing ready saleability of the specific security. All securities shall be held by a custodian registered and licensed by appropriate bodies such as the Securities and Exchange Commission and the Federal Reserve Board. The terms and conditions of this custodial relationship shall be detailed in a written agreement with the custodian.

The investment manager is also authorized to invest in equity securities traded on foreign exchanges for which there are readily ascertainable market prices and ample trading liquidity.

d. Monitoring and Evaluation.

1. Performance Measurement.

Investment performance and management of the fund and the separately managed portfolios will be evaluated over a three year investment horizon. Evaluation will be conducted based on the quantitative and qualitative standards which are applicable to the Fund and the separately managed portfolios.

(a) Quantitative standards.

- (1) The extent to which the compounded annual rate of return of the total fund equals or exceeds the fund's performance objective.
- (2) The extent to which the compounded annual rate of return of the separately managed portfolio equals or exceeds the portfolio's performance objectives.
- (3) Performance will be measured on a time-weighted basis which recognizes the changes in market value, as well as income received; any appreciation or depreciation that occurs during

the period examined, whether realized through the sale of securities or left unrealized by holding the securities; and eliminates the influence of cash flow or asset transfers that are essentially beyond the control of the manager.

- (b) Qualitative standards.
 - (1) The manager's adherence to the investment policies and guidelines of the Fund.
 - (2) The manager's consistency in the application of their own investment philosophy.
2. The evaluation and monitoring of the Fund will be accomplished as follows:
- (a) Semi-annual meetings of the Board's Committee responsible for the governance of the University financial matters with each of the investment managers to review the following:
 - (1) Review the past investment policy and examine the current investment policy.
 - (2) Develop an understanding of the strategy being used by the investment manager to carry out the current investment policy.
 - (3) Review the present and prospective economic climate.
 - (4) Permit the Board to understand the risk levels of securities represented in the portfolio.
 - (5) Review the performance of the portfolios with respect to the investment objectives at least annually, and possibly more often. While the Board recognizes that performance for an interval as short as one year or less normally is not a fair basis for evaluation of the performance of the investment manager, they do reserve the right to change the investment manager.
 - (b) An annual review meeting of the entire Board with the investment managers to review the performance of the portfolios, the performance of each investment manager, and the goals and objectives of the Fund.
 - (c) Quarterly reviews based on reports prepared by the Board's selected third-party monitoring service.
 - (d) Comparisons of Fund results and a universe comprised of other endowment funds nationwide to make certain the Fund results are in the top 50% as required by the guideline goals.
 - (e) The Board's third party monitor shall be relied on and expected to provide advice whenever appropriate on the composition, performance, and governance (e.g.: policies) of the Fund.

3. Guidelines for probation/termination of an investment manager (Note: These guidelines are also applicable to the Associated Students of the University of Hawai'i at Mānoa ("ASUH") investment managers). The Committee may recommend the termination of any manager and/or consultant(s) at any time if it determines that the manager is no longer appropriate for the Fund.
- (a) When the investment manager is in violation of the Fund's investment guidelines, the violations should be reviewed with the manager. Consideration may be given to re-establish appropriate guidelines. The manager may be placed on probation for one year. If further violations occur, the manager may be terminated.
 - (b) The investment manager must immediately notify the Board of any pending changes in ownership. This notification places the investment manager on probation. If the change is expected to have a detrimental effect on performance, the manager may be terminated.
 - (c) Upon hiring of the investment manager, a list of key personnel will be provided by the manager to the Board. This will be ordered according to authority. The manager is responsible for updating the list on an as needed basis. If 60% of the key personnel or two of the three top personnel listed have departed from the firm, the manager may be terminated.
 - (d) The investment manager must immediately notify the Board of any pending litigation. Based on the gravity of the suit the possible impact on the investment process, the manager may be placed on probation or terminated.
 - (e) The investment manager may be terminated should it fail to adhere to stated investment philosophy and style, or when that style is no longer compatible with the endowment fund's investment approach.
 - (f) While the Board reserves the right to terminate a manager at any time, it intends to evaluate the manager's investment performance on a trailing 3-year basis. The specific performance tests to determine whether a manager should be placed on probation or terminated will be based on a comparison of the annualized time-weighted total rate of return of the manager's total portfolio on a trailing 3-year basis against the following standards:
 - (1) Equity/Balanced Managers: Annualized return no lower than 30% below the return of the Policy Index, gross of fees or ranking no lower than the 65th percentile of a universe of peers.
 - (2) Fixed Income Managers: Annualized return no lower than 10% below the return of the Policy Index, gross of fees or ranking no lower than the 65th percentile of a universe of peers.

- (g) If a manager fails either of the applicable performance tests described above, the manager may be placed on probation for 6 months. For this 6-month period, the manager's performance is expected to rank at the 50th percentile or better, or be equal or better than the Policy Index. If this objective is not met, the manager may be terminated. If this objective is achieved, the manager's probationary period may be extended for an additional 6 months. After the second 6-month period, the manager's trailing 12 months performance is expected to rank at the 50th percentile or better, or equal or better than the Policy Index.
 - (1) If the 12-month objective is not attained, the manager may be terminated.
 - (2) If the 12-month objective is achieved and the fund's trailing 3 year performance has been met, probationary status may be removed.
 - (3) If the 12-month objective is achieved, but the fund's investment objective over 3 years has not been met, the manager's probationary period may be extended for an additional 12 months. After this 12-month extension, the fund's last 24-month performance is expected to rank at the 50th percentile or better, or be equal or better than the Policy Index. If these objectives are met, the probationary status will be removed. If it is not attained, the manager may be terminated.
 - (h) The manager is allowed only one 12-month probationary period over any 6-year period. Any subsequent failure of the specific performance tests stated in Section II.A. within a 6-year period after a 1-year probation is considered reason for termination.
 - (i) Four quarters of consecutive under-performance relative to any or all of the above referenced benchmarks will trigger a review with the offending investment managers. All of the qualitative criteria should be reviewed along with an explanation of the underperformance from the manager.
- e. Associated Students of the University of Hawai'i at Mānoa, ASUH Stadium Stock and Investment Policy Objectives and Guidelines.
1. Purpose of the Investment Policy Statement.
 - (a) The purpose of this policy as recommended by the Associated Students of the University of Hawai'i at Mānoa ("ASUH") and adopted by the Board is to establish goals and guidelines for the investment of the ASUH Stadium Stock Fund (hereinafter referred to as the "ASUH Mānoa Stadium Stock Fund"). This policy is promulgated pursuant to and in accordance with the Resolution on the Use of New Income, Principal and Investment of the ASUH Mānoa Stadium Stock Fund

which is attached and incorporated herein as Section 8-10.

It is the intent of this document to state general attitudes, guidelines, and a philosophy which will guide the investment manager toward the performance desired. It is intended that the investment policies be sufficiently specific to be meaningful, but adequately flexible to be practical.

- (b) The ASUH Mānoa Stadium Stock Fund shall be managed at all times in accordance with all applicable laws and regulations, including the Hawaii Uniform Prudent Management of Institutional Funds Act (UPMIFA), Chapter 517E, Hawaii Revised Statutes.

The investment of the ASUH Mānoa Stadium Stock Fund's asset shall be for the exclusive purpose of providing benefits to ASUH and defraying reasonable expenses of administering the ASUH Mānoa Stadium Stock Fund.

- (c) Investment Philosophy of the Board and the ASUH:

The Board and the ASUH recognize that risk (i.e., the uncertainty of future events), volatility (i.e., the potential for variability of asset values) and the possibility of loss in purchasing power (due to inflation are present to some degree with all types of investment vehicles). While high levels of risk are to be avoided, the assumption of a moderate level of risk is warranted and encouraged in order to allow the professional investment manager the opportunity to achieve satisfactory long-term results consistent with the objectives and the fiduciary character of the ASUH Mānoa Stadium Stock Fund.

The Board and the ASUH believe that the ASUH Mānoa Stadium Stock Fund's assets should be managed in a way which reflects the following statement:

The Board and the ASUH feel that bonds and other fixed income securities should be actively managed.

Risks in individual securities, particularly in stocks, shall be acceptable, but the overall fund should be managed in a well-diversified manner so that significant impairment of capital is avoided.

2. Responsibilities of the Board and the ASUH.

The specific responsibilities of the ASUH and the Board in the investment process include and are limited to:

- (a) Acting in accordance with the guidelines under all applicable laws and regulations, including UPMIFA, Chapter 517E, Hawaii Revised Statutes;
 - (b) Determining the ASUH Mānoa Stadium Stock Fund's projected financial needs and communicating it to the investment consultant/financial advisor on a timely basis;
 - (c) Expressing the ASUH Mānoa Stadium Stock Fund's risk tolerance level;
 - (d) Developing sound and consistent investment policy objectives and guidelines, which the investment consultant/financial advisor can use in formulating corresponding investment decisions;
 - (e) Monitoring and evaluating performance results through the investment consultant/financial advisor to assure that policy guidelines are being adhered to, that objectives are being met, and taking appropriate action to replace an investment manager for failure to perform as mutually expected.
3. Responsibilities of the Investment Manager or Fund Manager and the Investment Consultant/Financial Advisor.
- (a) Adherence to Investment Policy Objectives and Guidelines,
 - (b) Discretionary Authority,
 - (c) The investment manager will be responsible for making all investment decisions on a discretionary basis regarding all assets placed under its jurisdiction and will be held accountable for achieving the investment objectives indicated herein. Such "discretion" includes decisions to buy, hold and sell securities (including cash equivalents) in amounts and proportions that are reflective of the manager's current investment strategy and compatible with the ASUH Mānoa Stadium Stock Fund's investment guidelines.
 - (d) The Investment Consultant/Financial Advisor will assist the ASUH Mānoa Senate in achieving optimal long-term returns consistent with the endowment's acceptable level of risk and shall perform responsibilities generally comparable to those of the investment consultant for the Board as described herein Section 8-6b(4).
4. Assets Excluded from Investment Manager's Responsibility.

Any securities of the ASUH Mānoa Stadium Stock Fund not constituting a part of the ASUH Mānoa Stadium Stock Fund or any other securities or assets which are not entrusted to the investment manager's "discretionary" investment authority will not be deemed managed by the investment managers and, therefore, such assets will not be its responsibility.

5. Compliance with UPMIFA Rules and Appropriate Legislation.

- (a) The investment managers are responsible for compliance with the UPMIFA rules, as it pertains to their duties and responsibilities as fiduciaries.
- (b) The investment manager(s) shall:
 - (1) Acknowledge in writing his recognition and acceptance of full responsibility as fiduciary in accordance with applicable federal and state legislation; and
 - (2) Be registered under the Investment Advisory Act of 1940 or be exempt from the 1940 Act.

6. Communication and Reporting.

The investment consultant/financial advisor shall communicate on a timely basis with the Board and the ASUH Investments Committee:

- (a) Major changes of investment strategy, asset allocation and other investment philosophy related matters;
- (b) Significant changes in the ownership, organizational structure, financial conditions or senior personnel staffing;
- (c) Recommendations that any particular guideline be amended ;
- (d) Notices of transaction activity and quarterly performance reports;
- (e) Information requested by the Board and/or the ASUH in the conduct of their own evaluation of portfolio management.

7. Performance Objectives and Guidelines.

The performance objectives stated herein will be sought over a three-year moving average which will be construed as a market cycle, ending three years following the appointment of the investment manager.

- (a) Absolute Performance Objectives.

The ASUH Mānoa Stadium Stock Fund primarily seeks consistency of investment return through a growth and income objective with emphasis on total return.

(b) Relative Performance Guidelines.

Relative performance guidelines are stated only as an indication of the investment climate within which this ASUH Mānoa Stadium Stock Fund is managed and a guide in evaluating how the manager is performing relative to the investment climate.

(1) The ASUH Mānoa Stadium Stock Fund hopes that the plan's equity portion of the portfolio will outperform the Standard and Poor's 500 over the market cycle.

(2) The ASUH Mānoa Stadium Stock Fund would expect the portfolio's fixed income portion will perform in line with the Barclays Aggregate Bond Index.

8. General Investment Guidelines.

(a) Safety of Principal.

The criterion of safety of principal should not be imposed on each commitment. However, the portfolio taken as a whole, must be structured primarily to protect it against long-term erosion of capital.

(b) Liquidity Needs.

The investment consultant/financial advisor shall arrange to have sufficient funds on hand in the form of cash equivalents to meet anticipated disbursements from the ASUH Mānoa Stadium Stock Fund. A minimum of \$50,000 should be retained in cash equivalents at all times to meet the operation needs of the ASUH.

(c) Funding Policy.

The ASUH Investments Committee shall have the responsibility for:

(1) Recommending and carrying out a funding policy and method which is consistent with the objectives of the plan and the operating fund requirements of the ASUH. Consideration should be given to the plan's short-term and long-term needs.

(2) Establishing the desired net payout from the portfolio and providing the investment consultant/financial advisor with an

estimate of cash flows and cash withdrawal needs for the coming year.

(3) Establishing the maximum payout which should not exceed 5% of the total portfolio.

(d) Types of Assets.

All assets selected for the portfolio must have a readily ascertainable market value and must be readily marketable. In order to provide the investment manager with freedom to invest in various types of assets, the following list of types of assets is among those approved for investment:²

- Savings Accounts
- Commercial Paper with A-1 or P-1 rating
- Certificate of Deposit
- Money Market Funds/Common Trust Cash Equivalent Funds
- U.S. Government or its Agencies
- Securities guaranteed by or collateralized by Securities guaranteed by the U.S. Government or its Agencies
- Debt securities and convertible securities of U.S. Corporations and supranational organizations
- Preferred stocks
- Common stocks
- Publicly trade foreign securities
- Mutual funds and common trust or commingled funds
- American depository receipts/shares
- Global depository receipts/shares
- The writing (selling) of covered call options
- Real estate, real estate investment trusts, and real estate mortgages
- Forward foreign exchange contracts, and bond/currency options and futures may be used for the defensive hedging of foreign currency exposure
- Limited partnerships
- Securities on margin, short sale of securities, and short positions

The following types of assets or transactions are expressly prohibited:

² Investment in mutual funds, limited partnerships or pooled funds may be done so on an exception basis to fully comply with policies established for the ASUH Mānoa Stadium Stock Fund. However should the ASUH choose to make such investments, the guidelines established by the mutual fund's prospectus or the pooled fund's guidelines will take precedence, and may not fully comply with policies established for the ASUH Mānoa Stadium Stock Fund. The ASUH, through its investment consultant/financial advisor, shall periodically review the guidelines of any mutual fund or pooled fund investment in order to determine if they remain appropriate for the ASUH Mānoa Stadium Stock Fund.

Investments in companies which, including predecessors, have a record of less than three years of continuous operation

Commodities

Lettered stock and private placements

Selling "naked" puts and/or calls

The use of adjustable rate issues with coupons which move inversely to an index

Tax exempt securities

Securities issued by the managers, their parents or subsidiaries

Assets of the fund in their own interest or for their own account

Transactions involving fund assets on behalf of a party whose interests are adverse to the interests of the fund or its beneficiaries.

Transactions involving third party compensation for their own account from any party in connection with a transaction involving fund assets

(e) Risk Management Guidelines.

The Board and the ASUH recognize that the capital markets can be unpredictable at times and that any investment posture could result in periods whereby the market values of the ASUH Mānoa Stadium Stock Fund can decline in the account values. In this desire to limit risk, adherence to the asset allocation guidelines is paramount.

(f) Minimum Criteria for Selection.

(1) Equities

Equity investments will be made primarily in quality common stocks, convertible preferred stocks and convertible bonds, with an emphasis on total return. Investments managers should invest for longer term; however, this should not preclude the investment manager from making interim changes to meet the investment goal of the fund.

(2) Fixed Income.

Fixed income will be made up primarily of investment grade securities with the objective of total return.

(g) Diversification.

(1) Equities.

The investment manager will not be required to invest in equity securities representing a cross section of the economy. However, the investment manager will be allowed to choose the degree of

concentration in any industry up to a maximum limit of 15% of total equities in any one industry at cost and a maximum limit of 10% in any one company.

(2) Fixed Income.

To avoid the risk of concentration of assets, individual bond positions other than obligations of the U.S. Government should not comprise more than 5% of the total fixed income portion of the portfolio. In addition, no more than 15% of the fixed income investment may be lower than investment grade.

9. Asset Distribution.

The Board and the ASUH wish to set the following asset mix guidelines which should be rigidly observed.

Equities.....	Maximum 70% - Minimum 20%
Bonds	Maximum 70% - Minimum 20%
Cash or Cash Equivalents ...	Maximum 60% - Minimum 5%

10. Evaluation and Review.

- (a) Portfolio management performance will be measured on a year-to-year basis and will be evaluated over a three-year moving average. The following factors will be evaluated:
- (1) The time weighted return of the total portfolio vs. the ASUH Mānoa Stadium Stock Fund's stated investment objectives.
 - (2) The relative performance of the equities vs. the Standard and Poor's 500 Index.
 - (3) The relative performance of the fixed income investments vs. the Barclays Aggregate Bond Index.
 - (4) The manager's initiation of communication expressing its view and recommendations regarding the Investment Philosophy.
 - (5) The manager's consistency in the application of its own investment philosophy, such as its criteria of security selection and investment strategy.
- (b) Any large deviation from expected results or performance guidelines may require the consideration to alter and amend the investment

policies of the ASUH Mānoa Stadium Stock Fund.

(c) While the ASUH intends to fairly evaluate the portfolio performance over the agreed upon period of evaluation, they reserve the right to change the investment manager if there is unacceptable justification for poor results. The two most serious threats to the confidence regarding any investment manager are:

(1) Inconsistency of approach—having no visible philosophy or not adhering to a stated investment strategy.

(2) Poor supervision of individual stock investments.

(d) Fund and/or Manager Selection Process.

(1) Classification.

Classification of a fund into the proper asset class type (i.e. U.S. large-cap value) should be used when analyzing the funds/manager by peer group. Consider the consistency of return. Understand and compare the risk a fund or manager has taken in order to generate its returns. The quantitative process should be initiated by screening for all funds/managers in the same classification.

(2) Peer Performance.

The second step in the process is looking for the top performers over a 3-, 5- and 10-year period. A top performing fund/manager would have its historical performance ranked in the top 33% percentile relative to its peer group or fund classification for each period of time (3, 5 and 10 years).

(3) Consistency of Performance.

The third step is determining the consistency of the returns. The same manager(s) should be in place during the performance period being evaluated.

(4) Risk.

The fourth step is determining the risk a manager has taken in order to achieve the returns.

(e) Guidelines for probation/termination of an investment manager will follow Regents policy, Section 8-6d(3).

11. Reporting Requirements.

(a) ASUH shall meet with the investment consultant/financial advisor at least quarterly, unless otherwise mutually agreed upon, but no less than four times a year, on the following:

- (1) To discuss current portfolio structure and asset allocation policy.
- (2) To review specific investments and their appropriateness to the portfolio.
- (3) To gain insight into the manager's investment strategy as it relates to their outlook on the economy and stock market.
- (4) To evaluate comparative performance figures.
- (5) To review long-range philosophy/strategy vis-à-vis the Fund's ongoing needs or objectives.

(b) The ASUH shall obtain the following information from their investment consultant/financial advisor to assist in their evaluation of the ASUH Mānoa Stadium Stock Fund's performance and management on a quarterly basis.

(1) Account Information.

Summary of Investment Portfolio
 Common Stock Summary
 Portfolio Holdings—By industry diversification
 Schedule of Additions and Disbursements
 Schedule of Interest and Dividends Received
 Schedule of Purchases
 Schedule of Sales
 Schedule of Realized Gains and Losses

(2) Performance Evaluation.

The investment consultant/financial advisor shall provide an evaluation of the investment managers' performance based on the investment policy objectives and guidelines.

(3) Communications.

The investment consultant/financial advisor shall make recommendations in writing as to changes the investment consultant/financial advisor believes will be prudently beneficial to the ASUH Mānoa Stadium Stock Fund, such as changes in the ASUH Mānoa Stadium Stock Fund's investment guidelines when appropriate.

f. Name.

All securities held by the University shall be registered in the name "University of Hawai'i."

g. Investment Responsibility.

1. Statement. The primary fiduciary responsibility of the Board in managing the University's endowment funds is to attain an adequate financial return on those resources, taking into account the amount of risk appropriate for University investment policy.

However, when the Board adjudges that corporate policies or practices cause substantial social injury, the Board, as a responsible and ethical investor, shall give independent weight to this factor in its investment policies and in voting proxies on corporate securities.

2. Policy Guidelines. The Board shall normally not vote on any shareholder resolution involving social issues unless they conclude that a company's activities cause substantial social injury and such activities are the subject of a shareholder proposal which would eliminate or materially reduce the substantial social injury. The Board will vote on the proposal, provided such action is not inconsistent with the Board's fiduciary obligations. In cases where the proposed remedy is deemed unreasonable, the Board may abstain.

Where the Board concludes that a company's activities or policies cause substantial social injury, and the Board concludes that: (a) a desired change in the company's activities would have a direct and material effect in alleviating such injury; (b) the Board has exhausted its practicable shareholder rights in seeking to modify the company's activities to eliminate or reduce the substantial social injury thereby caused; (c) the company has been afforded the maximum reasonable opportunity to alter its activities; and (d) no alleviation of the substantial social injury by the company is likely within a reasonable time, the Board will consider the alternative of not continuing to exercise its shareholder rights under the previous paragraph, and may instead, when such an action is consistent with its fiduciary obligations, direct its investment managers to sell the securities in question within a reasonable period of time and in a prudent manner. Failure to meet the above guidelines presumes that no new investments will be made in such companies provided such action is consistent with the fiduciary duties of the Board.

If the Board concludes that a specific Board action otherwise indicated under these Guidelines is likely to impair the capacity of the University to carry out its educational mission and/or meet its financial obligations, then the Board need not take such action.

h. Short-term investments.

It is the policy of the Board to invest its funds in excess of immediate requirements in investments permitted under section 36-21, short-term investment of state moneys, Hawai'i Revised Statutes.

1. The objectives of the University's short-term investment policy are:
 - (a) Safety—To safeguard University funds by minimizing risk through collateralization, diversification and by depositing funds into federally-insured banks and savings and loan associations.
 - (b) Liquidity—To insure the availability of funds to meet University payments by the timely forecasting of cash requirements and the selection of securities that can be promptly converted into cash with a minimum risk of loss in principal.
 - (c) Yield—To maximize interest earnings on University investments by investing idle funds to the maximum extent possible.
2. The guidelines for short-term investments are:
 - (a) Banks and savings and loan associations without collateral agreements with the University and insured by the Federal Deposit Insurance Corporation "FDIC" or the Federal Savings and Loan Insurance Corporation "FSLIC": The maximum amount of the investment is not to exceed the maximum insurance coverage provided by the FDIC or FSLIC.
 - (b) Banks and savings and loan associations with collateral agreements with the University and Insured by the FDIC and FSLIC: The amount invested will be on the basis of the highest interest rate available for such maturity at the time the investment is placed.
3. Other investments shall observe the objectives of safety, liquidity and yield. Prudent risk control shall be of paramount importance in investment decisions with emphasis placed on the probable safety of capital rather than the probable income to be derived.
4. Investments with local depositories are to be made at bank branches which service University checking accounts or the main office of banks and savings and loan associations or at branches designated by the main office.
5. Collateralization of short-term investments is required under this policy for all deposits exceeding the maximum amount of federal deposit insurance.

6. The President or his/her designees are authorized to manage the University's short-term investment program. The Board will review the performance of the short-term investment program at least annually.

Section 8-7 Travel.

The President or his/her designees are delegated the authority to approve on behalf of the Board all travel requests. The President shall establish policies and procedures in implementing this delegation and conditions and criteria for the approval of travel. The President shall provide such travel reports as may be requested by the Board. The President or his/her designees are to insure that all State and Federal laws, rules, regulations and policies are adhered to and that adequate records are maintained for all travel.

Section 8-8 Gifts.

The Board, by statute, shall be the official recipient of all gifts to the University. Gifts or bequests to the University with inappropriate conditions attached to them shall be refused. Gifts without conditions may be accepted by the President on behalf of the Board. Gifts with conditions, regardless of value, shall be considered for acceptance by the Board.

Section 8-9 Fund Raising.

- a. Fund raising campaigns conducted for the benefit of, and in the name of, the University, or any of its affiliate units, for whatever purpose, must be given prior approval in writing by the President. When Board policy appears to be involved, or should the campaign require University funds or have a goal in excess of \$50 million, the matter will be taken to the Board for approval.
- b. The President may process applications from faculty members to local foundations for funds for various purposes if, in the opinion of the administration, the applications are worthy of support from foundations, with the understanding that these applications are not to take the place of the ones submitted by the administration.
- c. The University of Hawai'i Foundation ("Foundation") is a not-for-profit corporation established to raise funds for the University. The President is authorized to serve on the Board of Trustees of the Foundation if requested to do so by the Foundation.
- d. The Board wishes to acknowledge the service of volunteer groups and nonprofit organizations and to encourage their support on behalf of the University. These entities provide valuable assistance in fundraising, public outreach, and other support for the University's mission. The most common forms of such organizations are support groups and alumni chapters.

At the same time, as a public trust and the beneficiary of the funds raised, the University is obligated to require that the funds raised by such entities be adequately controlled and properly expended. The President shall promulgate such necessary policies and procedures that provide for the official recognition of groups and includes provisions that promote the fulfillment of the envisioned support of the University by the group and compliance with usual and common business and regulatory practices.

Section 8-10 Resolution on Use of New Income, Principal, and Investment of ASUH-Mānoa Stadium Stock Fund dated January 18, 1979.

WHEREAS, 1,481 shares of stock of Honolulu Stadium, Ltd., were held in the name of the Associated Students of the University of Hawai'i-Mānoa (herein after referred to as the "ASUH"); and

WHEREAS, upon liquidation of said Honolulu Stadium, Ltd., proceeds of \$839,258.77 was paid in respect of said 1,481 shares; and

WHEREAS, said proceeds of the redemption of said 1,481 shares shall be used to constitute the "ASUH Stadium Stock Fund" (herein after referred to as the "Fund"); and

WHEREAS, the Board of Regents of the University of Hawai'i (herein after referred to as the "Board") and the ASUH have agreed upon procedures set forth herein below for the use of the net income, principal, and investment of the Fund;

NOW, THEREFORE, be it resolved that the following procedures shall govern with respect to the Fund:

1. Annual Payout.

Annual payout, as defined and established in the below-mentioned "Investment Goals and Guidelines," shall be included as revenues in the annual ASUH budget for the exclusive use of the ASUH.

2. Principal.

The Board, only upon the recommendation of the ASUH Senate, may authorize the invasion of the principal, or any portion thereof, of the Fund for capital projects or other specific activities for the benefit of the ASUH.

3. Establishment of Investment Goals and Guidelines. (Amended April 12, 2012)

The Board, upon the recommendation of the ASUH Senate, shall establish investment goals and guidelines which shall govern the investment of the Fund.

4. Selection of Investment Managers.

The Board, upon the recommendation of the ASUH Senate, shall select an investment manager(s) who shall be responsible for the management of the Fund and shall be delegated limited (buy-sell decisions) investment authority.

5. Investment Consultant/Financial Advisor.

The Board, upon the recommendation of the ASUH Senate, shall select an investment consultant/financial advisor to monitor the performance of the investment manager(s).

6. Action of the Board of Regents.

(a) All matters in connection with the Fund shall be referred to the appropriate committee of the Board. Except when such committee meets in executive meetings, as provided by law, a duly appointed representative of the ASUH Senate shall be entitled to participate in such committee meetings when the committee considers any matter in connection with the Fund and shall be notified of all such committee meetings.

(b) All recommendations of the ASUH Senate with respect to the Fund shall be submitted to the University of Hawai'i administration which shall have 45 calendar days upon receipt of such recommendations to accept, modify or reject such recommendations and submit its recommendations to the Secretary of the Board of Regents. The 45-day period shall commence upon receipt of the ASUH recommendations by the Chancellor of the University of Hawai'i at Mānoa.

Upon mutual agreement in writing between the ASUH Senate and the University of Hawai'i administration, the deadline of 45 calendar days may be extended.

Upon receipt of the University of Hawai'i administration's recommendation by the Secretary of the Board, the Board shall have 45 calendar days to approve, modify or reject the administration's recommendation, which deadline may be extended by the Secretary of the Board for periods of 15 calendar days for reasonable cause upon notice of such extension(s) to the ASUH Senate.

7. Responsibility of the Board of Regents.

The Board of Regents shall have the authority and responsibility for the Fund as set forth herein and may take whatever action it deems appropriate and prudent with respect to said Fund.

The Board shall, however, consult with and solicit the recommendations of the ASUH Senate prior to acting on any Board initiated proposal with respect to the Fund except in emergency situations.

Section 8-11 Guidelines on Use of Income from the University of Hawai'i Mānoa Stadium Stock Fund, Proceeds from the Sale of the Kaimuki Observatory Lot and from the Rental of University Property.

The payout of income earned from (a) the Mānoa Stadium Stock Fund, (b) the proceeds of the sale of the Kaimuki Observatory Lot, and (c) the rental of University property herein called the Fund, shall not exceed 6% of the market value of the Fund on June 30 of the preceding year and shall be allocated in accordance with the following guidelines:

- a. The annual payout from the investment of proceeds from the liquidation of donated shares of the Honolulu Stadium, Ltd., supplemented as needed by the payout from the balance of the Mānoa Stadium Stock Fund shall be allocated as follows:
 - (1) A maximum of fifty percent of the potential payout from the Mānoa Stadium Stock Fund, as calculated above, on an annual basis, or so much thereof as may be needed as determined by the President, for scholarships for student athletes and student support services at the University of Hawai'i at Mānoa.
 - (2) A maximum of fifteen percent of the potential payout from the Mānoa Stadium Stock Fund, as calculated above, on an annual basis, or so much thereof as may be needed as determined by the President, for scholarships for student athletes and student support services at the University of Hawai'i at Hilo.
 - (3) A maximum of \$50,000 from the balance of the Mānoa Stadium Stock Fund for projects authorized by the President in consultation with the Board that would assist the University in meeting its different obligations and opportunities and such other projects that would further the interest of the University. Grants for individual projects are limited to \$15,000. Requirements in excess of the maximum limitations notes above require specific Board approval.
 - (4) A maximum of \$25,000 from the balance of the Mānoa Stadium Stock Fund for cash awards authorized by the Board or by the President in consultation with the Board, including the Board of Regents' Medal for Excellence in Teaching, Board of Regents' Medal for Excellence in Research, Willard Wilson Distinguished Service Award, and Excellence in Building and Grounds Maintenance Award.
- b. The balance of annual payout from the Mānoa Stadium Stock Fund, or so much thereof as may be required, may be allocated annually by the Board based on proposals submitted by the President for the following purposes:

- (1) Student financial aid programs available to students on all campuses, including scholarships, grants-in-aid, loans and student employment.
 - (2) Other student-related needs not normally provided by legislative appropriations. Such allocations shall be on a "one-shot" basis, and shall not be provided for continuing programs other than for initial development and "start-up" purposes, with future funding to come from other sources.
- c. The President may set aside any unused balance of the Mānoa Stadium Stock Fund to support the Regents' and Presidential Scholarships Programs.
 - d. The President shall provide an annual report to the Board regarding the payout of income from the Mānoa Stadium Stock Fund and from the proceeds of the Sale of the Kaimuki Observatory Lot.



UNIVERSITY
of HAWAII[®]
SYSTEM

M.R.C. Greenwood, Ph.D.
President

July 12, 2012

MEMORANDUM

TO: Vice Presidents
Chancellors

FROM: M.R.C. Greenwood
President

A handwritten signature in black ink that reads "M.R.C. Greenwood".

SUBJECT: E8.106, Authority to Execute Contractual Documents for Procuring Goods and Services and Entering into Cooperative Agreements for the Office of Intercollegiate Athletics, University of Hawai'i at Mānoa

Effectively immediately, authority delegated in accordance with the above cited Executive Policy E8.106 is suspended. Other standing University policies, procedures and signatory authority relating to the procuring of goods and services and entering into cooperative agreements shall apply.

cc: Vice President for Student Affairs and University/Community Relations and
Acting UHM Athletic Director Rockne Freitas

2444 Dole Street, Bachman Hall
Honolulu, Hawaii 96822
Telephone: (808) 956-8207
Fax: (808) 956-5286
Email: mrcgreenwood@hawaii.edu

An Equal Opportunity/Affirmative Action Institution

Prepared by the Office of the
Senior Vice President for Administration
This is a new Policy.

UNIVERSITY OF HAWAI'I

EXECUTIVE POLICY - DELEGATION OF AUTHORITY

November 1997

P 1 of 1

E8.106 Authority to Execute Contractual Documents for Procuring
Goods and Services and Entering into Cooperative
Agreements for the Office of Intercollegiate Athletics,
University of Hawai'i at Manoa

Source of Delegation:

Board of Regent's Bylaws and Policies, Section 8-1a;
2-2(b)(4)

Authority Delegated to:

Director of Intercollegiate Athletics, University of Hawai'i
at Mānoa, and his designees to execute contractual documents
for procuring goods and services with moneys from the
University of Hawai'i at Mānoa Intercollegiate Athletics
Revolving Fund and for entering into cooperative agreements
for the Office of Intercollegiate Athletics, University of
Hawai'i at Mānoa.

Effective Date of Delegation:

November 1, 1997

OPRPM Form 107G
(Rev. 07/2007)

**UNIVERSITY OF HAWAII
AGREEMENT FOR SERVICES**

This Agreement, effective the 12th day of July, 2012, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Cades Schutte, LLP

(hereinafter "CONTRACTOR"), a limited liability partnership
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)
under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: 1000 Bishop Street, Suite 1200, Honolulu, Hawaii 96813.
Taxpayer ID No. XX-XXX5190, Hawaii Tax ID No. W20269538-01

RECITALS

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

C. Money is available to fund this Agreement pursuant to:

- (1) _____ or
(Identify state sources)
- (2) _____ or
(Identify federal sources)
- (3) _____
(Identify other sources)

in the following amounts:

State	\$	<u>50,000.00</u>
Federal	\$	_____
Other	\$	_____

D. Pursuant to Section 304A-105 Hawaii Revised Statutes (HRS), the UNIVERSITY is authorized to enter into this Agreement.

E. The procurement of services specified herein is subject to the following procedures:

- Competitive sealed bidding/proposals.
- Sole source procurement.
- Emergency procurement.
- Exempt purchase, pursuant to APM Section A8.220, Exemption No. 11.
- Other: _____

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the UNIVERSITY and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$ 50,000.00), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.
5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii, at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of Procurement and Real Property Management. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

By *Mike Greenwald*
Its President

Approved as to Form and Legality:

CONTRACTOR

By *Margaret H. Feudt* 9/19/12
Title Vice President for Legal Affairs and University General Counsel

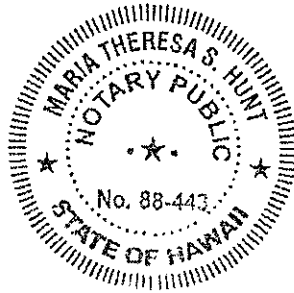
By *Kevin Wallace*
Title Partner *

*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

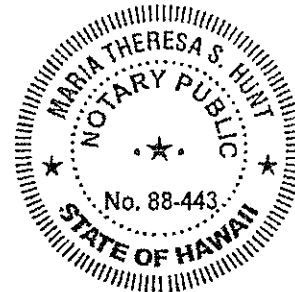
State of Hawaii)
County of Honolulu) SS.

On this 19th day of September, 2012, before me personally appeared Dennis W. Chong Kee, Esq., to me personally known, who being by me duty sworn, did say that he/she is the partner of Codes Schutte LLP, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.



Maria Theresa S. Hunt
Notary Public, MARIA THERESA S. HUNT
My Commission expires: 8/03/2016
My commission expires: _____

NOTARY CERTIFICATION Doc. Date: 7/12/2012
Doc. Description: University of Hawaii
Agreement for Services # of Pages: 19
Maria Theresa S. Hunt 9/19/2012
Notary Signature, 1st Circuit Notary/Cert. Date
Printed Name of Notary: MARIA THERESA S. HUNT



SCOPE OF SERVICES

Contractor shall assist in the fact finding concerning possible inappropriate management, planning, organization and administration of a benefit concert scheduled for August 18, 2012 at the Stan Sheriff Center at the University of Hawai'i at Mānoa, and/or violations of University of Hawai'i ("University") policies and procedures and other related violations.

Contractor shall provide the services of Dennis Chong Kee, Calvert Chipchase, Elijah Yip, and Lori Amano to gather information and draft a fact finding report relevant to the above.

TIME OF PERFORMANCE

All services rendered by the Contractor under this contract shall commence upon approval by the University and shall be completed within ONE (1) year.

COMPENSATION AND PAYMENT SCHEDULE

For services rendered hereunder, Contractor shall be paid an amount not to exceed FIFTY THOUSAND DOLLARS (\$50,000.00), which amount shall include all applicable taxes. The University shall not be responsible for any out-of-pocket expenses incurred by the Contractor unless specifically agreed to in writing. Contractor shall be responsible and shall pay all taxes, federal, state, and local. Total payment for services rendered under this contract shall not exceed FIFTY THOUSAND DOLLARS (\$50,000.00), unless agreed to in writing. The following hourly rates shall apply:

Dennis Chong Kee	\$275.00 per hour
Calvert Chipchase	\$240.00 per hour
Elijah Yip	\$230.00 per hour
Lori Amano	\$190.00 per hour

Payment by the University is subject to submission, in triplicate, of a properly executed original invoice, indicating the contract number, to the Office of Vice President for Legal Affairs and University General Counsel, 244 Dole Street, Bachman 110, Honolulu, Hawaii 96822. If the Contractor is being compensated on an hourly basis, the invoice shall indicate a certified account of all time spent in rendering services required by this contract.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than FIFTY PERCENT (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of Cades Schutte, LLP
CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) ~~(is not)~~ a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the UNIVERSITY if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the UNIVERSITY.

DATED: _____

CONTRACTOR

By *Allen W. Cleary*

Title *Partner*

* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII
GENERAL CONDITIONS FOR
AGREEMENTS FOR SERVICES

1. Coordination of Services by the UNIVERSITY. The DIRECTOR, or the DIRECTOR's designee, shall coordinate the services to be provided by the CONTRACTOR in order to complete the Project. The CONTRACTOR shall maintain communications with the DIRECTOR, or the DIRECTOR's designee, at all stages of the CONTRACTOR's work, and submit to the DIRECTOR or the DIRECTOR's designee, for resolution, any questions which may arise as to the performance of this Agreement.

2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

a. In the performance of services, or delivery of goods, or both, required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed or the goods are being provided, or both, by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract, to provide services, or goods, or both to other individuals or entities while under contract with the UNIVERSITY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR, and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53 and 237-45, Hawaii Revised Statutes, and paragraph 19 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Subcontracts and Assignments.

a. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Senior Vice President for Administration of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

b. Recognition of a successor in interest. When in the best interest of the UNIVERSITY, a successor in interest may be recognized in an assignment agreement which the UNIVERSITY, the CONTRACTOR, and the assignee as transferee (hereinafter referred to as the "ASSIGNEE") shall agree that:

- (1) The ASSIGNEE assumes all of the CONTRACTOR's obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against the UNIVERSITY, and
- (3) The CONTRACTOR shall continue to furnish, and the ASSIGNEE shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR requests to change the name in which the CONTRACTOR holds this Agreement with the UNIVERSITY, the DIRECTOR or the DIRECTOR's designee, shall, upon receipt of a document acceptable or satisfactory to the UNIVERSITY indicating such change of name (for example, as amendment to the CONTRACTOR's articles of incorporation), enter into an agreement with the CONTRACTOR to effect such a change of name. The agreement changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed.

d. Reports. All change of name or novation agreements effecting changes of the CONTRACTOR's name or novations hereunder other than by the DIRECTOR or the DIRECTOR's designee shall be reported to the DIRECTOR or the DIRECTOR's designee within THIRTY (30) days of the date that the agreement becomes effective.

e. Actions affecting more than one department. Notwithstanding the provisions of subparagraphs 5a through 5d herein, when the CONTRACTOR holds agreements with more than one department of the UNIVERSITY, the novation or change of name agreements herein authorized shall be processed only through the Office of Procurement and Real Property Management.

6. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

8. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the UNIVERSITY, the State of Hawaii, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. Modification of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 10 herein.

10. Change Order.

a. The DIRECTOR, or the DIRECTOR's designee, may, by a written order, signed only by the UNIVERSITY, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Agreement in any one or more of the following:

- (1) Drawings, designs or specifications, if the goods or services, or both, to be furnished are to be specially provided to the UNIVERSITY in accordance therewith;
- (2) Method of delivery; or
- (3) Place of delivery.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the DIRECTOR, or the DIRECTOR's designee, promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

c. Time period for claim. Within TEN (10) days after receipt of a written change order under subparagraph 10b, unless the period is extended by the DIRECTOR in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.

e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

11. Price Adjustment.

a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the Agreement or subsequently agreed upon;
- (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
- (4) In such other manner as the parties may mutually agree; or
- (5) In the absence of agreement between the parties, by a unilateral determination by the DIRECTOR of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

12. Suspension of Agreement. The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The DIRECTOR may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the DIRECTOR shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and

- (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the DIRECTOR decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

13. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause:

a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.

c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

14. Claims Based on the DIRECTOR's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the UNIVERSITY's procurement official(s), requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall have given written notice to the DIRECTOR:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the DIRECTOR in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The DIRECTOR, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the DIRECTOR;

- (3) Basis must be explained. The notice required by subparagraph 14a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the DIRECTOR within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or law precluding any UNIVERSITY officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

15. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.

b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

16. Ownership Rights and Copyright. The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

17. Publicity. The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, including the DIRECTOR, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts to the CONTRACTOR about the Project or this Agreement shall be referred to the DIRECTOR.

18. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be consistent with the following guidelines:

- a. Reimbursement for interisland air transportation shall be for actual cost only.
- b. Reimbursement for air transportation between Hawaii and out-of-state locations shall not exceed the lesser of actual cost and coach class air fare. In the event travel in a higher class will result in an overall cost savings to the UNIVERSITY, and with prior written approval of the DIRECTOR, fares in excess of coach class may be reimbursed.
- c. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

Attachment 5

d. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

19. Payment Procedures; Final Payment; Tax Clearance. All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that (i) services requested under the Agreement have been performed by CONTRACTOR according to the Agreement, or (ii) the goods have been accepted by the UNIVERSITY, or (iii) both. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Sections 103-53 and 237-45, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6, from the State of Hawaii, Department of Taxation, and the Internal Revenue Service (IRS), showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

20. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the DIRECTOR may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in TEN (10) days or any longer time specified in writing by the DIRECTOR, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the DIRECTOR may, if possible, procure similar goods or services, or both, in a manner and upon the terms deemed appropriate by the DIRECTOR. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services, or both.

b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the DIRECTOR, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.

c. Compensation. Payment for completed services or goods, or both, delivered to and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and UNIVERSITY; if the parties fail to agree, the DIRECTOR shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the DIRECTOR deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the DIRECTOR within FIFTEEN (15) days after the cause of the delay and the failure arises out of [unforeseen] causes such as: acts of God; acts of a public enemy; acts of the UNIVERSITY and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services or goods, or both, to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the DIRECTOR shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under this Agreement. As used in this paragraph, the term 'subcontractor' means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 20d, 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, this Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

21. Termination for Convenience.

a. Termination. The DIRECTOR may, when the interests of the UNIVERSITY so require, terminate this Agreement in whole or in part, for the convenience of the UNIVERSITY. The DIRECTOR shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The DIRECTOR may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the UNIVERSITY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The DIRECTOR may require the CONTRACTOR to transfer title and deliver to the UNIVERSITY in the manner and to the extent directed by the DIRECTOR:

- (1) Any completed goods or work product; and
- (2) The partially completed work product, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement.

The CONTRACTOR shall, upon direction of the DIRECTOR, protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest. If the DIRECTOR does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the UNIVERSITY has breached the Agreement by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, bearing on such claim. If the CONTRACTOR fails to file a termination claim within ONE (1) year from the effective date of termination, the DIRECTOR may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 21d(3) below.
- (2) The DIRECTOR and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by the UNIVERSITY, the proceeds of any sales of goods and manufacturing materials under subparagraph 21l and the Agreement price of performance not terminated.
- (3) Absent complete agreement under subparagraph 21d(2), the DIRECTOR shall pay CONTRACTOR the following amounts, provided payments agreed to under subparagraph 21d(2) shall not duplicate payments under this subparagraph 21d(3) for the following:
 - (A) Agreement prices for goods or services accepted under the Agreement;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services, or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to this subparagraph 21b. These costs must not include costs paid in accordance with subparagraph 21d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement of claims and supporting data with respect to the terminated portion of the Agreement and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid the CONTRACTOR under this paragraph shall not exceed the total Agreement price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 21d(2), and the Agreement price of performance not terminated.

22. Federal Funds. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such federal funds received from the federal government, and shall not be paid from any other funds.

23. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

24. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

25. Waiver. The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

26. Antitrust Claims. The UNIVERSITY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to UNIVERSITY any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the UNIVERSITY under an escalation clause.

27. Minimizing Congestion. The CONTRACTOR shall undertake all necessary precautions to minimize any adverse impact the performance under this Agreement may have on traffic congestion.

28. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 20 (Termination for Default) and fails to cure in the time specified, the CONTRACTOR shall be liable for damages for delay in the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the UNIVERSITY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 20d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

29. Liens and Warranties. Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in Attachment 1, whichever is greater.

30. Changes in Cost-reimbursement Agreement. If this Agreement is a cost-reimbursement Agreement, the following provisions shall apply:

a. The DIRECTOR may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Agreement in any one or more of the following:

- (1) Description of performance;
- (2) Time of performance (i.e., hours of the day, days of the week, etc.);
- (3) Place of performance of services;
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the UNIVERSITY in accordance with the drawings, designs, or specifications;
- (5) Method of shipment or packing of supplies; or
- (6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance, of any part of the performance under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, the DIRECTOR shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Agreement accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within THIRTY (30) days of the receipt of the written order. However, if the DIRECTOR decides that the facts justify it, the DIRECTOR may receive and act upon a proposal submitted before final payment under the Agreement.

d. Failure to agree to any adjustment shall be a dispute under paragraph 13. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Agreement as changed.

e. Notwithstanding the terms and conditions of subparagraphs 31a and 31b, the estimated cost of this Agreement and, if this Agreement is incrementally funded, the funds allotted for the performance of this Agreement, shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new Agreement estimated cost and, if this Agreement is incrementally funded, the new amount allotted to the Agreement.

31. Equal Opportunity and Affirmative Action Certification. The Contractor agrees that the equal opportunity clause which prohibit discrimination on the basis of race, color, religion, sex or national origin and the affirmative action requirements of Executive Order 11246, as amended, and implementing regulations at 41 CFR 60, are incorporated by reference in each non-exempt contract, subcontract, or purchase order which is presently existing or which may be entered into hereafter, between the Contractor and the University of Hawaii. The Contractor agrees to perform the applicable obligations of the equal employment opportunity and affirmative action clauses, as amended, covering nonsegregated facilities (41 CFR 60-1.8), minorities and women (41 CFR 60-1.4), persons with disabilities (41 CFR 60-741.4), and Vietnam era and special disabled veterans (41 CFR 60-250.4). Contractors and construction contractors with 50 or more employees, and contracts of \$50,000 or more, agree to comply with requirements for EEO-1 reports [41 CFR 60-1.7(a)], affirmative action programs [41 CFR 60-1.409(a)], affirmative action program for Vietnam era and special disabled veterans (41 CFR 60-250.5), and affirmative action program for handicapped workers (41 CFR-741.5). The Contractor agrees to indemnify and hold harmless from any claims or demands with regard to the Contractor's compliance with these provisions.

SPECIAL CONDITIONS

*** NONE ***

C130023

UNIVERSITY OF HAWAII
AGREEMENT FOR SERVICES

This Agreement, effective the 20th day of August, 2012, is entered into between the University of Hawaii (hereinafter "UNIVERSITY"), and Torkildson, Katz, Moore, Hetherington & Harris

(hereinafter "CONTRACTOR"), a law corporation
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)

under the laws of the State of Hawaii, whose business address and taxpayer identification number are as follows: 700 Bishop Street, 15th Floor, Honolulu, Hawaii 96813-4187

Fed. I.D. No. 99-0155867

RECITALS

A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.

B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

C. Money is available to fund this Agreement pursuant to:

(1) Account No. 2269712 or
(Identify state sources)

(2) _____
(Identify federal sources)

or both, in the following amounts: State \$ 25,000.00
Federal \$ _____

D. Pursuant to Section 304A-103, Hawaii Revised Statutes, as amended, the UNIVERSITY is authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the UNIVERSITY and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.

2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$ 25,000.00), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.


4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.

5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.

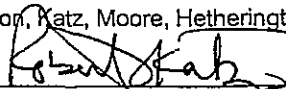
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of the Office of Procurement and Real Property Management, who is also the Procurement Officer. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

By 
Its Director of the Office of Procurement
and Real Property Management

CONTRACTOR

Torkildson, Katz, Moore, Hetherington & Harris
By 
Title Attorney *

*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

SCOPE OF SERVICES

University hereby retains the law firm of Torkildson, Katz, Moore, Hetherington & Harris a Hawai'i Law Corporation (hereafter referred to as "CONTRACTOR") specifically to retain the services of Robert Katz to represent the University of Hawai'i (hereafter the "UNIVERSITY") and provide advice and counsel in the matter relating to the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties and related issues (hereafter the "Project"), including, without limitation, handling any litigation, legislative and administrative proceedings, protests, procurement matters, disputes, alternative dispute resolution proceedings, and other legal issues relating to the Project, whether the proceedings or actions are conducted within administrative, judicial, or alternative dispute resolution forums. The CONTRACTOR's work hereunder shall include at least the following:

- A. Advise with respect to Investigative Report. The CONTRACTOR shall exercise the CONTRACTOR's best professional judgment and render the necessary legal services to represent the UNIVERSITY in all matters relating to the Project, including, without limitation, consulting with and advising the President and the Board of Regents on the handling of the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties.
- B. Litigation. The CONTRACTOR shall also provide legal services in connection with any administrative proceeding or action or litigation involving the Project.
- C. Supervision and reporting. All legal services on this case shall be under the detailed, specific supervision and management of Robert S. Katz and he or his designated representative shall report to the UNIVERSITY's President and Board of Regents or designated representative.
- D. University approval. The CONTRACTOR shall promptly forward to the UNIVERSITY's President and Board of Regents or designated representative copies of all correspondence, documents, reports, analysis, evaluations, and work products arising out of or connected with the services rendered under this Agreement and shall tender for prior approval of the UNIVERSITY's President and Board of Regents or designated representative those items which the CONTRACTOR reasonably believes should have the UNIVERSITY's approval prior to release, filing, or use.
- E. Updates. The CONTRACTOR agrees to meet and confer from time to time with the UNIVERSITY's President and Board of Regents or designated representative regarding the progress and status of all legal services performed or being performed by the CONTRACTOR under this Agreement, including, without limitation, strategies, plans, tactics, and related matters.

F. Assistance requires University approval. The CONTRACTOR shall not contract with or employ experts or consultants to assist the CONTRACTOR in the performance of this Agreement without the prior written approval of the UNIVERSITY. The UNIVERSITY and the CONTRACTOR do acknowledge, however, that the CONTRACTOR, from time to time, may need or deem it advisable to consult with attorneys, law firms, or other professionals that are situated in particular geographic areas or otherwise have expertise in specific areas of law or such geographic areas. If the CONTRACTOR deems such consultation necessary, the CONTRACTOR shall advise the UNIVERSITY's President and Board of Regents or designated representative, including furnishing information as to the reasons for the consultation and the estimated cost and obtain the UNIVERSITY's written approval before proceeding or incurring obligations on behalf of the UNIVERSITY.

G. Non exclusive. The UNIVERSITY and the CONTRACTOR acknowledge and agree that (1) the CONTRACTOR's rights under this Agreement are not exclusive and (2) the UNIVERSITY may also retain other attorneys and law firms to advise, assist, and counsel the UNIVERSITY in matters relating to the Project, including matters on which the CONTRACTOR may have already provided legal services

H. Payment responsibility. In the absence of the UNIVERSITY's prior written approval, the UNIVERSITY shall not be responsible to pay for the services or any work performed by an expert or consultant retained by the CONTRACTOR to perform work in connection with this Agreement.

TIME OF PERFORMANCE

Services by the CONTRACTOR under this Agreement shall commence on August 20, 2012, and shall continue until the matters specified herein are resolved, unless earlier terminated by the University as provided herein, or until funds allocated to this Agreement have been exhausted.

COMPENSATION AND PAYMENT SCHEDULE

1. Rates. The CONTRACTOR shall be compensated for legal services rendered and costs incurred under this Agreement pursuant to the schedule below, with a maximum ceiling of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00):

Robert Katz	\$300.00 per hour
Jeffrey S. Harris	\$300.00 per hour
Kalani Morse	\$250.00 per hour
John Mackey	\$250.00 per hour
Margaret Kageyama	\$145.00 per hour
Vanessa Harms	\$145.00 per hour
Michele Ferguson	\$100.00 per hour

Payment shall be made from UNIVERSITY funds.

2. Costs incurred. The UNIVERSITY shall be responsible for paying on a current basis all costs and expenses which are reasonably incurred in the representation of the UNIVERSITY, including, but not limited to, court costs and fees, copying, depositions, long distance telephone charges, postage, travel expenses and charges incident to the performance of the legal services required hereunder. All expenses and costs incurred with respect to computer research shall be the responsibility of the CONTRACTOR. Costs incurred to third parties shall be charged to the UNIVERSITY on a pass through basis without surcharge.

3. Invoices. Invoices for the CONTRACTOR's fees and expenses, including applicable taxes, shall be billed on a monthly basis and shall be payable within THIRTY (30) days, subject to the following:

A. Obtaining reimbursement. All payments under this Agreement, including reimbursement for costs, shall be made only upon submission by CONTRACTOR of original invoices specifying the amount due and certifying that the costs billed have been incurred by CONTRACTOR in furtherance of its representation of the UNIVERSITY.

B. Content. Original invoices submitted must include at least the following:

- (1) A description of the specific task performed by CONTRACTOR.
- (2) Time billed will be reported by specific matter or task handled.
- (2) The time billed for specific tasks in increments no greater than one-tenth (.1) of an hour.
- (3) The hourly rate of the attorney or paralegal performing the task.
- (4) An itemized statement of disbursements, if charged.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than FIFTY PERCENT (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of Torkildson Katz Moore Hetherington & Harris, the CONTRACTOR herein, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the UNIVERSITY if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the UNIVERSITY.

DATED: Honolulu, Hawaii, August 29, 2012

CONTRACTOR
Torkildson, Katz, Moore, Hetherington & Harris

By *Torkildson Katz*
Title *Attorney*

* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII
AGREEMENT FOR SERVICES
GENERAL CONDITIONS

1. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities

- a. In the performance of services required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the UNIVERSITY.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, worker's compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53, Hawaii Revised Statutes, and Section 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

2. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3. Nondiscrimination

No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

4. Subcontracts and Assignments

The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

5. Conflicts of Interest

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

6. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

7. Indemnification and Defense

The CONTRACTOR shall defend, indemnify, and hold harmless the University of Hawaii and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Modification of Agreement

Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 9, Change Orders, herein.

9. Change Orders

- a. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the CONTRACTOR will perform the work as changed, as though it had been part of the original contract.
- b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment paragraph of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- c. Time period for claim. Within TEN (10) days after receipt of a written change order under 9.a, unless the period is extended by the agency procurement officer in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.
- e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

10. Price Adjustment

- a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Agreement or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the provisions, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

11. Suspension of Agreement

The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this paragraph. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the agency procurement officer shall either:
- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provisions or the termination for convenience provisions of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

12. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause.

- a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

- b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.
- c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

13. Claims Based on a Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (1) Written notice required. The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
 - (3) Basis must be explained. The notice required by paragraph 13.a.(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and upon request make available to the procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

14. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.
- b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Ownership Rights and Copyright

The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

16. Publicity

The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about this Agreement or the performance under this Agreement shall be referred to the procurement officer.

17. Payment Procedures; Final Payment; Tax Clearance

All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which require a valid tax clearance, FORM A-6 (Rev. 2005), from the State of Hawaii, Department of Taxation and the Internal Revenue Service (IRS) showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

18. Termination for Default

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in TEN (10) days or any longer time specified in writing by the procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or failure to properly perform. In the event of termination in whole or in part the procurement officer may procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- 1
- b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.
- c. Compensation. Payment for completed services delivered and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the procurement officer; if the parties fail to agree, the procurement officer shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within FIFTEEN (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under the Agreement. As used in this part of this paragraph 18.d., the term 'subcontractor' means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this paragraph 18, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this Agreement or that the delay was excusable under the provisions of 18.d., 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a provision providing for termination for convenience of the UNIVERSITY, the Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph 18 are in addition to any other rights and remedies provided by law or under this Agreement.

SPECIAL CONDITIONS

1. ASSESSMENT AND EVALUATION

The CONTRACTOR and the UNIVERSITY agree that the UNIVERSITY will be requesting the CONTRACTOR's assistance with a broad range of matters and issues relating to the Project. In providing such assistance, the CONTRACTOR will review, evaluate, analyze, and make recommendations with respect to best achieving, in a cost effective manner that prudently addresses the potential risks involved, the implementation of the Project, including, without limitation, handling and resolving any legislative, administrative and judicial proceedings and actions relating to the Project. It is anticipated that at least initially, much of the requested assistance will involve providing assistance in: (1) consulting with and advising the President and the Board of Regents on the handling of the Fact-Finders Investigative Report regarding a benefit event and in responding to inquiries by the media and third parties, (2) handling any related legislative, administrative and judicial actions and proceedings, (3) developing and formulating the University's position in any disputes involving the Project, (4) negotiating settlement or termination agreements pertaining to any disputes involving the Project, and (5) preparing all necessary documents, such as tolling, settlement, termination, release, waiver, and other agreements. The CONTRACTOR agrees to use its best efforts provide such services and assistance within the timeframe requested by the UNIVERSITY.

With respect to each specific task or issue for which the UNIVERSITY requests assistance, the CONTRACTOR agrees to give to the UNIVERSITY a cost estimate for providing the requested assistance. The CONTRACTOR and the UNIVERSITY will work toward a mutually agreeable budget covering the requested assistance.

The CONTRACTOR shall provide UNIVERSITY with periodic status reports concerning each of the tasks, issues, and matters for which the UNIVERSITY has requested assistance from the CONTRACTOR.

2. INSURANCE

The CONTRACTOR shall maintain professional liability insurance acceptable to the UNIVERSITY in full force and effect throughout the term of this Agreement. The policy or policies of insurance maintained by the CONTRACTOR shall provide single limit coverage in the amount of \$5,000,000 per claim and \$5,000,000 aggregate for all claims made during the policy period.

Insurance shall be in force the first day of the term of this Agreement.

3. PRINCIPAL ATTORNEY

The CONTRACTOR shall assign Robert Katz as the principal attorney for performing and providing the legal services and completing the work requested by the UNIVERSITY. The

CONTRACTOR may also assign Jeffrey Harris (\$300.00 per hour) and Kalani Morse (\$250.00 per hour) to perform legal services requested by the UNIVERSITY under this Agreement, with the exact hourly rate to be selected and set by the UNIVERSITY. The CONTRACTOR shall not modify this assignment without the UNIVERSITY's prior written consent. The UNIVERSITY also acknowledges that the CONTRACTOR may use paralegals, such as Margaret Kageyama and Vanessa Harms (each at \$145.00 per hour). The UNIVERSITY shall advise the CONTRACTOR of the hourly rate the UNIVERSITY is willing to pay for the services of such other attorneys, paralegals, and other staff.

4. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Further information is available from the State Campaign Spending Commission at www.hawaii.gov/campaign or at (808) 586-0285.

Concert Events Description

6/25 - This was when I was first informed that this event was happening. Attached is the email from Ryan Akamine at OGC informing me that they were working on it and there was a short time frame to make the initial payment. I received this email as I was preparing for the Audit Committee presentation on Kualii Financial System. and coming in only for that meeting. I asked for more information, but to follow up at the time.

6/26 - By the time I followed up after the new Board member orientation the following morning, the money had been wired. See attached documents relating to the wire. The circumstances of requiring a wire on short notice concerned me, so I asked Kathy Cutshaw about this. She said she didn't know anything about it, but would check. That she didn't know about it concerned me further so I asked Ryan Akamine for the background and documents.

6/27 - Ryan Akamine sends me a copy, unsigned, of the agreement, which is titled "Agreement between University of Hawaii at Manoa and for the Use of Stan Sheriff Center" and says he is waiting for executed copies from Athletics. See his email and the executed agreement. He indicated to me that the agreement calls for insurance to protect UH from loss if the performance does not happen. His email asks Athletics for the insurance policy.

6/28 - After reading the agreement, I follow up with Kathy Cutshaw to find out whether Manoa Chancellor's office approved the agreement. That evening she emails me. See attached email and my response. She calls me and says that Virginia Hinshaw said she doesn't know anything about it, but that system knows all about it and approved a \$200,000 payment. How can she not know anything, but know that?

6/29 am - Kathy Cutshaw sends me an unsigned agreement between and the Athletic Department (see attached). Upon reading this, I meet with Ryan Akamine and voice my strong concerns. He indicates that he told Athletics not to be a signatory to that agreement. I reiterate my concerns about needing to have the insurance contract that per the agreement Athletics did sign with , that was supposed to provide to Athletics prior to commencement of pre-sale ticket sales. Ryan follows up with Athletics and ultimately is told that they are working on it.

6/29 (Friday) - Later that day, Ryan emails me that OGC does have a legal services request for assistance with this agreement which was signed by Carl Clapp and Virginia Hinshaw on May 6, 2012. See attached emails. JMB

7/2 (Monday) - I brief President Greenwood on the situation. She indicates that Virginia Hinshaw definitely knew about the concert because she responded earlier in June to a query from MRC regarding the concert. See attached email.

Applicable University Policies (attached):

Board Policy 8-1 - generally the President is authorized to sign contracts, and may delegate that authority to others.

Executive policy E10.101 - Authority to develop procedures for use of University-owned facilities delegated to Chancellors

Board Policy 10-1 - Source of Delegation in E10.101

Executive policy E10.201 - Delegation of responsibility for facilities use to Chancellors

Executive Policy E10.202 - UHM Special Events Center Use Policy - does not delegate signing authority for contracts regarding Stan Sheriff Arena from Chancellor to Athletics Director

Exhibit A

Administrative Policy A.1.200 – Delegates authority for Manoa facilities use to the President, who at that time (2002), was the chief executive of Manoa campus as well as the system. Again, no delegation to Athletics Director is indicated.

Conclusion:

General contracts are authorized to be signed by the President. Facilities use contracts are delegated to Chancellors.

Summary:

The agreement was not reviewed by Manoa Chancellor's office or President's office or VP B&F prior to its signing.

There is no evidence that [redacted] actually ultimately had an agreement with [redacted] to perform at Stan Sheriff Arena on August 18.

From a financial standpoint, no analysis or projection of revenues and costs and estimated profits and related risks were provided to campus or system administration prior to signing of the agreement.

The insurance policy required by the agreement prior to commencement of pre-sale ticket sales has not been obtained.

Athletics nevertheless proceeded with the pre-sale of tickets.

The agreement is in the form of a facilities use agreement, but it contained a number of clauses that represented exposure for the university that are not in a normal facilities use agreement.

The payment of \$200,000 was requested through an AFP (Authorization for Payment) form. See attached for the form and related documents. The requisitioner was Rich Sheriff, the purchasing officer was Carl Clapp and the Fiscal Officer was Tiffany Kuraoka. Could this have been stopped by our system disbursing office? See attached memorandum for record by Accounts Payable Supervisor Alan Klmura, email to Paul Kobayashi from Carl Clapp and Executive Policy E8.106. At the end of the day, they felt that they had done enough inquiry and there were enough high level people involved including the Office of General Council that they released the wire. Nevertheless, the answer is yes, it could have been stopped by the disbursing office.

19. Regarding paragraph 6/29 of the Concert Events Description, I was asked about the _____ Memorandum Agreement. I received the document from Kathleen Cutshaw through her email to me on 6/29 at 9:05 a.m., which she apparently received from Tiffany Kuraoka based on the email string. I met with Ryan Akamine in his office after I read this agreement. I told Ryan Akamine that I was concerned that if we had signed this agreement the University would be a party to _____'s agreement with _____. Ryan Akamine said that he told Athletics to not sign the _____ Engagement Memorandum Agreement. I pointed out to Ryan Akamine that per the contract, the insurance policy needed to be in place before presale ticket sales. This was a problem because pre-sale ticket sales had already been conducted and we had not yet received the copy of the insurance policy he had requested from Rich Sheriff on June 27. Ryan Akamine again emailed Athletics for the insurance policy and received the response that "they are working on it." I told Ryan Akamine that that's not a good enough answer.

20. I asked Ryan Akamine whether there was a legal services request. Ryan Akamine said that Chancellor Hinshaw signed a legal services request in early May. I wondered how "Manoa" can say that they don't know anything when they submitted a legal services request in early May. I never saw the legal services request. I asked Ryan for a copy of it. Ryan Akamine responded by email on 6/29 that he could not give me a copy of the legal services request because it is attorney-client privileged.

21. Regarding paragraph 7/2 of the Concert Events Description, I was asked about my briefing with Greenwood. I asked Greenwood if I could meet with her to discuss my concerns. No one else was present when I met with Greenwood. In my meeting with Greenwood I explained everything that I previously mentioned. I told her that there apparently was no insurance, ticket sales have started and a wire for \$200,000 went out. I expressed my concern that Chancellor Hinshaw says that she knows nothing about this when she requested the legal services request. Greenwood noted that Chancellor Hinshaw had responded to an inquiry from Greenwood to her in a June 19, 2012 email, providing information, so Hinshaw did know about it. I was not working on it and did not know about it until Ryan Akamine's email to me on June 25. Ryan Akamine was working on it. Jim Donovan and Chancellor Hinshaw are considered to be "Manoa." So apparently Manoa was working on it. Greenwood and I concluded that at that point all we could do was hope the concert would be successfully conducted. On July 10, 2012, Greenwood received emails from _____, and I found out about the concert problems at the meeting at noon.

22. In the Concert Events Description I listed various University policies because I was trying to determine whether the signing of the agreement was done properly. I wondered who should have signed the agreement. I reviewed the facilities use policies for the use of the Center. Policies for facilities use have been delegated to the Chancellor by the President. I did not find a policy promulgated by the Chancellor to delegate authority to sign contracts for use of facilities. I listed Executive Policy E10.101 – Authority to develop procedures for use of University-owned facilities delegated to Chancellors. In this policy the President delegated authority to the Chancellor to develop procedures for and therefore to sign contracts for the use of University facilities.

23. It appears that the Athletic Director does not have signing authority to execute contracts for use of University facilities. It appears that the authority lies with the Chancellor. It

40. My office does not get involved with determining whether particular uses of the Center are proper.

41. I do not know whether the use of the Center for a benefit concert is a proper use under University policies. I was told that before the University holds an event at the Center that could compete with Blaisdell Center the University would need consent from Blaisdell. I heard that consent was obtained but never saw it.

42. On July 10, 2012, I learned that the benefit concert would not be occurring. I attended a meeting with the President, Jim Donovan, Richard Sheriff, Rockne Freitas, Tom Apple, and possibly someone else, where we were told that the concert would not happen. After the meeting I prepared the Concert Events Description.

43. President Greenwood asked if I could see if we could recover the \$200,000. I called Bank of America in Orlando. I spoke to , VP of Bank of America. said she asked the account holder to agree to the return of the money and the account holder said, no. I asked Paul Kobayashi to call Bank of Hawaii. Bank of Hawaii also requested a return of the money and received the same response. said that she cannot tell me anything about the account or the account holder. A few minutes after speaking with , a VP of Global Financial Crimes Investigations and Compliance from Bank of America called me and said that they cannot give me information about the account, but that we should ask the FBI to move quickly to freeze the account.

44. I have never spoken to .

45. I do not know of anyone at the University who stood to benefit personally from the concert going forward. The purpose of the concert was to raise funds for Athletics.

46. The Concert Events Description is still accurate to my knowledge.

47. asked if there was anything else I would like to add. I stated that there were questions I had as to what events transpired but, other than that, I did not have anything to add.

The foregoing is a true and accurate summary of my statement to the fact-finder.

Howard Shigeo Todo
HOWARD SHIGEO TODO

8/21/12
Date

40. Wire transfers are frequently done at the University. However, the fact that the request was for wire transfer and a large amount was concerning.

41. As compared to payment by check, the only additional requirement applicable to wire transfers is that the transfer must be processed before 10:30 a.m. The required supporting documentation is the same as for a check request.

42. showed me Administrative Policy A8.808. I am familiar with the policy. The policy applies to wire transfers like the \$200,000 transfer. The \$200,000 transfer did not strictly comply with section 4.a. of the policy, which states that the "Department should coordinate with the Disbursing 2 days prior to the desired date of the wire transfer to ensure that the transfer can be processed without delay." I received the paperwork for the request on June 25 in the late afternoon, and Athletics needed the wire transfer done the next morning. However, this did not necessarily raise a red flag for me, and I was satisfied that there were enough funds and that the required documentation was in place before I made the transfer.

43. I have not seen a University department make that large of a payment to secure a performer. I also have not processed a payment to secure a performer via wire transfer.

44. Because the request from Athletics was for a wire transfer of \$200,000, on June 25, I called Kuraoka to inquire why Athletics needed the wire transfer the next day. I left a message for her, and she did not return my call. After I left the message, I sent an email to Kuraoka with a copy to Inouchi. Inouchi called me at 6-6:30 p.m. on June 25. We discussed my questions about the mismatch in codes on the Authorization For Payment form, as described in the second paragraph of my memorandum. showed me a copy of an Authorization For Payment Form that was stamped as received by the Disbursing Office on June 25, 2012. I recognize the document.

45. The University has general ledger (GL) accounts and subsidiary ledger (SL) accounts. Each type of ledger account has specific budget subcodes. The Authorization For Payment form submitted with the \$200,000 wire transfer request referenced a GL account with a SL account subcode. Inouchi explained to me that the subcode on the form was incorrect. She gave me the correct subcode.

46. I also asked Inouchi why they were using the GL account instead of the revolving account (the code for which starts with a "3") like they normally do. Inouchi explained that they had no time to transfer money from the GL to the revolving account.

47. The Authorization For Payment form is signed by the Fiscal Officer. By signing the form, the Fiscal Officer certifies that "sufficient funds are available in the accounts specified and that this payment is in accordance with applicable University policies and procedures." That certification runs parallel to the scope of Disbursing's final preaudit review under Administrative Policy A8.806 section 5.e. (a copy of which showed to me) of "the legality, propriety and proper authority on all payment transactions." In other words, by signing the Authorization For Payment form, the Fiscal Officer is certifying that the requested payment is legal, proper, and authorized. The certification also confirms that contract conditions, including conditions relating to payment, are satisfied.

29. The ultimate responsibility for making sure that contract conditions, including conditions relating to payment, are satisfied falls on the Fiscal Officer and the Approving Authority, whomever that happens to be (e.g., the director, dean, etc.).

30. I am aware of Executive Policy E.106, which I understand gives Athletics the ability to negotiate dollar amounts greater than \$25,000. Such transactions are not reviewed by Procurement.

31. The department requesting payment is the one who makes the call as to which account will be the source of funds for payment. Disbursing does not have oversight over which account to use. Disbursing just needs to know the ledger account and subcode to process the payment.

32. showed me a memorandum dated June 25, 2012. I recognize this document. I wrote the memorandum. I recognize my signature at the bottom of the document. I actually wrote the document on or about June 26, 2012..

33. No one asked me to write the memorandum. I wrote it as a memory jogger for myself. I do not normally write a memorandum for payment transactions. If something was different about a transaction, I would jot something down.

34. I shared the memorandum with my supervisor, JR. JR and I had another discussion about the memorandum after it came to light that the concert might not go forward. I do not recall having a meeting about the memorandum with anyone else. No one responded specifically to my memorandum.

35. Paul Kobayashi ("Kobayashi"), the Director - Financial Management and Controller, called a meeting with JR and me to get a copy of the wire transfer information for the \$200,000 transfer. This was a short meeting. I was not asked to do anything besides provide the wire transfer information. I do not recall discussing the contents of my memorandum at the meeting.

36. showed me a Wire Transfer Form dated June 25, 2012. I recognize this document. The complete document includes the following attachments: (1) Authorization For Payment form; (2) invoice; (3) Requisition Form; and (4) supporting documentation.

< 37. I am the one in Disbursing who is in charge of executing wire transfers for the University. >

38. The wire transfer request caught my attention because it was for a prepayment of a large amount of money. The dollar amount of the transaction alone was enough to raise a flag for me, but that combined with the fact that was for a prepayment made it even more unusual.

39. It is not unusual to make prepayments to secure the performer, followed by a final payment after the performance, but those transactions are usually done by check. A check takes a little longer to process. A wire transfer, however, is instantaneous.

48. The payment request documentation I received from Athletics included an eFMIS printout apparently showing deposits into the GL account. The total amount of deposits labeled " " appearing on the form do not total \$200,000, but there is a copy of a register receipt showing amounts adding up to \$203,251.00. I am not entirely sure if Inouehi told me during my conversation with her that they had enough funds from ticket presales to cover the transfer. In any event, I went online to verify if there were sufficient funds in the GL account, and confirmed that there were.

49. My understanding is that the funds to be used for the \$200,000 wire transfer were collected from ticket pre-sales.

50. I also called Karlee Hisashima, the deputy director of Procurement, to confirm whether Procurement had any contract for the transaction. She said not to her knowledge.

51. I did not see a copy of a contract between the University and before wiring the funds.

52. I made the \$200,000 wire transfer on June 26, 2012.

53. showed me a Wire Detail Report dated June 26, 2012. I recognize the document. The wire trace number on the document confirms that the wire transfer was completed.

54. I do not know what kind of account the funds were transferred to. I do not know if the receiving account was an escrow account.

55. The Wire Detail Report has a field for "Created By," and "ALANK" is typed into that field. That refers to me. There is also a field for "Modified By," and "KARYN" is typed into that field. That refers to Karyn Yoshioka, one of the releasing authorities in our office, i.e., a person with authority to release the transfer. If JR is not available, Ms. Yoshioka is the releasing authority. If both JR and Ms. Yoshioka are not available, Kobayashi can release the transfer.

56. I am not aware that the contract between the University and the concert promoter required there to be insurance in place before ticket sales began.

57. I do not know if the funds that were transferred were withdrawn.

58. I have heard the name , only in the news. Based only on what I see in the news, I believe is affiliated with .

59. I learned from the news that the concert might not go forward. I have talked to Kobayashi and JR about the concert not going forward.

60. I have not been tasked with looking into where the transferred funds went.

61. I have no records relating to the benefit concert other than what is in my office or on my office computer.

STATE OF HAWAII
 UNIVERSITY OF HAWAII
 SYSTEMWIDE ADMINISTRATION
 VICE PRESIDENT FOR
 BUDGET AND FINANCE/
 CHIEF FINANCIAL OFFICER
 FINANCIAL MANAGEMENT

POSITION ORGANIZATION CHART

CHART II

Todo

OFFICE OF THE VICE PRESIDENT FOR BUDGET AND FINANCE/
 CHIEF FINANCIAL OFFICER
 VP for Budget and Finance and Chief Financial Officer 89283*

FINANCIAL MANAGEMENT
 Director of Financial Management and Controller 89212
 Secretary SR-16 15349

Administrative Officer PBB 80173

GENERAL ACCOUNTING
 AND LOAN COLLECTION
 (See Chart II-A)

BURSAR
 (See Chart II-B)

DISBURSING AND
 PAYROLL OFFICE
 (See Chart II-C)

PROPERTY AND FUND
 MANAGEMENT
 (See Chart II-D)

FISCAL SERVICES
 OFFICE
 (See Chart II-E)

PROCUREMENT AND
 REAL PROPERTY
 MANAGEMENT
 (See Chart II-F)

* Excluded from position count, this page

Kashiwamura

CHART UPDATED
 DATE JUL 01 2011

Perm
 General Funds 3.00

Date of Interview: August 1, 2012

Interviewee:

Fact-Finder Conducting Interview:

1. I, _____, was interviewed by _____ on Wednesday, August 1, 2012.

2. The interview was conducted in a conference room at the offices of _____

3. _____ explained that he was appointed by the University of Hawai'i ("University") to conduct a fact-finding investigation concerning the benefit concert at the Stan Sheriff Center (the "Center") that was scheduled for August 18, 2012; to prepare a report; and to submit the report to the decision-makers in this case, who are the University President, M.R.C. Greenwood and the University's Board of Regents. _____ advised me that he is an attorney in private practice with the law firm of _____. I understand that _____ does not represent the University as its attorney in this matter.

4. _____ advised me that my statements could be used in the fact-finding report.

5. The confidential nature of the investigation was explained to me, and I was asked not to discuss the investigation with those who do not have a legitimate reason to know about the investigation. I advised _____ that I did not intend to speak with the media. I was advised that all facts gathered during the investigation, including the facts that I provide, will be shared with those who need to know, such as the decision-makers and other responsible administrators, and that the information and the fact-finding report might become public.

6. I am a promoter and producer. I have been promoting and producing shows in Hawai'i for more than 40 years.

7. When I use the terms "produce" and "production," I mean that I do not put up the money to pay for the show. I am hired under a contract to put on the show for someone else. I am paid for my services.

8. When I use the terms "promote" and "promoter," I mean that I am putting up the money for the show. If the show is successful, I will share in the profits.

9. _____ ("_____") is my production company.

10. The benefit concert at the Center was supposed to be a production for the University.

11. In the 1970s, I produced a concert in Hawai'i for . In the 1980s, I was the promoter for a concert in Hawai'i. For this second show, the was 's agent.

12. For years, I had wanted to bring back to Hawai'i. At various times, I had tried to put something together, but the shows never worked out.

13. I knew that (" ") represented . I did not believe that 's representation was exclusive. My "booking bible" states that is self-managed.

14. In 2011, I was working with , who is a promoter in England, on various projects, including doing another Crater Festival at Diamond Head.

15. In this context, was brought up as a possible act, but he wanted \$1.1 million to do a show. A show at Diamond Head could not support such a high fee.

16. I was also looking into booking for a show on Maui. But I needed a second show on O'ahu to support the fee that was going to charge.

17. and I continued discussing and other acts. As our discussions continued, introduced me to , who was represented to be a principal with (" "). The transition from to occurred gradually and seemed natural to me. I cannot pinpoint a time when I stopped dealing with and started dealing with .

18. claimed to represent as his international agent and claimed to be dealing with , who I knew to be an attorney for ; , who I knew to be a former president of ; and a third person who I was told was in direct contact with . I don't remember this third person's name.

19. I had never heard of or . To investigate 's claims and determine that was a legitimate agency, I checked

out and online and in the social media. I did this in 2011. I never met . Because had referred to me. I did not believe that any investigation was necessary.

20. Separately, I had always wanted to put on a show at the Center. I am a University graduate. And I believe that the Center is a wonderful and underused venue.

21. I had previously looked into putting on shows at the Center, but those shows did not pan out. I kept the Center in mind as a venue.

22. As my discussions with , I thought of putting on a show at the Center. I felt the Center was a perfect venue for a show because I could put him "in the round," meaning set up the stage on a large turntable in the middle of the Center, and have more than 10,000 available seats.

23. In March 2012, I approached Rich Sheriff about putting on a show at the Center.

24. I did not have a personal relationship with Mr. Sheriff. I had not previously worked with Mr. Sheriff. But I knew that he was the manager of the Center, and I had spoken with him casually at sporting events. In addition, Mr. Sheriff had shown me the Center before for various possible shows.

25. One of the shows that I had previously discussed with Mr. Sheriff was for . In 2008 or 2009, I had spoken with Mr. Sheriff about doing a benefit concert for U.S. Vets. Inc., which is a U.S. veterans group. Ultimately, the show did not happen.

26. When I reached out to Mr. Sheriff in March 2012, I had not seen him in years.

27. I did not know James Donovan. I might have met him. But we never worked together. And we do not have a personal relationship.

28. I did not know any of the other University employees who ultimately came to be involved with the benefit concert.

29. I wanted the concert to be a benefit for the University for several reasons. First, the University is my alma mater. I wanted to help. Second, I thought that presenting the concert as a benefit would make it easier to obtain City

approval for use of the Center. Third, I had to sell the benefit idea to [redacted]. I knew [redacted] wasn't going to perform a show at the same price for me as he would for the University. A benefit was the only way to have the kind of margins that I wanted. Finally, I needed access to the University's box office so that I could cover the artist's fees. I could not put on the show without the cash flow from the box office.

30. If this concert were successful for the University, I was interested in putting on more shows at the Center. In particular, I was interested in possibly being hired by the University as an employee and tasked with developing and putting on shows at the Center to earn additional revenue for the University. I hoped eventually to generate \$1,000,000 per year for the University through concerts at the Center.

31. Mr. Sheriff was immediately interested in the benefit concert idea. Mr. Donovan approved and wanted to pursue the idea. They wanted to profit more than a standard rental fee for the Center.

32. Mr. Sheriff was also receptive to making the production of shows a regular occurrence. No one promised me a job. The idea was that I would do the show, and then we would talk about going forward.

33. In the meantime, I was still negotiating with [redacted]. One issue was the transfer of money. [redacted] is based in Spain. I did not want to transfer money to a foreign account. [redacted] proposed using Florida as a depository. I don't recall why. It sort of just evolved. Perhaps it was because Florida was about midway between my time zone and [redacted]'s time zone.

34. I tried to set up an account in Florida, but the bank said that I would have to sign in person. I didn't want to fly to Florida.

35. We considered using [redacted]'s account. But he wanted to charge something like 1.5% of the transfer as a fee for the service.

36. [redacted] proposed using [redacted] of [redacted] (" [redacted]"). [redacted] offered to let us use his account without charge. I had never heard of [redacted] or [redacted]. I looked at [redacted]'s website, but I did not do anything to determine whether [redacted] and [redacted] were legitimate agents. There were no red flags. I knew we needed to be careful. I never met [redacted].

37. [redacted], [redacted] and [redacted] entered into an agreement in May 2012. Exhibit 1 to this statement is a true and accurate copy of the agreement.

38. I negotiated the contract with [redacted]. No one from the University was involved in any way.

39. The agreement contemplated two shows.

40. The total fees were a \$50,000 binder, a \$325,000 deposit due June 22, 2012 and a \$355,000 deposit due August 1, 2012.

41. These fees were for the Center and Maui shows. The total cost for the Center show was the \$50,000 binder and two \$200,000 deposits, for a total of \$450,000. [redacted] did not require a separate binder for the Maui show.

42. The University knew that I was trying to do the Maui show as well.

43. The University also knew that there would be other expenses, such as airfare for [redacted]. These expenses were supposed to come out of the box office.

44. It took a long time to get things done with the University. We lost the first dates that we were working with. But I was able to get new dates from [redacted] and we went forward.

45. Throughout the discussions with the University, Mr. Sheriff was my primary point of contact. I knew that he was working with others at the University, including Mr. Donovan and lawyers. But Mr. Sheriff was the conduit for all communications.

46. Mr. Donovan might have been copied on emails. I do not remember. I had no calls or meetings with Mr. Donovan. I was supposed to meet with Mr. Donovan on April 25, 2012. The meeting did not happen. I don't know why.

47. I do not remember corresponding, speaking with or meeting Ryan Akamine. I do not know who he is.

48. I don't remember anyone else with the University.

49. I did attend a meeting at the University with various people on May 18, 2012. Mr. Sheriff was there. I don't remember who else attended. Exhibit 2 to this statement is a true and correct copy of what I understand to be the list of attendees.

50. We had to work through several issues. One issue was how to make the concert a benefit for the University. An idea was for the University and [redacted] to act as co-promoters. But this idea didn't work because of procurement issues.

51. Ultimately, Mr. Sheriff proposed a "hybrid" agreement pursuant to which I would rent the Center from the University. Instead of a flat fee, my rental fee would be a percentage of revenue from the concert. Originally, the percentage was going to be a share of net revenue. But to make sure the University earned something from the concert, Mr. Sheriff proposed that the rental fee be 75% of the net revenues or 10% of gross revenues, whichever amount was greater. There was no fee due before the concert. I agreed to these terms.

52. Another issue was the payment of the \$50,000 binder to [redacted].

53. We needed to pay the binder before we could start marketing tickets to boosters. Accordingly, the binder had to be paid out of existing cash.

54. Mr. Sheriff said that Mr. Donovan did not want the University to put up the binder money.

55. Mr. Sheriff and I talked about getting the money from boosters. But that idea didn't go anywhere.

56. I couldn't pay \$50,000. I tried different ways to get the binder. Eventually, I was able to obtain \$50,000 from [redacted], who is the accountant for friends of mine. I agreed to pay [redacted] \$10,000 in return for putting up the binder. I also agreed to give him a portion of my profits from the concert, though we didn't agree on any specific amount or percentage.

57. Mr. Sheriff knew that I had obtained the binder from a third party and that the binder would cost us \$10,000 as a show expense.

58. A third issue was the payment of the remaining \$400,000 artist's deposit, which had to be paid in two \$200,000 increments. We wanted to take the deposit out of cash flow— ticket sales—so there was no liability.

59. I had very little input on the contract terms. I had initially sent over a form contract that I had used for years. But the University drafted its own contract. It went through several drafts. I skimmed the terms.

60. I finally signed an agreement with the University in June 2012. Exhibit 3 to this statement is a true and correct copy of my agreement with the University.

61. One of the contract terms was cancellation insurance. I told Mr. Sheriff in April 2012 that I would get cancellation insurance. Cancellation insurance protects the promoter if the artist isn't able to perform the show. I wanted cancellation insurance for expenses and profit. My goal was zero possible liability for the University.

62. Including the insurance as a contract term and the timing of the insurance requirement were the University's ideas.

63. [redacted] was responsible for getting the cancellation insurance. To get cancellation insurance, I turned to CSI Special Event Insurance. I had worked with CSI for years. I contracted a guy there, [redacted], a long time before contract with the University was signed. [redacted] kept telling me that the insurance "would be here tomorrow." When the insurance did not arrive, [redacted] would tell me that it "just hadn't come yet." This is specialty insurance. Not every insurance company will write cancellation insurance. So I was just waiting.

64. I updated Mr. Sheriff about the cancellation insurance. I didn't update anyone else. He was the conduit for all information from me and all information to me. I assured Mr. Sheriff that the insurance was coming soon, that it was an ongoing process and that we were just waiting for a quote on how much we would pay. I was confident that the insurance was going to be in place.

65. The ticket sale dates were generally controlled by [redacted]'s contract with [redacted] and [redacted]. That contract contemplated sales to boosters and sales to the public on specific dates. Per my agreement with [redacted] and [redacted], no sales to the general public were supposed to occur until the first \$200,000 payment was made.

66. [redacted]'s contract with [redacted] and [redacted] also required that money had to be in place as of a certain date. I was pushing the University to get the money to [redacted] so the deal didn't fall apart. We had the money from the box office. We needed to get the money to [redacted].

67. I knew the money went out from UH to [redacted] around June 25 or 26. The money went to an escrow account. That was important to me. The money had to go to [redacted]'s people. I didn't verify that there were escrow instructions. I gave [redacted] approval to release the money. I was told that

's people got the money. I thought the money went to

68. I knew the insurance was not in place when the tickets went on sale. I knew the insurance was not in place when the University wired the money. But I wasn't really thinking about it. In my mind, the insurance was there, because I had done it hundreds of times before. It was just a matter of cost.

69. I did finally get a quote for the insurance. The quote was 1.5% or more of the face amount. That's really high. This was in early July 2012. I wanted to use additional box office money, as my contract with the University allowed, but the University refused. Mr. Sheriff told me that no additional expenses would be paid from the box office until we had cancellation insurance. The lawyers had made an issue of it. I couldn't get the insurance if I didn't have money to get it.

70. Exhibit 4 to the is statement is a true and correct copy of the insurance policy I could have obtained. I got a copy of the policy around July 10, 2012. But the policy was not put in place. By then, the University had already cancelled the concert.

71. I didn't want people to know how much money the University was going to make on the concert, because I was afraid that would find out and want "its cut."

72. Unfortunately, the University gave a press conference and announced how much money it would be making. As soon as I heard about that, I expected to get involved.

73. Pretty soon after that, contacted the University. I've known who is a principal with , for 25-30 years. He is usually the voice of reason.

74. In my opinion, just wanted money. With a little more time, the concert would have happened.

75. I believe that had known about the concert for weeks. It was all over the internet. got involved only when it found out how much money the University was going to make.

76. never told me that there was no deal to be made. I believe was negotiating. I still think there was a deal to be made.

77. But the University announced the concert was cancelled.

78. I wasn't consulted about cancelling the concert. I was told that there would be a staff meeting on July 9, 2012 and that I might receive a call. No one called me from the meeting.

79. Instead, two lawyers for the University called me. I told them not to cancel the concert and that cancelling the concert would jeopardize the deposit. They replied that the University wouldn't cancel the concert. I don't appreciate being lied to.

80. In the last conversations that I had with _____ and _____, they maintain that the money went to _____'s people.

81. _____ initially said that they would not refund the money because the University improperly cancelled the concert. But _____ has since said that if the University asks for the money, they will forward the request to _____'s people.

82. I relayed the message to the University.

83. I also advised _____ that I'm stepping out of it.

84. Everybody had the best of intentions and hoped to do this again in the future, a couple of times a year.

85. I tried to create a deal with minimum exposure to the University and maximum profit for the University.

86. Everyone worked hard a diligently and carefully

87. If this was a scam, I got scammed too. My money went first.

The foregoing is a true and accurate summary of my statement to the fact-finder.

Date 8/12/2012

Ryan Akamine

From: Richard Sheriff [rsheriff@hawaii.edu]
Sent: Thursday, May 10, 2012 11:16 AM
To: Ryan Akamine
Subject: Fwd: Benefit Concert for UH Athletics August 11, 2012

----- Forwarded message -----

From: _____
Date: Thu, May 10, 2012 at 11:05 AM
Subject: RE: Benefit Concert for UH Athletics August 11, 2012
To: Richard Sheriff <rsheriff@hawaii.edu>

Richard: Option 2. Would not require that you promote or co promote. It would leave you in a position to both flat rent and do a University benefit. It is the University benefit that allowed me to sell this to the City administration and a University related event. I have not contracted your date here yet. Let me know if we need to talk.

From: Richard Sheriff [mailto:rsheriff@hawaii.edu]
Sent: Thursday, May 10, 2012 11:00 AM
To:
Cc: Ryan M. Akamine

Subject: Re: Benefit Concert for UH Athletics August 11, 2012

Given our departmental financial position and our procurement limitations, our UH Legal Counsel and head of procurement are suggesting that for now we look at just renting out the Stan Sheriff Center and not get involved as a co promoter. Would it be OK if we just rented out our facility to this group since NBC is already booked on the date in question. This would still give the athletic department the ability to get a decent amount of rental revenue without taking on the liability of being the promoter or co promoter.

Thanks,

Rich

On Thu, May 10, 2012 at 10:47 AM, _____ wrote:
Richard: When you say straight rental would that be a flat fee.? If so then that could become problematic. What if you did a co promotion. where you and your co promoter all your cost in the front end to be paid first then do a percentage split on the remaining with the promoter getting part for his risk and the athletic department getting a percentage. as a donation to the athletic department.

Option 2. could be to have the lighting company, sound company, staging, security

RE: Payment to for Benefit Concert

Paul Kobayashi [pyk@hawaii.edu]

Sent: Monday, June 25, 2012 12:51 PM

To: Carl Clapp [cclapp@hawaii.edu]

Cc: Tiffany Kuraoka [tkuraoka@hawaii.edu]; Michele Inouchi [mkaminag@hawaii.edu]; Richard Sheriff [rsheriff@hawaii.edu]; Walter Watanabe [wtwatana@hawaii.edu]

Aloha Carl,

Sorry for the delay in responding. We are five days away from fiscal year-end and the start of the new Kualii Financial System so it has gotten quite hectic with a lot of non-routine issues occurring – all at the same time. I wanted to confirm I received your request. Spoke with Tiffany today and we think we have a plan of action to get this done and to expedite. We will keep you posted.

Mahalo,

Paul Kobayashi

University of Hawaii
Director - Financial Management and Controller
Office: 956-7161
Direct: 956-5445
Fax: 956-9497

From: Carl Clapp [mailto:cclapp@hawaii.edu]

Sent: Monday, June 25, 2012 8:54 AM

To: Paul Kobayashi

Cc: Tiffany Kuraoka; Michele Inouchi; Richard Sheriff; Walter Watanabe

Subject: Re: Payment to for Benefit Concert

Paul,

Good morning!

We have reached the point where the transfer/check is needed today. Tiffany is working with our Ticket Office to identify the account that the money is deposited into. How can all of us work together to accomplish this? This is an extraordinary opportunity for the Athletics Department to make a significant amount of money. I anticipate, if this opportunity is successful, that the Athletics Department will maximize the use of Stan Sheriff Center by occasionally allowing outside groups to use the facilities when it "benefits" UHM.

Thank you for your follow up with this and all of us are available to assist you.

Carl

On Fri, Jun 22, 2012 at 11:57 AM, Carl Clapp <cclapp@hawaii.edu> wrote:

Paul,

ATTACHMENT 111

University-1122

INVOICE



BILL TO:

ATTN: University of Hawaii Athletics
Company
Address 1337 Lower Campus Road
City Honolulu State HI ZIP 96822
Phone

Invoice Date 06/25/12
Invoice #

Quantity	Description	Total
	Deposit for Benefit Concert for UH Athletics in the Stan Sheriff Center, August 18th, 2012.	200,000.00

DATE 06/15/12
Invoice Received
DATE 06/25/12
Goods/ Svcs Received
VOUCHER NO. 2266083

A
ENTERED
JUN 2012
DISBURSING
ATK

Subtotal 200,000.00
Tax
TOTAL 200,000.00

Re: Benefit Concert

Howard Todo [htodo@hawaii.edu]

Sent: Monday, June 25, 2012 2:14 PM

To: Ryan Akamine [Ryan.Akamine@hawaii.edu]

Cc: Paul Kobayashi [pyk@hawaii.edu]; Jim Donovan [jdonovan@hawaii.edu]; Carl Clapp [cciapp@hawaii.edu]; Darolyn H. Lendio

Attachments: htodo.vcf (397 B)

Ryan, what are the required statutory disclosures, and who is handling those?

Howard

On 6/25/2012 2:08 PM, Paul Kobayashi wrote:

Aloha Ryan,

Thank you for the notification. We are working Carl and Tiffany towards making the initial deposit and payment.

Please call me if you have any additional comments or questions.

Mahalo,

Paul Kobayashi

University of Hawaii
Director - Financial Management and Controller
Office: 956-7161
Direct: 956-5445
Fax: 956-9497

From: Ryan Akamine [mailto:Ryan.Akamine@hawaii.edu]
Sent: Monday, June 25, 2012 1:47 PM
To: Howard Todo (mailto:htodo@hawaii.edu); Paul Kobayashi
Cc: Jim Donovan; Carl Clapp (mailto:cciapp@hawaii.edu); Darolyn H. Lendio
Subject: Benefit Concert

Howard and Paul,

We are working through a number of issues with this benefit concert, but I just wanted to touch bases with you because my understanding is that we have a short deadline to make the initial payment to the talent. You can contact Carl Clapp and Tiff Kuraoka for any information you need so we can make to payment. I also understand that some statutory disclosures need to be made to the Attorney General's Office, which could include financial disclosures. Let me know if you have questions.

Thanks,
Ryan

Ryan M. Akamine

June 25, 2012

MEMORANDUM FOR RECORD

SUBJECT: Wire Transfer to

On June 25, 2012, I received a wire transfer document delivered by UHM Athletics concerning a wire transfer payment of \$200,000.00 to a company for a benefit concert. I was concerned that this was a prepayment of a large amount money. I tried to contact Tiffany Kuraoka, UHM Athletics fiscal officer but she did not answer my call.

First, the account code was a GL account with a different budget code than what was listed in the Authorization for Payment document. Second, it was not the UHM Athletics revolving account they would normally use and why were they using a GL account belonging to Aloha Stadium? According to the documentation provided in the wire transfer, there was a screen print from eFMIS of the some sort of deposits to the GL account.

An email message was sent at 4:17 PM, 06/25/12 to Tiffany concerning my questions above. I also contacted Karless Hisashima, OPRPM, if UHM Athletics had the authority to request payment of that amount without Duff Zwald's signature. Karlee replied that UHM has some authority to enter into contracts without OPRPM approval based on their revolving accounts. She was not aware of a contract to request for payment of a concert.

Michele from UHM Athletics did call back late that afternoon and responded that the GL account was used for the pre-ticket sales deposits for the concert. I asked her why did they did not transfer the funds to their revolving accounts and pay from there. The response was that payment was needed to pay the vendor as soon as possible. I assumed a contract was in place to lock in the concert. Since funding via deposits reflected an amount greater than \$200,000.00, I would released the wire transfer the next day.

Alan Keriman
A/P Supervisor

Benefit Concert

Ryan Akamine [Ryan.Akamine@hawaii.edu]

Sent: Tuesday, June 26, 2012 3:10 PM

To: Jim Donovan (jdonovan@hawaii.edu)

Cc: Vince Baldemor (vince@koaanuenuue.org); Carl Clapp (cdapp@hawaii.edu); Rich Sheriff (rsheff@hawaii.edu); Debbie Kutara [dkutara@hawaii.edu]; Darolyn H. Lendio

Attachments: Agreement for Use of Non-P~I.pdf (11 KB) ; § 467B - 5.5 (2012).pdf (70 KB)

Jim,

Attached please find a consent agreement for your execution. The need for such an agreement was brought to our attention by the University of Hawaii Foundation. I drafted the agreement to conform with the statutory provision, which I've also attached. Note that for purposes of promotion and marketing the names, logos and trademarks are limited to those associated with the University of Hawaii at Manoa campus and the athletic department. I've copied Debbie Kutara, our UH licensing person.

My understanding is that the executed agreement needs to be "filed" with the Attorney General's office by the "commercial co-venturer", which is I'm trying to get clarification on the "filing" process. If you already know the process, please let me know your understanding.

If the agreement is acceptable, please execute it and send it to me. It can be executed in counterparts, so separately executed agreements will be fine. Please be aware that the agreement will be a public document. If you have any questions, please feel free to contact me.

Thanks,
Ryan

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawai'i
2444 Dole Street, Bachman Hall 110
Honolulu, Hawai'i 96822
(808) 956-2211 phone
(808) 956-2109 fax
ryan.akamine@hawaii.edu

CONFIDENTIALITY NOTICE:

This E-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this E-mail or any attachment is prohibited. If you have received this E-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you

**CONSENT AGREEMENT BETWEEN
UNIVERSITY OF HAWAII AND**

This Consent Agreement, dated June 26, 2012, by and between the UNIVERSITY OF HAWAII AT MANOA ("UNIVERSITY") and _____ is to establish that _____ has UNIVERSITY's consent to use UNIVERSITY's name(s), logo(s), and trademark(s) to promote the _____ Benefit Concert

W I T N E S S E I H

1. UNIVERSITY and _____ entered into an agreement on June 12, 2012 ("Event Agreement") for _____ use of the Stan Sheriff Center ("SSC") for the production of the _____ Benefit Concert (_____) on August 18, 2012, and possibly August 19, 2012. The _____ is a fund-raising benefit for UNIVERSITY's athletic department ("UHMAD").
2. _____, with UHMAD's assistance, will sell tickets to the _____ to donors of UHMAD and UNIVERSITY, and then to the general public. Ticket sales shall continue until they are sold-out.
3. UNIVERSITY grants _____ a non-exclusive, non-assignable, non-transferable license to use UNIVERSITY's and UHMAD's name, logo, and trademark on marketing or press materials for the sole purpose of identifying that the _____ is a fund-raising event for UHMAD. The names, logos and marks shall be used in the exact form, style and type prescribed by UNIVERSITY and shall remain the exclusive property of UNIVERSITY.
4. _____ agrees to not disparage, or make any derogatory, false or misleading statements concerning UNIVERSITY or of any of its regents, officers or employees.
5. UNIVERSITY and _____ have agreed to a rental fee for use of the SSC in the amount of 10% of the gross revenues from ticket sales or 75% of the net revenue after expenses, whichever is greater. UNIVERSITY makes no representation as to the status of such payment for federal, state or local tax purposes with respect to _____, including qualification as tax deductible charitable contribution.

6. Pursuant to the Event Agreement, within a reasonable time after the conclusion of the _____, UNIVERSITY shall provide _____ with a statement certifying the total amount of all reimbursable expenses and any other fees and charges payable by _____. Within ten (10) days of receipt of said statement, _____ shall make its payment for expenses and fees to the UNIVERSITY and its payment of the rent fee.

7. _____ will prepare a final accounting for the _____. Upon request, a copy of the final accounting shall be provided to the attorney general not more than twenty (20) days after the request is made. Upon request, a copy of the final accounting shall be provided to UNIVERSITY not more than twenty (20) days after the request is made. _____ shall keep the final accounting for a period of three years, unless _____ and UNIVERSITY mutually agree that the accounting should be kept by UNIVERSITY.

8. This Consent Agreement does not constitute a partnership, joint venture for profit or for any other purpose, or employer or principal/agent relationship between _____ and UNIVERSITY. This Consent Agreement also does not constitute a contract or agency agreement for _____ to solicit or consult on the solicitation of, or collect contributions from others on behalf of UNIVERSITY. Neither _____ nor UNIVERSITY has the right to obligate or bind the other in any manner whatsoever.

9. This Consent Agreement may be executed in two or more counterparts, each counterpart shall be considered an original, and all counterparts shall constitute one and the same document.

The parties have caused this Consent Agreement to be executed by their duly authorized officers below, on the date written above.

University of Hawai'i at Manoa

By: _____
James J. Donovan III
Director of Athletics

By: _____

Re:

Benefit Concert

Subject: Re: Benefit Concert
From: Howard Todo <htodo@hawaii.edu>
Date: 6/28/2012 6:25 PM
To: Kathleen Cutshaw <cutshaw@hawaii.edu>

11b

Let me be clear, Kathy, I'm only involved because I found out about it from OGC. Manoa Athletics initiated this and apparently has entered an agreement. So this is a Manoa issue. I'm telling you, because as such, I believe it is the Chancellor's office's responsibility. So you should most definitely not stand down, but rather insure that it is okay and is being properly authorized and executed, because of the exposure and risk.

Howard

On 6/28/2012 6:10 PM, Kathleen Cutshaw wrote:

I haven't verified that Virginia was informed and agreed to this. I have verified that you have been involved. If system has already moved forward, I am standing down.

Kathy

On Jun 28, 2012, at 6:03 PM, "Howard Todo" <htodo@hawaii.edu> wrote:

Kathy, here's what I've gotten from Ryan.

Howard

----- Original Message -----

Subject: RE: Benefit Concert
Date: Wed, 27 Jun 2012 16:34:38 -1000
From: Ryan Akamine <Ryan.Akamine@hawaii.edu>
To: 'Howard Todo' <htodo@hawaii.edu>
CC: 'Paul Kobayashi' <pyk@hawaii.edu>, 'Jim Donovan' <jdonovan@hawaii.edu>, 'Carl Clapp' <cclapp@hawaii.edu>, "Rich Sheriff (rsheriff@hawaii.edu)" <rsheriff@hawaii.edu>, "Darolyn H. Lendio" <lendio@hawaii.edu>

Howard,

Per our discussion, attached are the agreements for use of SSC and the consent

Re:

Benefit Concert

for the use of UH's name. Both copies are not executed. I am waiting for executed copies of the two agreements from athletics. By copy to Rich, please also provide me a copy of the insurance agreements that promised.

Ryan

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawai'i
2444 Dole Street, Bachman Hall 110
Honolulu, Hawai'i 96822
(808) 956-2211 phone
(808) 956-2109 fax
ryan.akamine@hawaii.edu

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<2012 Agreement for Use of SSC by 2012.06.12 v.final.pdf>

<Agreement for Use of Non-Profit Name.pdf>

<htodo.vcf>

Howard S. Todo <htodo@hawaii.edu>

Vice President for Budget and Finance/CFO

University of Hawaii

From: ~~Robert A. ...~~
To: ~~"Robert A. ..."~~
Cc: ~~Mr. ...~~
Subject: Benefit Concert
Date: Monday, July 09, 2012 12:42:53 PM
Attachments:

Rich,

The attached certificate of insurance does not comply with the contract provisions. The State of Hawaii and the University of Hawaii need to be named as additional insureds. should be able to get another copy quickly as the additional cost to obtain the additional insured certificate is nominal.

Here's the provision in the agreement:

10. Insurance and Indemnity. In accordance with the UNIVERSITY's policies pertaining to the Use of University-Owned Facilities:

A. shall indemnify, defend and hold harmless the University of Hawai'i and the State of Hawai'i its officers, agents, employees or any person acting on its behalf (1) from and against any claim or demand for loss, liability or damage, including but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident arising out of or connected with the performance of this Agreement, and will reimburse the University of Hawai'i ... attorney's fees, costs, and expenses in connection with the defense of such claims, and (2) from and against all claims, suits, and damages by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

B. during the period of this Agreement, at its own cost and expense, shall maintain commercial general liability insurance covering premises, operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, advertising injury and host liquor liability, with a combined single limit of not less than \$2,000,000. Such policy must be acceptable to the UNIVERSITY and shall name the University of Hawai'i and the State of Hawai'i as additional insureds, and shall cover claims related to the Event. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of indemnity under this Agreement.

A copy of the above policy shall be deposited with the Director of Risk Management as soon as possible prior to the day of the Event. The above policy shall contain the following three clauses.

1. The insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the University of Hawai'i
2. It is agreed that any insurance maintained by the University of Hawai'i and the State of Hawai'i will apply in excess of, and not contribute with, insurance provided by this policy

3. The University of Hawai'i and the State of Hawai'i is added as an additional insured with respect to operations of its officers, employees, contractors and agents on University of Hawai'i premises used on behalf of the Event.

Additionally, although UNIVERSITY agrees to use its best efforts to assist in producing a successful Event, agrees to assume all risks associated with booking, promoting and producing the Event. Specifically, shall indemnify, defend and hold harmless UNIVERSITY, the University of Hawai'i and the State of Hawai'i its officers, agents, employees or any person acting on its behalf from and against any and all claims and demands brought or made on account of the non-performance of at the Event, for any reason whatsoever. represents to UNIVERSITY that it can and will secure insurance to cover this possibility, and identify UNIVERSITY, the University of Hawai'i and the State of Hawai'i as additional insureds. A copy of this policy shall be provided to the UNIVERSITY's Director of Athletics ~~before~~ Pre-Sale Ticket sales commence.

The last highlighted portion above is *separate* insurance that also needs to be obtained. At this point, is in breach of our agreement if he hasn't obtained the insurance and provided it to you. After you obtain the two insurance certificates, they should be forwarded to Risk Management.

Ryan

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawai'i
2444 Dole Street, Bachman Hall 110
Honolulu, Hawai'i 96822
(808) 956-2211 phone
(808) 956-2109 fax
ryan.akamine@hawaii.edu

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From: Richard Sheriff [mailto:rsheff@hawaii.edu]
Sent: Monday, July 09, 2012 12:13 PM
To: James J Donovan III
Cc: Carl Clapp; Ryan Akamine
Subject: Fwd: (no subject)

Jim,
Attached is a copy of liability insurance for the Concert on August 18th. He is working on the cancellation insurance policy confirmation. I will forward it to you as soon as I get it.

Rich

----- Forwarded message -----

From: <@aol.com>

Date: Fri, Jul 6, 2012 at 6:13 AM

Subject: (no subject)

To: rsheriff@hawaii.edu

Liability ins

--

Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

From:
sent: Friday, August 03, 2012 8:20 AM
To:
Subject: Fwd: (no subject)

My last communication with
She wrong about 200k wire from my account.
It was wired directly from the UH to pic.
I wired them 50k binder.

From:
To:
CC:
Sent: 7/18/2012 8:57:30 P.M. Hawaiian Standard Time
Subj: Re: (no subject)

Morning

We'll see if we can make this work with Ms Greenwood.
In the meantime please forward the copy of the for US\$200k transfer from your account to _____ as we need to send that with the document from the UH requesting the 200k returned.

On Wed, Jul 18, 2012 at 11:53 PM, _____ wrote:

I have forwarded your email to the University of Hawaii for their direct response.
I am taking a step back out of the issue. You need to make the UH satisfied.

In a message dated 7/18/2012 10:23:48 A.M. Hawaiian Standard Time, _____ writes:

Dear

All we are asking for at this moment in time is the copy of your transfer to _____'s Escrow account so that we can initiate proceedings for refund of the University of Hawaii's deposit.

On Wed, Jul 18, 2012 at 9:07 PM, _____ wrote:

Sorry to hear about _____ but I need the following information.

1. Who has _____ been dealing with in _____'s camp? Is it _____? _____ as you know has been dealing with _____ who has direct links into _____'s camp

2. How does he know he can secure ? has been in this business for many many years staging and producing shows

3. Did send the money to ? If so how much? sent funds to to lodge with 's camp as you know

What happened to the rest of the money? Rest of what money?

4. Who has the money now? Management representative

5. I a representative of willing to contact the UH? Because of all the bad publicity within your camp at this time 's rep is not prepared to speak with the UH. There has been breach of confidentiality on the Hawaiian side on more than one occasion.

We have asked several times for the information and confirmation needed to complete this deal, nobody in Hawaii seems to be able to provide it to secure the final contract.

We need to see a contract from YOU stating that you are authorised to represent the UH in this matter. There seems to be come confusion over this matter.

We have a deal ready to go.

UH Hawaii cancelled the show NOT the artist.

You and or the University of Hawaii put tickets on sale before management had signed and completed the deal. This put you in breach of artist contractual agreement, after our explicit instructions not to do so.

and I are trying to work with you to to have this performance staged in Honolulu on Aug 18 2012

To make this happen we would need to see the contract that you have with the University of Hawaii that we have requested on several occasions.

is a trusted and upstanding individual and NONE of this situation can be held liable for.

If the tickets had not gone on sale in Hawaii the deal would be completed now as the President of the University is now aware of.

There are only 2 options, either close this deal immediately and provide Management with the paperwork they need including who is actually meeting the final payment of 500k USD for this show or request the University deposit of US\$200,000.00 back on official University headed paper for us to present to Management for a refund.

Failing proof that can deliver , at this point both UH and I want our money back.

Can you answer questions?

Did you get any of the money?

Finally what made you choose / to do this deal?

Have you worked with him before?

Ball's in 's court.

No more claims of trade secrets. Time has come for full disclosure !!!

]

From:
Int: Friday, August 03, 2012 9:05 AM
To:
Subject: Fwd: Friday the 13th conference call?

From:
To:
Sent: 7/14/2012 11:28:23 P.M. Hawaiian Standard Time
Subj: Re: Friday the 13th conference call?

I know...

told me last night to stop worrying and we'll get this done, they just want to be so careful as nobody expected this to blow up as badly as it did :(

On Sun, Jul 15, 2012 at 11:24 AM, _____ wrote:
If we get done ... the pressure will be over on all of us.

Help

In a message dated 7/14/2012 10:53:08 P.M. Hawaiian Standard Time, _____ writes:

Ok i'll tell what's been said here.
All he's doing is being careful and thinking ahead as we have one shot at this now and we want it to be 100% successful as do you.

I'll get back to you asap :)

x

On Sun, Jul 15, 2012 at 10:30 AM, _____ wrote:
They are 100% on board ... unfortunately the people that were point men on this deal are all on paid leave until this show happens.

I am still under contract with the UH to provide _____ on 18th.

I am the one you are hurting ... If you get the contract to me for the 18th ... I will have the money and letter in 2 business days. I trusted you ... you need to trust me.

I am the one ... the one whom on the University's behalf ... that you are dealing with ... Now I am the one they will sue if _____ doesn't play.

Contract first

Then who do I have the UH make the letter out to?

In a message dated 7/14/2012 8:30:17 P.M. Hawaiian Standard Time, _____ writes:

Update.....

needs a current letter from the UH or a point of contact there, due to all the bad press 's camp want to be 100% sure they're onboard.

On Sun, Jul 15, 2012 at 8:01 AM, _____ wrote:
????????????????

In a message dated 7/13/2012 6:48:59 A.M. Hawaiian Standard Time,
_____ writes:

All we need to know at this point in time is who is putting up the rest of the money for this show and that needs to be committed to in writing as once 's management has sent the new contract the balance will be due in 48 hours.

On Fri, Jul 13, 2012 at 6:26 PM, _____ wrote:

—
Kindest regards,

Any offers to artists, agents, promoters and/or venues are without prejudice and subject to a written and signed contract.

_____ are not responsible for the compliance by Contractors or Artists with their respective obligations although we take all normal precautions. _____ are acting as agents and not as principal and as such accepts no liabilities for any acts, failures, errors and omissions on part of the principal.

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From:
ent: Friday, August 03, 2012 9:00 AM
To:
Subject: Fwd: Show/s Aug 2012

From:
To:
CC:
Sent: 7/18/2012 8:14:18 A.M. Hawaiian Standard Time
Subj: Re: Show/s Aug 2012

Thank you, we need the proof of transfer from your account to _____ for management.

On Wed, Jul 18, 2012 at 8:11 PM, _____ wrote:
I'm working on the 200k receipt ... I enclose the 50k receipt.

In a message dated 7/18/2012 7:58:50 A.M. Hawaiian Standard Time, _____ writes:

**We need a copy of the 200k that you transferred.
Might as well send the 50k transfer as well though.**

On Wed, Jul 18, 2012 at 7:54 PM, _____ wrote:

...

I will ask for a copy of the transfer ... do you need a copy of my 50k?

In a message dated 7/18/2012 7:31:06 A.M. Hawaiian Standard Time,
writes:

Hi

We need a copy of the transfer for US\$200,000.00 please to get the ball rolling.

Please send back immediately.

On Wed, Jul 18, 2012 at 6:39 PM, _____ wrote:
Good morning..

Well guys I was waiting for you to get this done.

||| I think timing has become the enemy.

It is time to return the 200k back to the UH and me my 50k.

I have had further interest from China in .. just need the answers to my previous questions.

On ward and upward

In a message dated 7/18/2012 5:48:52 A.M. Hawaiian Standard Time,
_____ writes:

Dear _____,

I have been calling you but no answer however I did leave a message. I've been extremely concerned that I/we haven't heard from you for a few days. I have been speaking with _____, this show/s can be done, to do this we need cooperation and fast as we're running out of time. Please read below from _____ and advise in writing so that we can contact with a way forward.

No, your not crazy, but the only person that can get it done at this point is _____ and Mgmt. Because of the way they made us look like bad guys, and fraud etc... it has put a bad light on him, _____ etc. If _____/University can guarantee payment despite what the contract says... then he will push for the contract... basically thats the hold up... not to mention some points I made out below...

1. _____ / _____ maintains we did not commit or intend to commit any kind of ill gotten gains from the UH.
2. We were contracted to provide a booking/consulting service to _____ and consequently it seems, a service to UH
3. Before we could complete this service and AGAINST advisement not to do so:
 - a. Promotions, such as advertising, TV Commercials, internet and email blast etc
 - b. This began before _____ obtained Management approval.
 - c. Selling tickets to raise capital to pay for the service is considered arbitrage.
- § 1.1. of MOU states:
 - 1.1. Bookings are not confirmed until deposit and contracts are received and deposits and receipt of booking confirmation has been agreed upon with Artist/ Artist Management,
4. Our contract specifically states contract/artist is not confirmed until a management has given approval by signature.
5. _____ at this point has not canceled this event, and is willing to continue to provide services as contracted as long as _____ /UH are able, willing and ready to comply to the agreement(s)

§ of 12. of MOU states:

(12. **BREACH**

(12.1) Each of the terms and conditions of this MOU and Contract is necessary and essential for Artist, and/or Artist representative(s) full performance of its obligations hereunder. Accordingly, if Purchaser refuses or neglects to fulfill all of the terms and conditions contained in the MOU or the Contract (including, without limitation, the payment of any monies due and any

services and items required hereunder) then Purchaser shall be deemed in material breach of contract. In such event, Artist, and/or Artist representative shall have the right, without waiver of any other rights and/or remedies, all of which are reserved: (i) to refuse to perform this Contract; (ii) to cancel the Engagement; and (iii) to retain any amounts paid to Artist, and/or Artist representative(s) as partial compensation. If on or before the date of the Engagement, Purchaser has failed, neglected, or refused to perform any contract with any other performer or entity, or if the financial standing or credit of Purchaser has been impaired or is unsatisfactory (in Artist, and/or Artist representative(s) good faith opinion), Artist, and/or Artist representative(s) shall have the right to demand immediate payment of the full contract price specified herein. If Purchaser fails or refuses to make such payment immediately, Purchaser shall be deemed in anticipatory breach of contract. In such event, Artist, and/or Artist representative(s) shall have the right, without further obligation to Purchaser (i) to refuse to perform this Contract; (ii) to cancel the Engagement; (iii) to retain any amounts paid to Artist, and/or Artist representative(s) as partial compensation; and (iv) Purchaser shall remain liable to Artist, and/or Artist representative(s) for the full contract price, including any percentage monies due. The foregoing is in addition to all other rights and/or remedies available to Producer or Artist in law and/or equity.

Kindest regards,

Any offers to artistes, agents, promoters and/or venues are without prejudice and subject to a written and signed contract.

are not responsible for the compliance by Contractors or Artists with their respective obligations although we take all normal precautions are acting as agents and not as principal and as such accepts no liabilities for any acts, failures, errors and omissions on part of the principal.

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and labor be paid by a Box Office assignment of proceeds from the net gross (after state taxes and University expenses. Then the promoter gets his and does your athletic donation. Let me know if I need to sit and talk with you and any others on this.

From: Richard Sheriff [mailto:rsheriff@hawaii.edu]

Sent: Thursday, May 10, 2012 10:25 AM

To:

Subject: Re: Benefit Concert for UH Athletics August 11, 2012

I wanted to update you, things are moving very slowly on the University's part putting together this deal. It seems like it is very hard to pay for lighting, sound and staging as a University entity. If I am unable to bring our people together, is it OK if we still host this concert as a straight rental. Obviously I want to keep it as a benefit concert as that would be a lot more lucrative for the athletic department, but I do not want to totally lose out on the event.

Let me know how NBC and the city would feel if we are forced to change directions.

Thanks for your help!

Rich

On Mon, May 7, 2012 at 10:22 AM, Richard Sheriff <rsheriff@hawaii.edu> wrote:

Thanks for you assistance. I will keep you posted as to how things go.

Rich

Sent from my HTC on the Now Network from Sprint!

----- Reply message -----

From:

Date: Mon, May 7, 2012 9:46 am

Subject: Benefit Concert for UH Athletics August 11, 2012

To: "Richard Sheriff" <rsheriff@hawaii.edu>

Richard: Let me know how everything turns out.

From:

Sent: Wednesday, May 02, 2012 4:36 PM

To: 'Richard Sheriff'

Subject: RE: Benefit Concert for UH Athletics August 11, 2012

Richard: You have our permission to proceed with the benefit booking

From: Richard Sheriff [mailto:rsheriff@hawaii.edu]

Sent: Wednesday, May 02, 2012 3:21 PM
To:
Subject: Re: Benefit Concert for UH Athletics August 11, 2012

Thank you for your assistance!

Rich

On Wed, May 2, 2012 at 2:56 PM,
Richard. I will get back to you by tomorrow

wrote:

From: Richard Sheriff [mailto:rsheriff@hawaii.edu]
Sent: Wednesday, May 02, 2012 1:08 PM
To:
Subject: Re: Benefit Concert for UH Athletics August 11, 2012

We do not have any other events on lower campus on that date.

Rich

Sent from my HTC on the Now Network from Sprint!

----- Reply message -----

From:
Date: Wed, May 2, 2012 12:50 pm
Subject: Benefit Concert for UH Athletics August 11, 2012
To: "Richard Sheriff;" <rsheriff@hawaii.edu>

Richard: Is there any other sport activity that day?

From: Richard Sheriff [mailto:rsheriff@hawaii.edu]
Sent: Wednesday, May 02, 2012 12:42 PM
To:
Cc: Ryan M. Akamine
Subject: Benefit Concert for UH Athletics August 11, 2012

Thank you for our conversation today. As I have told you on the phone, the University of Hawaii Athletics Department has been approached by a local promoter who hosts a benefit concert for the Athletic Department at the Stan Sheriff Center. This will be a 100% profit after expenses benefit to the UH Athletics Department. The show date would be Saturday August 11, 2012. It is my understanding that the NBC is pursuing a different show for this date. The entertainer is a prominent mainland act. This will be a great opportunity for the

UHAD to help towards balancing our budget.

Please confirm that the City & County of Honolulu and NBC are in full support of the University of Hawaii and UH Athletics hosting this benefit concert at the Stan Sheriff Center.

We truly appreciate your assistance with this great opportunity. Please respond as soon as possible as finalizing this event is time sensitive.

Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

Ryan Akamine

From: Richard Sheriff [rsheriff@hawaii.edu]
Sent: Wednesday, June 06, 2012 8:41 AM
To: Ryan Akamine
Subject: Concert contract

Ryan,

Do we have everything we need on the contract? I did have a thought that must have his non performance insurance in place prior to any money being paid out for entertainers deposit. When will the benefit concert contract ready for pick up?

Jim will be out on vacation starting tomorrow, so I want to try to pick it up so he can sign it today.

Rich

Sent from my HTC on the Now Network from Sprint!

RE: Benefit Concert

Ryan Akamine [Ryan.Akamine@hawaii.edu]

Sent: Wednesday, June 06, 2012 4:26 PM

To: Jim Donovan (jdonovan@hawaii.edu); Richard Sheriff (rsheriff@hawaii.edu)

Cc: Darolyn H. Lendlo; Carl Clapp (cclapp@hawaii.edu)

Attachments: 2012 Agreement for Use of ~1.pdf (54 KB) ; 2012 Agreement for Use of ~2.doc (89 KB)

Jim and Rich,

See version 5 attached. Most important change is to the fee structure, 10% of gross sales or 75% of net after expenses.

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawaii
2444 Dole Street, Bachman Hall 110
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From: Ryan Akamine
Sent: Wednesday, June 06, 2012 2:44 PM
To: Jim Donovan (jdonovan@hawaii.edu); Richard Sheriff
Cc: Darolyn H. Lendlo
Subject: RE: Benefit Concert

Jim and Rich,

See attached new draft following my discussion with Rich. Call me after you review.

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawaii
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From: Ryan Akamine
Sent: Wednesday, June 06, 2012 2:08 PM
To: Jim Donovan (jdonovan@hawaii.edu); Richard Sheriff
Cc: Darolyn Lendio (lendio@hawaii.edu)
Subject: Benefit Concert

Jim and Rich,

In addition to the budget from Rich, attached are copies of the same draft agreement in different forms. Note that I have only been discussing a one-night concert with Rich and the agreement does not say the concert is just one night. We should discuss this. Call me after you have read through the draft. 956-4376 or 286-6996.

Ryan M. Akamine
Associate General Counsel
Office of Vice-President for Legal Affairs
and University General Counsel
University of Hawaii
2444 Dole Street, Bachman Hall 110
Honolulu, Hawaii 96822
(808) 956-2211 phone
(808) 956-2109 fax
ryan.akamine@uh.hawaii.edu

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From: Richard Sheriff [mailto:rsheff@hawaii.edu]
Sent: Tuesday, June 05, 2012 2:45 PM
To: Ryan Akamine
Subject: Fwd: (no subject)

Ryan,
Attached is the working budget for the expenses guideline as I said. has agreed to the terms below. UHAD receiving \$22,500 in rent and \$22,500 in service fee, we will split 75%UHAD / 25% after expenses.

Let me know if you need anything else.

Concert

Tiffany Kuraoka [tkuraoka@hawaii.edu]

Sent: Friday, June 15, 2012 12:15 PM

To: James Kashiwamura [jkashiwa@hawaii.edu]

Cc: Carl Clapp [cclapp@hawaii.edu]; Richard C Sheriff [rsheff@hawaii.edu]

JR,

I was just informed by Rich Sheriff, Stan Sheriff Center Manager and Carl Clapp that the department is looking to have a concert in the Stan Sheriff Center in August. In order to have this concert they would need to have a \$200,000 check cut to the performer late next week or the following week. The funds for the \$200,000 is to come from advance ticket sales which should begin shortly. Please let me know if this is possible to process. Thanks.

--
Tiffany Kuraoka
University of Hawaii
Assistant Athletic Director
Business Operations
Phone (808)956-6505
Fax (808)956-4637



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

September 13, 2012

Ms. Vida G. Bottom
Special Agent in Charge
Federal Bureau of Investigation
Honolulu Division
300 Ala Moana Boulevard
Suite 4-230
Honolulu, Hawaii 96813

Dear Special Agent Bottom:

Re: FBI Investigation into Missing Deposit for Cancelled Stevie Wonder Benefit Concert

On August 29, 2012, pursuant to Senate Rule 20, Senate President Shan Tsutsui appointed a Special Committee on Accountability (Committee) to conduct an informational briefing or briefings, as may be necessary, to review the oversight, accountability, and transparency of the operational and financial management of the University of Hawaii System, including but not limited to the University of Hawaii's Athletic Department.

It is the Committee's understanding that the University of Hawaii provided a \$200,000 deposit to an entity or entities that were believed to represent the artist Stevie Wonder for a planned benefit concert at the University of Hawaii. Subsequently, it was revealed and publically reported that the entity or entities who received the \$200,000 mischaracterized their representation to the University of Hawaii. Further, it is the Committee's understanding that this apparent fraudulent or criminal act or acts, as well as the whereabouts of the \$200,000 deposit, are part of an ongoing investigation undertaken by your office.

As Chair of the Committee, and in anticipation of the Committee's first informational briefing scheduled for Monday, September 24, 2012, at 1:00 p.m., I am writing to request the following information:

1. An update on the status of the missing \$200,000 deposit;

2. The steps taken by your office to locate the missing money; and
3. The name of the lead agent in charge of this investigation.

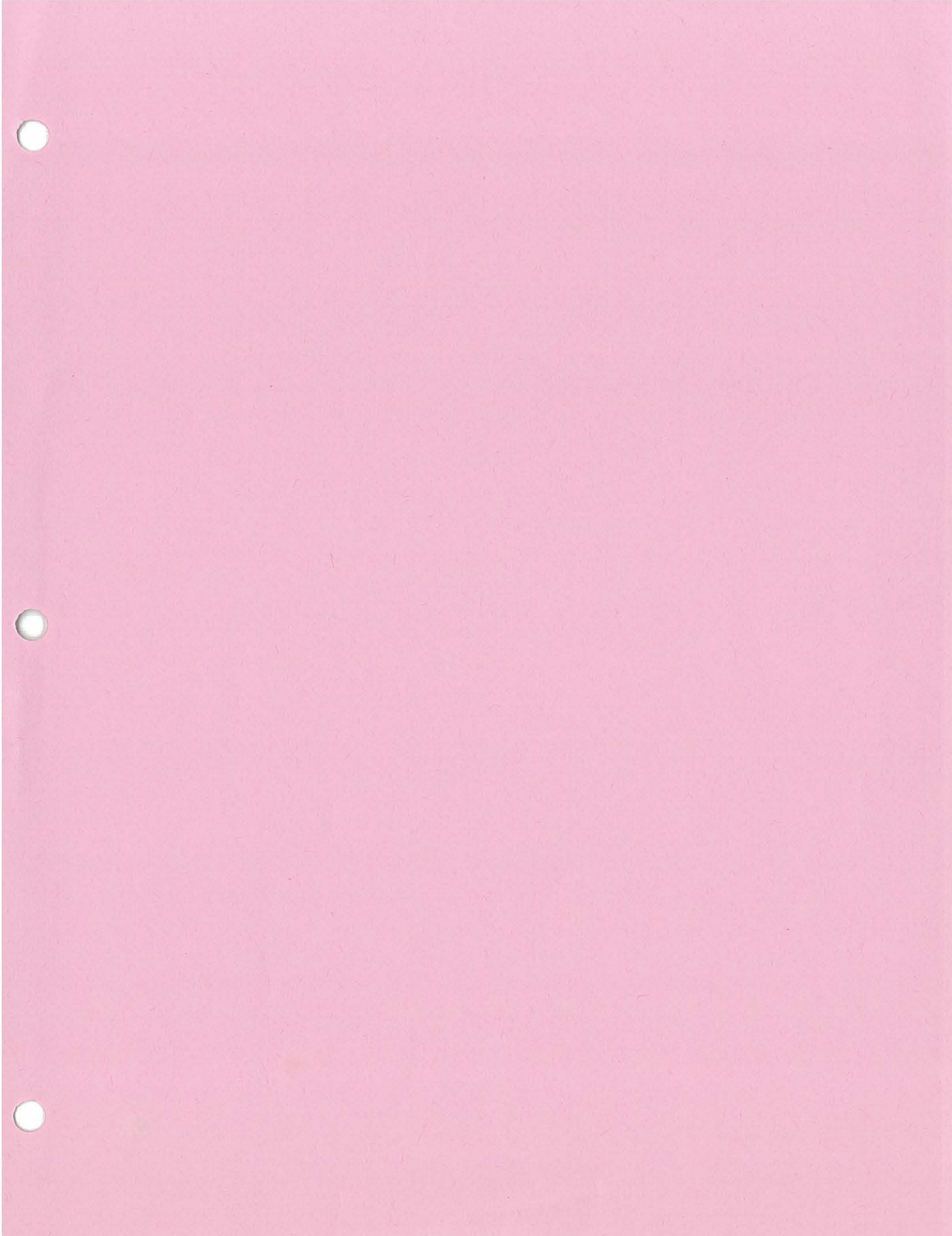
I hope to hear from your office by September 20th so that the Committee may continue with its preparations for the scheduled informational briefing.

I also welcome and invite you or one of your representatives to attend and participate in the Committee's informational briefing on Monday, September 24, 2012, at 1:00 p.m., in Capitol Conference Room 211, if it is appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Mercado Kim". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senator Donna Mercado Kim
Chair, Senate Special Committee on Accountability






UNIVERSITY OF HAWAII

BOARD OF REGENTS

January 6, 2011

TO: M.R.C. Greenwood
President

FROM: Howard Karr 
Chair

SUBJECT: Mountain West Conference

This memo confirms our discussions and reiterates my understanding and expectations as Chair of the Board of Regents regarding representation of the University of Hawai'i in the Mountain West Conference during this critical period of transition in the University's athletic conference affiliation. The President will serve as the University's representative on the Mountain West Conference Board of Directors and in senior-level interactions with the Mountain West Conference, particularly when other universities' Presidents are involved. In the event of irreconcilable scheduling conflict, the President may designate an appropriate executive to represent the University on the President's behalf, if permitted by the Mountain West Conference, in which event the President will retain oversight and consultation with the designated representative. Major decisions or commitments related to the University's participation in the Mountain West Conference are to be made by the President, in consultation with the Chair and Vice-Chair, or by the Board of Regents, in accordance with established Board policies and practices.



UNIVERSITY
of HAWAII
SYSTEM

M.R.C. Greenwood, Ph.D.
President

December 12, 2011

Virginia S. Hinshaw, Ph.D.
Chancellor, University of Hawai'i at Mānoa
2500 Campus Road
Hawaii Hall 202
Honolulu, HI 96822

Dear Chancellor Hinshaw:

This letter confirms our conversations regarding representation of the University of Hawai'i at Mānoa (UHM) in the Mountain West Conference and is intended for use in connection with UHM's NCAA reaccreditation.

As directed by the Board of Regents, I, as President, am representing UHM in the Mountain West Conference during the current transition period in which UHM is leaving the Western Athletic Conference and joining the Mountain West Conference (football only) and Big West Conference (most other sports). The UHM Chancellor will assume responsibility for representation of UHM in the Mountain West Conference after completion of the transition.

Many thanks to you and the UHM team for your fine work with the NCAA.

Very truly yours,

A handwritten signature in cursive script that reads 'M.R.C. Greenwood'.

M.R.C. Greenwood, Ph.D.
President

c: Eric K. Martinson
Chair, Board of Regents

Keith Amemiya, Esq.
Executive Administrator & Secretary of the Board of Regents

2444 Dole Street, Bachman Hall
Honolulu, Hawai'i 96822
Telephone: (808) 956-8207
Fax: (808) 956-5286

Email: mrcgreenwood@hawaii.edu

An Equal Opportunity/Affirmative Action Institution

Report to the Faculty Senate
Peter Nicholson
Department of English
Faculty Athletics Representative
April 26, 2012

I present two reports to the Senate each year, a report on the academic progress of UHM student-athletes in the fall, and an end-of-year report in the spring. My fall reports are available on-line as follows:

2008: http://manoa.hawaii.edu/assessment/spprog/2008pdf/2008-Athletics_APR.pdf.

2009: http://manoa.hawaii.edu/assessment/spprog/2009pdf/2009-Athletics_APR.pdf

2010: http://manoa.hawaii.edu/assessment/spprog/2010pdf/2010-Athletics_APR.pdf.

2011:

http://www.hawaii.edu/uhmfs/minutes/2011_12/far_report_20111215_academicprogressstudentathletes.pdf

And my two previous spring reports are also available:

2010: http://www.hawaii.edu/uhmfs/documents/reports/faculty_athletic_representative_2010.html

2011: http://www.hawaii.edu/uhmfs/documents/reports/2010_11/far_report_2011.pdf

My report this semester consists of some updates and a discussion of one new issue.

1. Academics

My fall 2011 report presents a great deal of data on the student-athletes' academic performance, including their APR (the NCAA's "Academic Performance Rate"), their graduation rates, and their grades, and it compares UHM's results with those of our counterparts in our present conference, the WAC, in our two future conferences, the Big West and the Mountain West, and in NCAA Division 1 as a whole. There is no need for me to repeat all of those numbers here. In very quick summary: our APR (which is based on eligibility and retention rates) remains healthy, and the student-athletes' grades have started to rise, a trend that continued in the fall of 2011 (after my report was written): not only do they now nearly match the averages of our undergraduates generally, but their average semester GPAs are now running higher than their cumulative GPAs, reversing the pattern of previous years and indicating that we might expect even more of an increase in the future. Our student-athlete graduation rates, however, are lower than those of our own undergraduates and also, in most cases, lower than those of our conference and NCAA peers.

I have spent a good deal of time looking at the reasons for the lower graduation rates. I have found that overall, after a great deal of effort on our part, the number of students who have come to UHM, played for four years, and then left without a degree has sharply declined. This was one of our biggest concerns in the past, but most of the student-athletes who leave now are still academically eligible to play, indicating that they might simply have transferred to another school in order to finish their careers. Anecdotally, we know that the distance from home is a reason that many of our student-athletes are not happy here, and while these students are doing better academically, the coaches haven't

become much more prescient on which of their potential recruits is likely to want to stay. Football's graduation rate poses some particular concerns for us: by one measure, our team has the lowest graduation rate among all schools in our new conference, the Mountain West.¹ The questions posed by the NCAA during our recent Certification Self-Study (on which more below) directed our attention in particular to the very low graduation rate of our African-American Football players. I was required to do a more detailed study of the reasons. I found that the graduation rate had gone up significantly in the years subsequent to those on which the Self-Study report was based, but that in the more recent cohort, the graduation rate for African-Americans, and also the graduation rate for the team as a whole, was brought down by a group of ten students that had been recruited by our previous coach from junior colleges on the mainland and who had been Non-Qualifiers when they had graduated from high school (that is, their grades and their test scores combined made them ineligible to play at any four-year NCAA school). These ten students finished up their four years of playing time with us, and they then left without a degree, exactly the pattern that we had been trying so hard to reverse. The African-American members of the Football team who began with us as freshmen, by contrast, graduated at a fully respectable rate. We are still examining the implications of these results. We certainly don't want to close off any student's opportunity for an education by simply denying him or her admission, but we could perhaps do more to increase our athletes' chances of graduating: in the case of these students, for instance, by making them redshirt during their first year at UHM, so that when they were done playing for four years they had earned enough credits for their degree.

By using the opportunity to play as an incentive for academic success, we make sure that we are not simply exploiting these students' talents but that we are also thinking of their well-being, especially in the long term, even if they themselves are not motivated to earn a degree. The recent change in our eligibility requirements should be seen in the same light. The NCAA requires that student-athletes be in good academic standing as it is defined at their own institution in order to be eligible to play. Until recently, we did not have a campus-wide definition of "good academic standing" at UHM, and the minimum grade requirements for eligibility were therefore those set by the NCAA: 1.8 for sophomores, 1.9 for juniors, and 2.0 for seniors and above. As a consequence of recent action by the Faculty Senate, any student who has attempted at least 24 credits must now have a 2.0 to be in good academic standing, and this is also now our standard for eligibility. In addition, the Athletics Department itself has set a minimum of 1.6 for students with fewer than 24 credits (for whom the NCAA sets no minimum at all). So far, the results indicate that the vast majority of student-athletes are capable of rising to meet our expectations.

Both the Faculty Senate Committee on Athletics and the Athletics Advisory Board have also spent a great deal of time this year discussing missed class time and access to majors, largely as a consequence of the NCAA Self-Study Report, which addressed in

¹ The opportunity to turn pro, often cited in discussion of graduation rates, is not a factor here: UHM Football players do not have a greater opportunity to play professionally than their counterparts at other schools, and most of our Football players who turn pro do graduate first: graduation and a professional career must not be seen as mutually exclusive.

particular the effects of the scheduling of road trips on the student athletes' class attendance. This discussion extended to the Faculty Senate at its last meeting, and it will obviously continue. I will be watching carefully the effect that our new conference alignment has on the length of our road trips (which theoretically should now be shorter). Faculty members on both committees also clearly intend to take a close look at any coaches' requests for extended road trips, and also at the need for missing class when the athletes are playing at home, a situation that arises in golf (because of the impossibility of conducting competitions on golf courses on weekends) and tennis (because of the length of time it has taken to repair the defective lights on the tennis courts).

2. The NCAA Certification

In 2010-11, the university conducted an extensive self-study of the Athletics program as part of the NCAA certification process that, as we began, we were required to undergo every ten years. When we were halfway through the process, the NCAA announced that it was going to completely revamp the certification process, and that the detailed self-study would probably no longer be required. Since we had already invested so much time and work, we decided to continue what we had begun, and the complete 244-page self-study report that resulted is available for examination at [http://studentaffairs.manoa.hawaii.edu/downloads/ncaa_cert/UH Manoa Institution Self-study Instrument Report.pdf](http://studentaffairs.manoa.hawaii.edu/downloads/ncaa_cert/UH%20Manoa%20Institution%20Self-study%20Instrument%20Report.pdf).

The committees that produced the different sections of this report included, of course, a substantial number of faculty members (see the list on pages 8-9). The reports raised a great many specific questions about our compliance with the "measurable standards" that would be the basis for our NCAA accreditation, and these questions were addressed in the improvement plans that are included at the end of each section of the report, plans that were approved by both the Athletics Director and the Chancellor.

The NCAA sent a peer-review team to conduct a site-visit in October of 2011, and the team submitted its report in December. That report contained a number of recommendations and expressed a number of concerns, to which the university was allowed to submit a response. On February 24 of this year, we learned from the NCAA that we had been "certified with conditions", and that the one specific condition concerned the Athletics Department's failure to complete all of the facilities for women athletes that it had promised to provide in the gender equity plan that it submitted as part of the 2002 Certification. At issue is the construction of the facilities associated with the Ching Athletics Complex, which include the track, fan accommodations, and a new locker room building. Construction is under way, and it is expected that we will be able to report to the NCAA that we have met their condition later in the year.

3. Governance

One of the issues that the peer-review team identified concerned the governance of the Athletics program. When the decision was made to leave the Western Athletics Conference and to move to the Big West and the Mountain West, the system office took

on an unprecedented role in what might normally be considered a campus matter. Not only did the President and Board approve the realignment, as is appropriate, but the President assumed the responsibility of representing the institution at meetings of the Mountain West (our new football conference), though not the Big West (our new conference for most of our other sports). The peer-review team noted the oddness of this arrangement, and it recommended that "your institution be represented by your campus head at all athletics conferences as soon as possible." In its response, the university provided a letter from President Greenwood that included this paragraph: "As directed by the Board of Regents, I, as President, am representing UHM in the Mountain West Conference during the current transition period in which UHM is leaving the Western Athletic Conference and joining the Mountain West Conference (football only) and the Big West Conference (most other sports). The UHM Chancellor will assume responsibility for representation of UHM in the Mountain West Conference after the completion of the transition."

On the basis of this letter we should expect this issue to go away, but another situation arose this year that raises a similar concern. All normal procedures were again set aside in the hiring of the new football coach. Normally when it is necessary to replace a coach, the Athletics Director, who must take responsibility for his staff, makes a recommendation to the Chancellor after conducting a search, which he performs with the aid of a search committee. The process is not different from what happens on the upper campus. Jim Donovan, our current Athletics Director, has made a practice of appointing a committee that includes representatives of the constituencies that represent the different facets of a coach's job – including other administrators, those with knowledge of the particular sport, someone with an understanding of compliance and gender equity rules, and always at least one faculty member. I myself have served on at least two of these. But for the football search, the composition of the committee was determined by the system office. It contained no educators and no one from the Mānoa campus,² and there was no apparent attempt to bring together the full diversity of expertise that goes into the understanding of a coach's role at a public university.

I want to say at once, and very clearly, that I have absolutely no quarrel with the choice that was made: I already have a very good relationship with our new football coach, and I have already seen substantial improvement in the areas that fall under my responsibility. But there are larger issues implicated in the process, and much more is at stake here than simply the relation between the Chancellor and the President. First of all, where campus governance is concerned, the role of the faculty is also concerned. At the conference level, the expected arrangement is for the institution to be represented on the conference Board by the Chancellor, for it to be represented on the conference Council by the Athletics Director, the Athletics Department's Senior Woman Administrator, and the Faculty Athletics Representative, and for these four individuals to communicate with one another on conference issues as they arise. That system has worked very well for as long as I have been FAR, and both our campus administration and the conference officials respect the role that the faculty should have in athletics oversight. I have not, however,

² For the membership, see

http://www.hawaiiathletics.com/news/2011/12/7/FB_1207110732.aspx?path=football.

been invited to participate in any discussion concerning the football team's membership in the Mountain West. The President's office, moreover, which is taking such an interest in our football program, does not have the same relationship with the Mānoa Faculty Senate that the Chancellor does, and the Senate's Committee on Athletics too is therefore excluded from all discussion. And finally, I was told that when the constitution of the coach search committee was being decided, the idea of including a faculty member was specifically rejected.

The second major issue that I see concerns the role of our Football team. When asked about their interest in this one team in particular, both the President and certain members of the Board of Regents have been quoted as saying "Football is much bigger than Mānoa." We have to beware the geographical metaphor: we are not the University of Mānoa Valley. If the implication is that the football team in some way represents the entire state and not just Mānoa, then the University of Hawai'i at Mānoa also represents the entire state and not just one little valley: we are the only institution of our size and importance in Hawai'i; we draw our students (and our athletes) from the entire state; and we also have the only collegiate football program in the state. There is no sense in which the football team can be "bigger" than our institution.

But I am afraid that what they are really saying is not about geography at all. In taking the football program away from the institution, they are saying that it's not just about education or any of the proper functions of a university. It's bigger than Mānoa because it doesn't exist just for the students. It's about entertainment: it exists for the fans.

And that's where we really have to resist. However much we might be afraid that they're right, we have to continue acting like a university, and the only justification for having an athletics program at a university consists of the benefits that are derived by the students who participate – by the players themselves. It exists for them. We welcome the support and the enthusiasm of our community, but we are obliged to treat athletics as an educational program. It's a matter of law. Title IX, which is well-known for requiring equity for men's and women's sports, should be equally well known for its fundamental underlying assumption: that athletics must be conducted, and they must be assessed, as education. There is a danger, first of all, in treating football in a different manner from the other sports, because the other sports are likely to suffer, and we are going to be answerable for that under Title IX. In treating it as something apart from our educational mission, moreover, we risk exploiting our athletes; we risk losing sight of the benefits that they derive that are more important than simply winning games; and we risk overlooking the fact that they are students who play sports, and not just athletes who are required to go to class.

At a time when the NCAA is taking bold new initiatives to raise academic standards, to inhibit professionalization, and to keep the "student" in "student-athlete," I have seen the University of Hawai'i take two steps that have the potential to lead us in exactly the opposite direction. My hope is that with the installation of the new chancellor, we – and here I include the Athletics Department, the Faculty Senate, and the Faculty Athletics Representative – can take back full control of our program, and that we can all work

together to assure that all our student-athletes are treated the same, that the program is run for their benefit, and that their participation in athletics contributes to their education rather than detracts from it. Each of these goals will be easier to attain by those who are also able to say, "These are our students."

UH President Greenwood's involvement in athletics called "unprecedented"

July 17th, 2012

More grist for the "what's going on up at UH Manoa" mill.

According to a recent report by the Faculty Athletic Representative to the UH Manoa Faculty Senate, President M.R.C. Greenwood has had an "unprecedented" degree of involvement in major athletic policy decisions. According to the April 2012 report by Peter Nicholson, a professor of English and the designated NCAA Faculty Athletic Representative, an NCAA peer review team that visited Manoa last year identified "governance of the Athletics program" as an issue still needing to be dealt with.

When the decision was made to leave the Western Athletic Conference and to move to the Big West and the Mountain West, the system office took on an unprecedented role in what might normally be considered a campus matter. Not only did the President and Board approve the realignment, as is appropriate, but the President assumed the responsibility of representing the institution at meetings of the Mountain West (our new football conference), though not the Big West (our new conference for most of our other sports). The peer-review team noted the oddness of this arrangement, and it recommended that "your institution be represented by your campus head at all athletics conferences as soon as possible." In its response, the university provided a letter from President Greenwood that included this paragraph: "As directed by the Board of Regents, I, as President, am representing UHM in the Mountain West Conference during the current transition period in which UHM is leaving the Western Athletic Conference and joining the Mountain West Conference (football only) and the Big West Conference (most other sports). The UHM Chancellor will assume responsibility for representation of UHM in the Mountain West Conference after the completion of the transition."

Based on Greenwood's letter, Nicholson wrote, it seemed the issue had been resolved and control would be assumed by the Manoa Chancellor.

Instead, Nicholson reports, "all normal procedures were again set aside in the hiring of the new football coach."

...for the football search, the composition of the committee was determined by the system office. It contained no educators and no one from the Manoa campus, and there was no apparent attempt to bring together the full diversity of expertise that goes into the understanding of a coach's role at a public university.

As faculty athletics representative, Nicholson is one of just five campus officials authorized to communicate directly with the NCAA on a variety of issues, and is considered by NCAA rules to be a key member of the campus athletics management team. However, he and the faculty senate's committee on athletics have been excluded from participating in key decisions.

According to the recent report:

I have not, however, been invited to participate in any discussion concerning the football team's membership in the Mountain West. The President's office, moreover, which is taking such an interest in our football program, does not have the same relationship with the Ma?noa Faculty

Source: <http://www.ilind.net/2012/07/17/uh-president-greenwoods-involvement-in-athletics-called-unprecedented/>

UH President Greenwood's involvement in athletics called "unprecedented"

July 17th, 2012

Senate that the Chancellor does, and the Senate's Committee on Athletics too is therefore excluded from all discussion. And finally, I was told that when the constitution of the coach search committee was being decided, the idea of including a faculty member was specifically rejected.

The report then directly challenges the notion that "football is much bigger than Manoa."

But I am afraid that what they are really saying is not about geography at all. In taking the football program away from the institution, they are saying that it's not just about education or any of the proper functions of a university. It's bigger than Manoa because it doesn't exist just for the students. It's about entertainment: it exists for the fans.

And that's where we really have to resist. However much we might be afraid that they're right, we have to continue acting like a university, and the only justification for having an athletics program at a university consists of the benefits that are derived by the students who participate – by the players themselves. It exists for them. We welcome the support and the enthusiasm of our community, but we are obliged to treat athletics as an educational program. It's a matter of law. Title IX, which is well-known for requiring equity for men's and women's sports, should be equally well known for its fundamental underlying assumption: that athletics must be conducted, and they must be assessed, as education.

Football? Education? Radical!

September 18, 2012

Senator Donna Mercado Kim
The Senate
State Capitol
Honolulu, Hawai'i 96813

Dear Senator Kim,

In your letter of September 13, 2012, you asked if I, as one of the individuals responsible for our compliance with NCAA and conference rules and regulations on the Mānoa campus, thought that the upcoming Senate informational briefing might jeopardize our credibility or status with the NCAA.

Since the University of Hawai'i at Mānoa is a member of the NCAA, it is the duty of everyone associated with the University to conform to NCAA regulations. But the NCAA does not have a police force. It depends upon each institution to voluntarily monitor its own compliance and to report to the NCAA any instance in which its rules have been violated (NCAA By-Law 2.8.1). The institutions that have gotten into the greatest trouble have been those that either did not monitor sufficiently (which the NCAA calls a "lack of institutional control") or, aware of a compliance issue, have tried to conceal it from the NCAA.

I cannot predict what kind of discoveries or findings the Special Committee on Accountability might make. But if the Committee's hearings are conducted with the intention of improving the operation of the athletics program on the Mānoa campus, and if upon discovery of any potential issues, the Committee's action leads to appropriate reforms, then it appears to me that the hearings are fully consistent with the self-monitoring that the NCAA expects of our institution, and that any effort to bring us into closer compliance with NCAA rules will only enhance, rather than jeopardize, our credibility and status with the NCAA.

Yours sincerely,



Dr. Peter Nicholson
Department of English
Faculty Athletics Representative



SHAN S. TSUTSUI
PRESIDENT

DONNA MERCADO KIM
VICE PRESIDENT

SAM SLOM
MINORITY LEADER

The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

FIRST DISTRICT
MALAMA SOLOMON

SECOND DISTRICT
GILBERT KAHELE

THIRD DISTRICT
JOSH GREEN, M.D.

FOURTH DISTRICT
SHAN S. TSUTSUI

FIFTH DISTRICT
ROSALYN H. BAKER

SIXTH DISTRICT
J. KALANI ENGLISH

SEVENTH DISTRICT
RONALD D. KOUCHI

EIGHTH DISTRICT
SAM SLOM

NINTH DISTRICT
LES IHARA, JR.

TENTH DISTRICT
BRIAN T. TANIGUCHI

ELEVENTH DISTRICT
CAROL FUKUNAGA

TWELFTH DISTRICT
BRICKWOOD GALUTERIA

THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND

FOURTEENTH DISTRICT
DONNA MERCADO KIM

FIFTEENTH DISTRICT
GLENN WAKAI

SIXTEENTH DISTRICT
DAVID Y. IGE

SEVENTEENTH DISTRICT
MICHELLE N. KIDANI

EIGHTEENTH DISTRICT
CLARENCE K. NISHIHARA

NINETEENTH DISTRICT
MIKE GABBARD

TWENTIETH DISTRICT
WILL ESPERO

TWENTY-FIRST DISTRICT
MALE S.L. SHIMABUKURO

TWENTY-SECOND DISTRICT
DONOVAN M. DELA CRUZ

TWENTY-THIRD DISTRICT
CLAYTON HEE

TWENTY-FOURTH DISTRICT
JILL N. TOKUDA

TWENTY-FIFTH DISTRICT
POHAI RYAN

CHIEF CLERK
CAROL TANIGUCHI

September 13, 2012

Dr. Peter Nicholson
Faculty Athletics Representative
Office of Intercollegiate Athletics
1337 Lower Campus Road
Honolulu, HI 96822

Dear Dr. Nicholson,

As you are aware, on August 20, 2012, Senate President appointed a Special Committee on Accountability to conduct an informational briefing or briefings, as may be necessary, to review the oversight, accountability, and transparency of the operational and financial management of the University of Hawaii System, including but not limited to the University of Hawaii at Manoa Athletics Department.

In your capacity as the Faculty Athletics Representative (FAR) for the University of Hawaii at Manoa, as well as your position with the National Collegiate Athletics Association (NCAA), the Committee would appreciate your feedback concerning the University's Athletics Program in relation to NCAA credibility.

Please provide the following information:

1. Whether or not the Senate informational briefing on September 24 and/or any other subsequent informational briefings could jeopardize the University's Athletics credibility or status with the NCAA, and
2. Discoveries or findings that may be exposed during the informational briefing and/or subsequent informational briefings related to the University's Athletics Program that could jeopardize the University's Athletics credibility or status with the NCAA.

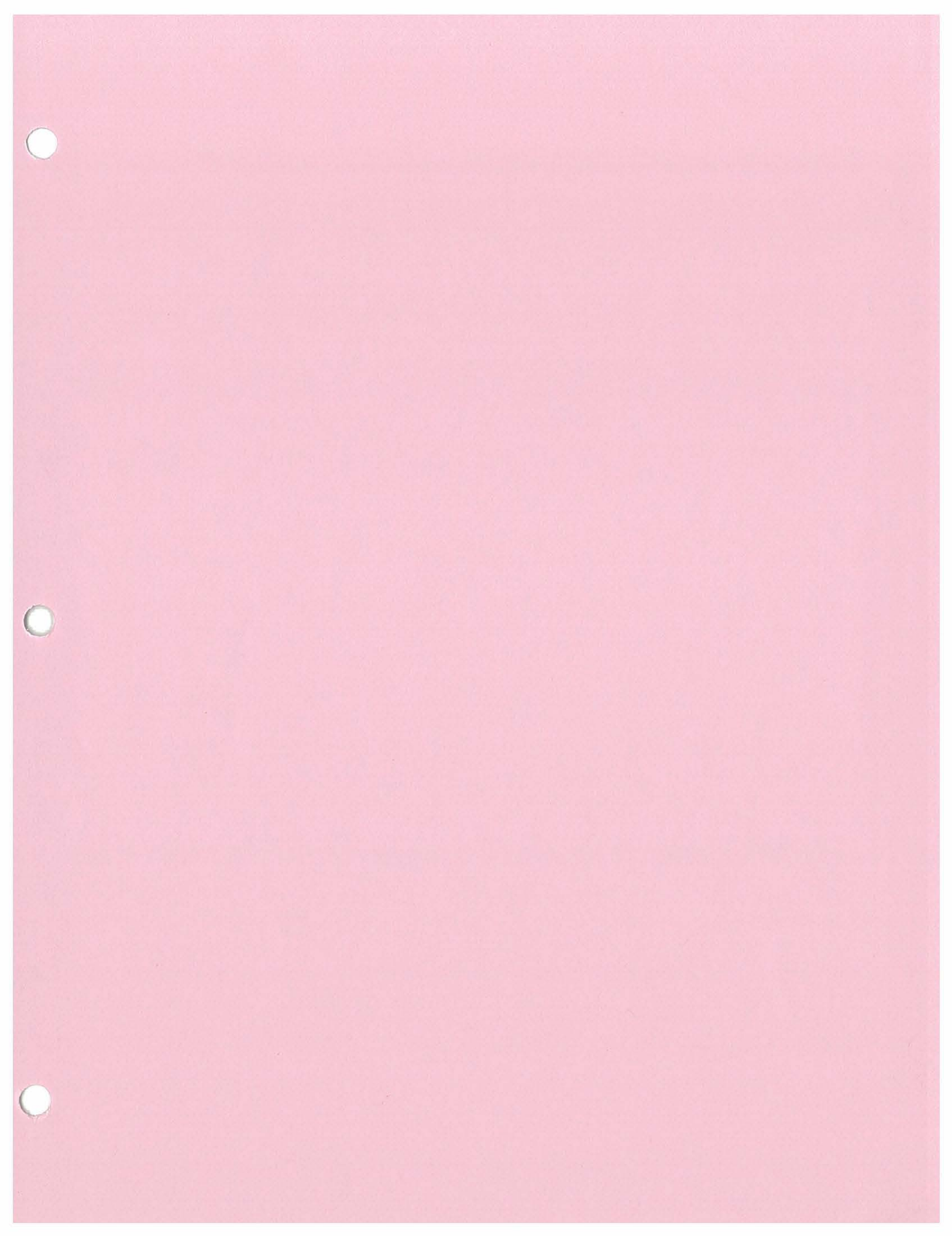
We would appreciate any further guidance you may have concerning actions or findings that may or may not jeopardize the University's Athletics credibility or status with the NCAA.

I look forward to receiving your response to this request by September 19, 2012. If you have any questions, please feel free to contact my office at 808-587-7200.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Mercado Kim". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donna Mercado Kim, Chair
Special Committee on Accountability
Senator, 14th District



University of Hawaii System Administration

Board of Regents
Eric Martinson, Chair
James H.Q. Lee, Vice Chair
Carl Carlson, Vice Chair

Vice President for Legal Affairs
& University General Counsel
Darolyn Lendio

President
University of Hawaii System
M.R.C. Greenwood

Chancellor
UH at Manoa
Tom Apple

Vice President for Budget &
Finance/Chief Financial Officer
Howard Todo

Office of the Athletics Director
Director of Athletics
James Donovan

Associate Athletics Director
Carl Clapp
John McNamara
Marilyn Moniz-Kahoohanohano

Manager, Stan Sheriff Center
Richard Sheriff



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

September 5, 2012

MEMORANDUM

TO: Honorable Donna Mercado Kim
Senator, 14th District

FROM: Krislen N. Chun
Senate Majority Research Office

RE: University of Hawaii; Roles and Responsibilities of the Board of Regents,
President, and Manoa Chancellor as related to Contract Approval

ISSUE

You have asked our office to provide you with a summary of the powers and duties of the University of Hawaii's Board of Regents (Board), President, and Manoa Chancellor as they relate to contract approval.

SHORT ANSWER

The Hawaii State Constitution and the Hawaii Revised Statutes (HRS) grant the Board with the power to manage and control the internal affairs of the University of Hawaii (University); provided that the University remains subject to laws of statewide concern, as determined by the Legislature. Under the law, the Board has the power to delegate certain powers and duties. Through the Board's internal policies, the Board has delegated its powers and duties relating to contracting, procurement, and settlement agreements to the President, except in specific cases, as will be discussed below.

DISCUSSION

Powers and Duties of the Board of Regents

Article X, Section 6 of the Hawaii State Constitution (Constitution) grants the Board of Regents the power to formulate policy and exercise control over the University through the President. See also, sections 304A-103 and 304A-105, HRS, for the Board's general powers.

During the Regular Session of 2000, the Legislature passed S.B. No. 539, C.D. 1 (S.B. No. 539), which proposed a constitutional amendment to Article X, Section 6, of the Constitution to clarify the University's "exclusive jurisdiction over the internal structure, management, and operation of the university" and allow the University to formulate policy and exercise control over the University without prior authorization through legislation by the Legislature. These particular amendments were intended to allow the University to respond to the needs of the community on a timely basis. However, S.B. No. 539 also proposed an amendment to grant the Legislature the exclusive jurisdiction to identify laws of statewide concern, to which the University is subject. The Committee on Conference for S.B. No. 539 found that the Legislature should reserve this right in order to avoid any misinterpretation of the constitutional amendment. The Committee on Conference made clear that the University would remain subject to laws of statewide concern, including but not limited to:

1. The budgeting process of the Legislature;
2. The Governor's ability to restrict funds;
3. The Legislature's ability to fund new initiatives concerning the University;
4. State employment laws relating to civil service and collective bargaining; and
5. Laws related to Hawaiian ceded land rights.

See Conference Committee Report No. 112, Regular Session of 2000.

The constitutional amendment proposed by S.B. No. 539 was ratified in November 2000.

Delegation of Power and Duties to the President

Both the Hawaii State Constitution and the HRS allow the Board to delegate certain powers and duties to the President, which the Board has done through its internal policies.¹

¹ A complete set of the Board's Polices, as well as its Bylaws, is available at <http://www.hawaii.edu/offices/bor/policy/> (last visited on August 31, 2012). A copy of the Board's policy relating to business and financial matters is enclosed with this Memorandum.

Generally, "the President is authorized to approve, sign, and execute contracts and settlements of claims in accordance with law and Board policy"; provided that

[s]hould it be determined, in consultation with the Board, that a contract or settlement is anticipated to have a significant impact on polices, programs or operations; or result in potential institutional liability the prior approval of the Board shall be required regardless of the amount and source of funding.

Board of Regents Policies (BRP), Section 8-1a.

The President "may delegate authority for the approval, acceptance, signing, and execution of contracts and settlements to other University officials." Id.

While contracting authority is delegated to the President or the President's designees, Board approval is still required for the following types of contracts:

1. Construction projects, including repair and maintenance projects, in excess of and/or totaling \$5,000,000;²
2. Consultant contracts in excess of \$1,000,000;
3. Any construction or consultant contracts that, in consultation with the Board, are anticipated to have a significant impact on policies, programs, operations, or generate controversy, regardless of the amount or source of funding.

See BRP sections 8-1b and 8-1c.

The President is authorized to develop internal policies and procedures for the procurement of goods, services, and construction; provided that the internal policies and procedures meet the requirements of applicable law and Board policy. BRP section 8-1e. These internal policies and procedures must be approved by the Board prior to their implementation. In addition, any procurement of goods and services that exceeds \$5,000,000 requires the prior approval of the Board. Id. Procurements that are anticipated to have a significant impact on policies, programs, operations, or that may generate controversy, regardless of the amount or source of funding, must have prior Board approval. Id.

² The President is authorized by the Board to act as the Contracting Officer of the University on construction projects. In addition, the President is required to provide advanced notice, to the extent possible, of potentially controversial decisions or actions that are within the authority delegated to the President. See BRP section 8-1b.

With regard to settlement agreements, "[a]ll settlement agreements exceeding \$500,000, except for settlement of workers' compensation claims, shall require the approval of the Board." BRP section 8-1d. In addition, settlement agreements that are "anticipated to require changes in Board policies and/or have significant impact on policy, programs, or operations and/or where the Board is named as a party to a suit, shall require the prior approval of the Board regardless of amount." Id.

Lastly, in light of the recent events at the University involving the Stevie Wonder Benefit Concert, we wanted to point out that with regard to fundraising for the University, Board policy requires that:

Fund raising campaigns conducted for the benefit of, and in the name of, the University, or any of its affiliate units, for whatever purpose, must be given prior approval in writing by the President. When Board policy appears to be involved, or should the campaign require University funds or have a goal in excess of \$50 million, the matter will be taken to the Board for approval.

BRP section 8-9a. *pg. 8-21*

Delegation of powers and duties to Manoa Chancellor

While neither the HRS nor the BRP mention the role of the Manoa Chancellor in approving contracts or settlement claims, BRP Section 8-1a gives the President the authority to delegate authority for the approval, acceptance, signing, and execution of contracts and settlements to other University officials.

The University's Executive Policy (EP) sets forth what powers and duties the President has delegated.³ According to the EP, generally, the execution of contracts is delegated to those officers with control over the subject matter of the contract. For example, the authority to execute contracts relating to research and training is delegated to the Vice President for Research. See EP E8.102. The Vice President for Budget and Finance/Chief Financial Officer is granted authority to enter into contracts relating to concessions on University property. See EP E8.105.

Chancellors are responsible for initiating the approval of consultant contracts by the Vice President for Administration. See EP E8.206. Chancellors are also responsible for preparing proposals for consultant services for Board approval, if necessary. Id. A review of the EP did not show that Chancellors have the authority to execute contracts.

On July 12, 2012, EP E8.106, entitled *Authority to Execute Contractual Documents for Procuring Goods and Services and Entering into Cooperative Agreements for the Office*

³ This can be found at <http://www.hawaii.edu/apis/ep/e8/bus.php> (last visited on August 31, 2012).

of Intercollegiate Athletics, University of Hawaii at Manoa, was suspended by President M.R.C. Greenwood. We have enclosed a copy of the memorandum suspending this policy. The policy is no longer available for review on the University of Hawaii's website so it is unclear if the President delegated authority to other University officials to execute these types of contractual documents.⁴ In addition, there does not appear to be any explicit authority in the EP that would seem to allow President Greenwood to have the authority to suspend the execution of contracts in this manner. Perhaps the authority is implicit.

If you have any questions regarding this matter, please do not hesitate to contact our office at 586-6770.

KNC:rn

Encs: Board of Regents Policies, Section 8-1 through 8-11

Memorandum from President M.R.C. Greenwood, dated July 12, 2012

⁴ See id.

CHAPTER 1

GENERAL PROVISIONS

Section 1-1 Definitions.

The words and phrases in the Board of Regents Policies shall, unless inconsistent with the context, be construed as follows:

- a. "Board" means the Board of Regents of the University of Hawai'i. (Note: By statute, references in these policies with respect to the University's authority refer to the Board of Regents.)
- b. "Chairperson" means the Chairperson of the Board
- c. "University" means the University of Hawai'i system except in references to authority (see section 'a' above). (Note: By statute, the University also refers to the Board of Regents.)
- d. "President" means the President of the University of Hawai'i system.
- e. "Executive Officer" or "Chief Executive Officer" means the University of Hawai'i President.
- f. "Secretary" means the Executive Administrator and Secretary of the Board of Regents.
- g. "In consultation" and/or "consult with the Board" mean to obtain input, comment, advice, and direction from the Board or the Board's designee prior to making a recommendation to the Board for decision-making and in certain instances, prior to administrative action by the President or the administration.
- h. "Vice Presidents" means the Executive Vice President for Academic Affairs/Provost; Vice President for Administration; Vice President for Budget and Finance/Chief Financial Officer; Vice President for Community Colleges; Vice President for Information Technology/Chief Information Officer; Vice President for Student Affairs and University/Community Relations; Vice President for Research; and University General Counsel and Vice President for Legal Affairs.
- i. "Chancellors" means the Chancellor for the University of Hawai'i, Mānoa; Chancellor for the University of Hawai'i, Hilo; Chancellor for the University of Hawai'i, West O'ahu; Chancellor, Hawai'i Community College; Chancellor, Honolulu Community College; Chancellor, Kapi'olani Community College; Chancellor, Kaua'i Community College; Chancellor, Leeward Community College; Chancellor, Maui College; and Chancellor, Windward Community College.

Section 1-2 Relationship of the Board to Administration and University.

- a. Principles and Rules of Conduct.

- (1) Principles. With respect to the duties and functions of the Board and the President, the following are the applicable principles:
- (a) It is recognized that the Board has been granted full legal power and authority to manage and control the affairs of the University, and the responsibility for the successful operation of the University and the achievement of the purposes as prescribed in the statutes rests exclusively with the Board.
 - (b) It is recognized that a distinction must be made between what may, for convenience, be called the "government" of the University, and the "administration" thereof. "Government" may be thought of as the establishment of the principles, laws and policies, and "administration" as the carrying out and execution of these principles, laws and policies once approved by the Board. Therefore, the interpretation of all Board policies shall rest exclusively with the Board and may be rendered, as necessary, through its designee(s).
 - (c) The functions of the Board are concerned with the government of the University; and its duties, in nature, are legislative and at times quasi-judicial. The execution of the policies authorized and established by the Board is entrusted to the President, vice presidents, chancellors, and other officers of administration of the University. The Regents must not concern themselves directly with the administration of the University, or individually or take part collectively, in administration, provided that it is the responsibility of the Board to satisfy itself, through proper channels, that the principles, laws and policies established by the Board are, in fact, being administered and that the administration is adequate.

The term "through proper channels" refers to the obligation of the Board members to secure detailed information or information requiring careful compilation, either through the Secretary or through the Executive Officer. It is not intended to place any restriction upon members of the Board conversing freely and frankly with any officers or other employees of the University. Any extended or detailed investigation or inquiry on the basis of which it is proposed to predicate Board action should, however, be carried on in a formal, orderly manner with the approval of the Board and the knowledge of the President. Ordinarily where assistance is sought of the faculty in major matters of educational policy, the Board will act through the President; and such assistance will come through the relevant academic senate for the affected campus(es) or some committee thereof.

Likewise, the administration shall communicate with the Board through the Secretary and only with permission of the

Chairperson may the administration deal directly with a member of the Board. This is to insure that all Regents have equal access to information and are given equal regard for their time and contributions.

- (d) No member of the Board shall serve on committees of the University concerned with curriculum and educational problems when a matter is to eventually require the Board's consideration, nor on any selection committees.
 - (e) The primary duty of the Board is first to determine and set forth the objectives of the University, and second, to provide the means, in the form of adequate budget, personnel and materials, to achieve these objectives. In determining the objectives of the University, the assistance of the faculty will be sought and obtained through proper channels.
- (2) Rules of Conduct. The rules of conduct between members of the Board and administration personnel shall be as follows:
- (a) In carrying out any policy established by the Board, except in so far as the method shall be defined by the Board, the method of execution shall be within the discretion of the President.
 - (b) Except as specifically authorized by formal action, no member of the Board can represent the Board within the University and no member shall interfere, engage in, or interact directly with the campuses without prior authorization from the Chairperson. All meetings between Board members and any member of the administration, including the President, shall be authorized by the Board's Chairperson and arranged through the Secretary and/or with the full knowledge of the Secretary. In addition, no unilateral action of a member of the Board has the authorization nor support of the Board; and the authority of the Board reposes in the Board as a whole. Likewise, all communication from the President and any members of the administration to the members of the Board must flow through the Secretary unless otherwise authorized.
 - (c) The Board members shall make written request through the Secretary for any detailed information with reference to actions of the President, particularly where it is desired to challenge such actions as inconsistent with the established policy of the Board.
 - (d) The interpretation of all Board policies rests exclusively with the Board. Where no policy has been established by the Board, the President shall consult with the Board prior to taking action; however, the President shall be free to exercise his/her judgment in taking action on emergency matters of major importance provided that in consultation with the Chairperson, it is determined that a special meeting of the Board cannot be held in time to

BOARD OF REGENTS – POLICIES OF AUTHORITY THAT HAVE BEEN ASSIGNED

Section	Description	Issue Date
E8.101	Authority to Execute Contractual Documents for University Inventions, Patents, Copyrights, and Technology Transfer	July 1998
E8.102	Authority to Sign and Execute Extramural Research and Training Contracts/Grants, Agreements and Contract Assignments and Releases	November 2007
E8.103	Authority to Develop Policies and Procedures and to Implement a Risk Management Program	Aug. 1983
E8.104	Approval of Out-of-State Travel	March 2011
E8.105	Authority to Execute Contractual Documents for Procuring Goods, Services, and Construction, Granting Concessions on University Real Property, and Entering into Cooperative Agreements	September 2009
E8.106	Authority to Execute Contractual Documents for Procuring Goods and Services and Entering into Cooperative Agreements for the Office of Intercollegiate Athletics, University of Hawai'i at Manoa	Nov. 1997 Suspended July 2012
E8.107	Authority to Execute Contractual Documents for Procuring Goods, Services, and Construction	July 1999
E8.108	Authority to Develop Policies and Procedures for the Implementation of a Purchasing Card Program	April 2000
E8.109	Authority to Establish Working Capital Accounts with External Agencies	December 2004
E8.201	Cash Management and Short-Term Investment of Operating Funds	March 2000
E8.202	Repair and Maintenance and Capital Improvement Projects	April 1981
E8.203	Budget Policy Paper 1981-83 Regarding Budget Objectives	April 1980
E8.204	University Audit Plan	June 1980
E8.205	Indicia and Licensing Policy	June 2006
E8.206	Approval of Consultant Contracts	April 1983
E8.207	Risk Management	Aug. 1983
E8.208	Travel	March 2011
E8.209	Fund Raising	October 2011

President's Letter to the UH Ohana

August 21, 2012

Dear University Ohana,

It's the start of a new school year and we have much to celebrate with the opening of the new UH West Oahu campus and other successful programs to advance our system of public higher education.

The last few weeks, however, have cast a cloud over our accomplishments and we've been unable to publicly refute much of the inaccuracies due to employee confidentiality and other concerns. This Wednesday, the University of Hawaii Board Of Regents will have a full and complete discussion of the facts leading to the cancelled Athletics benefit concert, examination of the university's subsequent actions, and our recommendations for moving forward. We have tried to follow, and I hope you agree that we have followed, a thoughtful and transparent process first with our Regents and then with the general public. I will be available after the meeting to answer questions and respond to concerns, and we ask for your understanding so that these matters can be handled with the appropriate attention, gravity and consideration.

Let me recap a few key facts:

1. **Stevie Wonder Concert:** We believe we were scammed. When we became aware that we may have been the victims of a fraud, we immediately reported it to law enforcement and fully cooperated with law enforcement. We also initiated our own internal investigation. The results will be presented to the Board of Regents this Wednesday. In order for the investigation to proceed freely and fully, employees closely connected with the planned concert were removed from the workplace and placed on paid leave. Because we felt it unfair to make statements before facts were available, we have declined to engage in the widespread speculation about blame and accountability.
2. **UH Athletics Department:** At the same time, and almost coincidentally, UH Mānoa administration had determined that after 4½ years of a 5-year agreement, it was time to search for a new Director of Athletics. Plans for the process and timetable for this action would have commenced regardless of the concert cancellation and ensuing investigation. The discussions regarding this personnel decision were in the early stages and not yet public, but the attention of campus leadership had already turned to the recruitment process.

Unfortunately, these two separate issues collided and became entangled in the public's perceptions. Personnel actions related to the future of the Athletic Department are not a result of nor derived from the investigation over the concert, and the two events should not have become so connected in the way that they have.

Please know we are deeply grateful for your concerns expressed over the last two weeks. We value your trust and pledge to continue to be transparent and open as we move forward as a university community and ohana.

I look forward to reporting back to you after the Regents meeting, and I thank you, as always, for the privilege of serving you, our students, faculty, staff, alumni, parents, and the people of Hawaii.

Aloha,
M.R.C. Greenwood
President
University of Hawaii System

APPLE LETTER TO UH OHANA

September 12, 2012

Dear UH Manoa Ohana,

Since arriving at Manoa, I have spoken personally with many of you. We have had a chance to get to know each other and exchange ideas and opinions, person to person. I have been very impressed by the passion, commitment and quality of our faculty, staff and students here. I have met some of the best scholars and educators that it has been my privilege to know. Unfortunately, there has not been enough time for me to speak with most of you in person.

I am excited about advancing the campus in our two primary missions: scholarship that has impact, and the academics to help our students find their passions. To that end, I want to engage the community in dialog on a regular basis. You have not heard anything from me directly regarding what took place since the Stevie Wonder concert was cancelled. With all of the controversy swirling about right now, that is something I would like to remedy.

The members of our UH Manoa community are justifiably distressed by what they have seen and heard regarding the failed concert and the search for a new Athletics Director. Partial facts, rumors and personal allegiances have all had a part in raising the temperature of the discussion. It is important that all of us who care deeply about the University and its people have facts to deal with before making our conclusions. That is the purpose of this email.

I begin by saying that, while I inherited the failed concert situation, I have made my share of missteps in communication since arriving. My public outreach was less than satisfying for all concerned, because I was not able to provide a lot of details, either because the investigation was ongoing or because of legal restrictions. People had a right to know that at the time. With respect to the failures of checks and balances, and general judgment that should have prevented the loss of \$200,000: I have instituted measures to prevent this from happening again. In addition, the Board of Regents has formed a group to ensure that our policies and procedures are both sound and efficient.

I have heard from many of you who have said that Jim Donovan should be returned to the position of Athletics Director. While it is true that the decision had already been made not to extend his contract, I was the one who requested that Dr. Rockne Freitas step in as interim Athletics Director and that Jim be reassigned. My decision to do this was based on many conversations with people within and outside the Athletics program. While I did and still do praise Jim's commitment to UH and his many talents, I concluded that it was in the best interest of the Athletics program and our students to reassign him. I stand by that decision. The timing of Jim's reassignment made a difficult situation more complicated and confusing and I regret that. I very much appreciate the support of my decision by the University President and members of the Board of Regents.

I approached campus and community leaders and asked them to serve on a Search Advisory Committee to find candidates for the position of Athletics Director. Accepting the challenge in the current climate was something each member had to consider carefully. Their commitment to the University should be applauded.

APPLE LETTER TO UH OHANA

September 12, 2012

As you are probably aware, a few days after formation of the Committee, a letter signed by nearly every coach in the Athletics Department was sent to me, indicating their support for Dr. Freitas' leadership. In the letter, they requested that he be appointed permanent AD. This event was followed by reactions on multiple sides of the issue. However the Search Advisory Committee weighs the contents of the coaches' letter, what they decide the role of the three coaches named to the Committee should be, and whatever names they recommend for the position of Athletics Director, there will be some who will disagree with the Committee's recommendation. I ask that the Committee members be given the space to do what has been asked of them. The Search Advisory Committee will publish updates periodically to keep us all informed, but their deliberations should be respected as confidential.

It is clear from all that has happened that there are many who are intensely interested in and care about our University. We have had our challenges, and we have taken action to rise to meet them. Please don't allow what has happened to distract or discourage you. Now is a time for the entire community to come together and support one another. We are all in the same canoe. We can only move forward if we are all paddling in the same direction.

Athletics is very important to the UH community, but it is only a part of what we do. We must not lose sight of the preeminence of our academic mission, our students, faculty and staff. They all need and deserve our support and attention. This is a place where students' lives are transformed. Our research has tremendous impact and helps those in our community and around the world. This week, the news included reports of our John A. Burns School of Medicine faculty, staff and students helping the homeless in our community, and about our UH Cancer Center discovering critical new information about fatal cancers. The greatness of our University ties into the greatness of our State. What we do here affects everyone. Wisdom, common sense, integrity and openness of spirit are cherished values here in our islands. Let's show the world what working with aloha really means.

Chancellor Tom Apple

From: [Samuel M Slom](mailto:Samuel.M.Slom)
To: bor@hawaii.edu
Subject: UH West Oahu Accreditation Question
Date: Friday, September 14, 2012 3:13:30 PM

Mr. Eric Martinson, Chair
University of Hawaii Board of Regents
2444 Dole Street, Bachman Hall, Room 209
Honolulu, Hawaii 96822 (*by email*)

Dear Chair Martinson:

I met with President Greenwood at her invitation last Tuesday and we discussed the upcoming UH Senate hearing on UH. I assured her the hearing was going to be fair but firm in its scope.

She wanted to know what questions might surface, and my own concerns. One of the issues I brought up was the recent disclosure of the question of accreditation at our new UH West Oahu campus.

I was surprised that her response was to question the level of experience of the television reporter who first broke the news, to say the information was not accurate, and that while UH has received a "letter of concern," that that is not an unusual or problematic event. She added that UH was given an extension to deal with issues raised by the rating organization.

I am curious as to whether or not that response is reflective of the Board of Regents understanding and discussion of West Oahu and any additional information you can give me related to that issue specifically.

Thank you for your prompt consideration.

Aloha,

Sam

--

Mahalo,

Sam Slom
President/Executive Director
SmartBusiness Hawaii
Small Business Hawaii Entrepreneurial Education Foundation
6600 Kalaniana'ole Hwy, Suite 212
Honolulu, HI 96825
Cell: (808) 349-5438
SBH Office: (808) 396-1724/SBH Fax: (808) 396-1716
Capitol Office: (808) 586-8424/Capitol Fax: (808) 586-8426
Website: smartbusinesshawaii.com/E-mail: Sbh@lava.net



UNIVERSITY OF HAWAI'I

BOARD OF REGENTS

September 19, 2012

Via email: senslom@capitol.hawaii.gov

The Honorable Sam Slom
Senator, 8th District
Hawai'i State Legislature
Hawai'i State Capitol, Room 214
Honolulu, HI 96813

Dear Senator Slom:

I'm in receipt of your September 14, 2012 email regarding UH-West O'ahu's accreditation status.

As you know, the Board of Regents discussed the Western Association of Schools and Colleges' ("WASC") July 10, 2012 letter of concern to UH-West O'ahu at its recent August 22, 2012 meeting. Additionally, UH-West O'ahu is scheduled to meet with WASC shortly to discuss the letter's concerns.

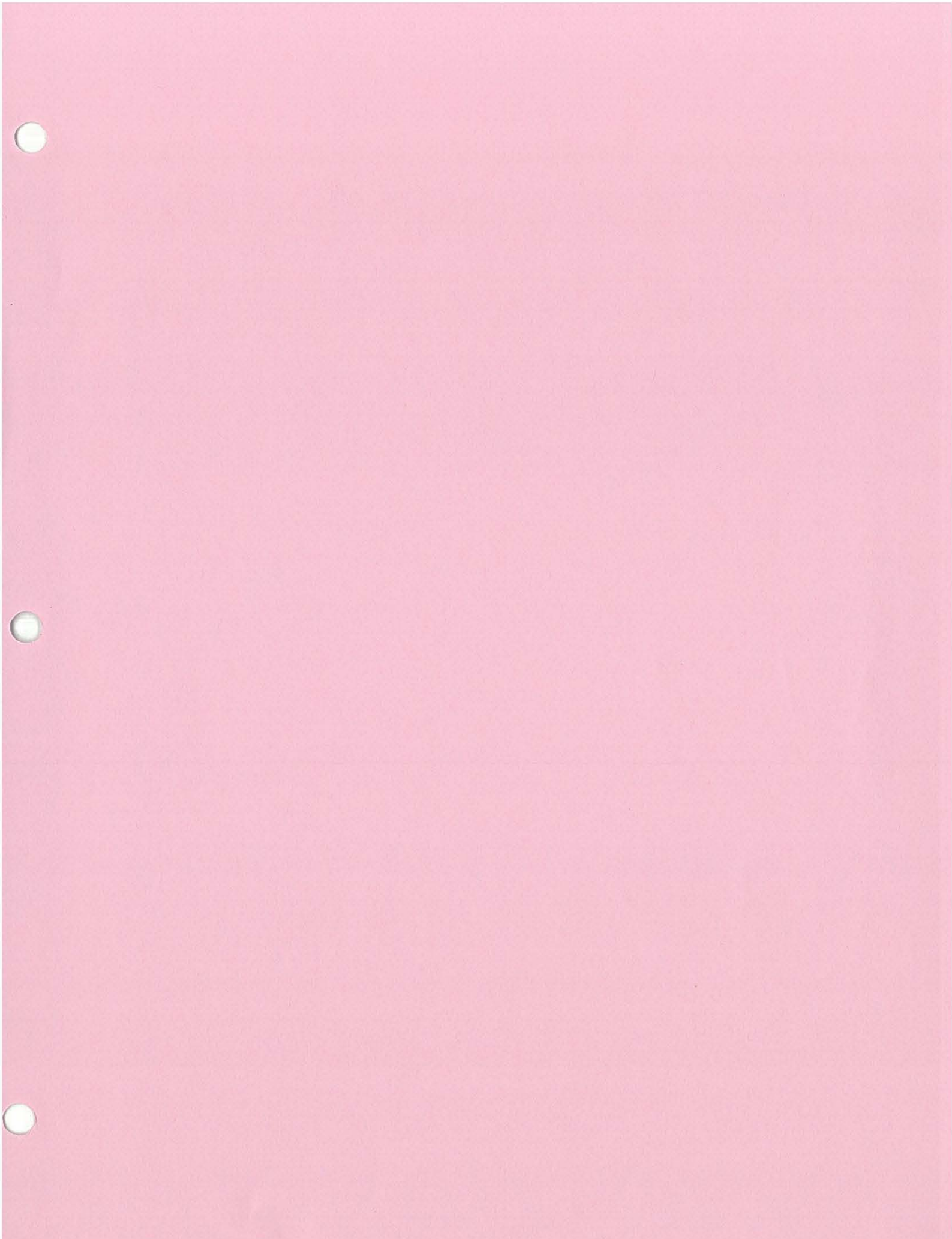
Please let me assure you that both the Board of Regents and President Greenwood are closely monitoring this situation to ensure that the concerns raised are being properly addressed and that UH-West O'ahu's current accredited status is not impacted in any way.

Should you have any additional questions or other concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric K. Martinson'.

Eric K. Martinson
Chair, Board of Regents



May 10, 2012

Dear :

This letter is to confirm that the University of Hawaii will make the Stan Sheriff Center available for you to host the – UH Athletics Benefit Concert on August 9, 10 & 11, 2012. We are very excited about the opportunity to have such a great entertainer involved in a project to benefit UH Athletics. We appreciate the opportunity to offer presale tickets to all of the people who financially support UH Athletics as well being able to offer presale tickets to the rest of the University of Hawaii family.

You have our full support in making this benefit concert a truly outstanding event for all who attend. We will help support your efforts by providing as much access to our social media outlets and media trade that we can. We hope you will also involve any of our many corporate sponsors who would so choose to support this project.

We are particularly grateful for you coordinating a special meet and greet package with for up to 200 of our most loyal supporters.

From this point forward please work with Ryan Akamine, UH Legal Counsel, and Richard Sheriff Manager of the Stan Sheriff Center, to finalize the details of the rental and donation agreement.

Sincerely,

James J Donovan III
Director of Athletics
University of Hawaii

AGREEMENT BETWEEN
UNIVERSITY OF HAWAII AT MANOA AND
FOR THE USE OF STAN SHERIFF CENTER

This Agreement, dated June 12, 2012, is by and between the UNIVERSITY OF HAWAII AT MANOA ("UNIVERSITY") and _____ for the use of the Stan Sheriff Center to hold the _____ Concert pursuant to the terms and conditions herein.

The UNIVERSITY specifically and expressly acknowledges and thanks _____ for its intent and agreement to promote the Benefit Concert as a fund-raising benefit for the UNIVERSITY's athletic department.

WITNESSETH

1. Description of Premises. UNIVERSITY, for and in consideration of the covenants and agreements to be performed by _____ as contained in this Agreement, hereby authorizes the use of the specific floor and ground areas within the walls of Stan Sheriff Center ("SSC") by _____ for the purpose of the _____ Benefit Concert ("Event") on the dates and periods hereinafter set forth, with the right of ingress and egress to the following areas:

- Arena Floor
- Visitor 1, 2 and 3 Locker Rooms
- Press Room
- Green Room
- Officials Room
- Ed Wong Hospitality Suite
- East Hospitality Area
- West (aka Ewa) Hospitality Area
- Diamond Head (or South) Hospitality Area

shall not have access to the following designated areas:

- Manager's and staff offices

- Training room
- Weight room
- Laundry room
- Equipment room
- Players' lounge
- Unassigned storage areas
- Concession areas and kitchen of SSC
- Ticket and sports information offices
- Mechanical, electrical and storage rooms
- Areas under construction

Upon request, however, access to the prohibited areas above and other UNIVERSITY premises may be allowed with UNIVERSITY's prior written approval. During the dates and periods of use, authorized representatives of UNIVERSITY shall have access and unrestricted right of ingress, egress and access to any part of SSC, including areas authorized to be used by _____, for the purpose of performing their duties and otherwise attending to the UNIVERSITY's business or to its interests, but UNIVERSITY shall not unreasonably interfere with _____ use.

Should any construction or remodeling be performed at SSC during the time of the Event, UNIVERSITY will notify _____ of the areas to be affected. UNIVERSITY represents and warrants that any such construction and remodeling shall not interfere with _____ use of the SSC.

_____ shall have the right to cover any existing signage in the SSC in a manner that will leave no marks, holes or other damage to the structure or existing signage upon removal. This right shall not apply to emergency exit signage or other signage required by law or regulation.

2. Use by _____ agrees and warrants that the SSC shall only be used for the Event and for no other purpose, and that said Event will be held as specified herein. _____ understands that the SSC is a facility of the UNIVERSITY, and used for educational, recreational, research, and other related programs of the UNIVERSITY. The following applies to _____ use of the SSC:

A. Personnel, equipment, or materials shall not be moved onto UNIVERSITY's property until approval is granted by UNIVERSITY. UNIVERSITY reserves the right to inspect all equipment and material and shall have the authority to bar the use of any equipment and material it deems to be inappropriate or detrimental to the SSC.

B. All personnel, equipment and materials brought onto UNIVERSITY and/or SSC premises by its contractors, or agents shall be removed from UNIVERSITY property as soon after the Event as possible, and no later than within 48 hours after the end of the Event.

C. If personnel, equipment and materials are not removed within 48 hours after the end of the Event. UNIVERSITY shall have the right to remove and dispose of same at expense. furthermore, shall defend and indemnify UNIVERSITY from any claim for damages or loss incurred in connection with said removal or disposition. agrees that UNIVERSITY shall not be responsible or liable for the loss of any equipment or material, including personal property, left at the SSC by its contractors, or agents.

UNIVERSITY will identify public parking areas that can be used by attendees of the Event, and provide with parking passes for lower campus use by its personnel for the Event. agrees to park only in the areas designated. If necessary, UNIVERSITY will also identify and provide parking areas for loading, unloading and staging of buses in the immediate proximity of the SSC.

3. Dates and Periods of Use. use of the SSC for its Event shall be on Thursday, August 16, 2012, Friday, August 17, 2012 and Saturday, August 18, 2012, during the times specified below. At the present time, the Event is anticipated to take place on the night of Saturday, August 18, 2012. Additional concert dates may be added on Friday, August 17, 2012 and/or Sunday, August 19, 2012. Additional dates shall be memorialized by a separate agreement between the Parties.

shall submit a detailed schedule of its planned use of the SSC to UNIVERSITY for its approval no later than August 1, 2012. shall have

access to the designated areas outlined in Section 1 of this Agreement beginning at 7:00 a.m. on the Wednesday before the Event through and including 10:30 a.m. on the Sunday following the Event.

The hours of the actual Event in the SSC shall take place between the hours of 8:00 a.m. to 10:30 p.m., unless otherwise agreed to in writing by UNIVERSITY. will be allowed access to the SSC from 7:00 a.m. during the periods of use.

4. Event Fee / Fundraising Revenue. The Event is a fund-raising benefit for the UNIVERSITY's athletic department. As such, UNIVERSITY and agree to a rent fee in the amount of 10% of the gross revenues from ticket sales or 75% of the net revenue after expenses, whichever is greater.

5. Assistance by UNIVERSITY. The UNIVERSITY will assist promotion of the fund-raising Event in the following manner:

A. Pre-Sale Tickets shall be made available for purchase by and through UNIVERSITY's athletics fundraising organization, on or about June 18, 2012.

B. Revenues from Pre-Sale Tickets in the amount of \$225,000.00 will be utilized by to reserve and secure the talents and services of the performer for the Event, prior to Event tickets being made available for purchase by the general public.

C. Revenues from all ticket sales may be utilized by to make additional payments to entertainers and service providers necessary for producing a successful fund-raising Event.

D. UNIVERSITY will use its best efforts to help promote the Event, and encourage ticket sales.

6. Reimbursable and Other Expenses. shall be responsible for any and all expenses to staff and operate the SSC in order to present a successful fund-raising Event, and return the SSC to its pre-Event status and condition. The expenses to include:

A. UNIVERSITY, with _____ input, will determine and furnish the staff necessary to operate the SSC for the Event, with UNIVERSITY to have the final say. The staffing shall include, but not be limited to, administrative, security, medical and operations staff, including ushers, usher supervisors, support, parking and janitorial personnel. _____ will only be billed actual hours worked by such staff.

B. UNIVERSITY will determine and furnish or rent any equipment it deems necessary for the Event upon consultation and agreement with _____ with UNIVERSITY to have the final say.

C. _____ agrees to discuss the necessity of all other expenses with UNIVERSITY prior to incurring such expenses for the Event.

7. Settlement of Accounts. Within a reasonable time after the conclusion of the Event, UNIVERSITY shall provide _____ with a statement certifying the total amount of all reimbursable expenses and any other fees and charges payable by _____. Within ten (10) days of receipt of said statement, _____ shall make its payment for expenses and fees to the UNIVERSITY and its payment of the rent fee.

8. Disclaimer. _____ acknowledges and agrees that there are no express or implied warranties or representations made by UNIVERSITY with respect to the fitness of the SSC for the Event.

9. Excuse of Performance. The parties shall be excused from the performance of this Agreement, in whole or in part, only for the following causes:

A. When performance is prevented by operation of law.

B. When performance is prevented or materially affected by act of God, earthquake, hurricane, flood, fire, riot, wars, strikes or labor disputes, interruption of supply, law or regulation, governmental action or any other cause beyond the control of that party.

C. When performance is prevented or materially affected by an act of the public enemies of the State of Hawai'i, or of the United States of America, or by strike, mob violence, fire, delay in transportation beyond the reasonable control of _____, or unavoidable casualty, or at any other time UNIVERSITY, in its sole discretion, determines that operation of the SSC would be dangerous to the public health or safety.

If performance is excused and the Event is canceled in accordance with the provisions of this section, _____ agrees to pay to UNIVERSITY any and all costs and expenses, if any, provided for in this Agreement which have been incurred up to the time performance is excused.

10. Insurance and Indemnity (_____). In accordance with the UNIVERSITY's policies pertaining to the Use of University-Owned Facilities:

A. _____ shall indemnify, defend and hold harmless the University of Hawai'i and the State of Hawai'i its officers, agents, employees or any person acting on its behalf (1) from and against any claim or demand for loss, liability or damage, including but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident arising out of or connected with the performance of this Agreement, and will reimburse the University of Hawai'i for all attorney's fees, costs, and expenses in connection with the defense of such claims, and (2) from and against all claims, suits, and damages by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

B. _____, during the period of this Agreement, at its own cost and expense, shall maintain commercial general liability insurance covering premises, operations, fire damage, independent contractors, products and completed operations; blanket contractual liability; personal injury, advertising injury and host liquor liability, with a combined single limit of not less than \$2,000,000. Such policy must

*Did we check
on this insurance?*

be acceptable to the UNIVERSITY and shall name the University of Hawai'i and _____ as additional insureds, and shall cover claims related to the Event. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Agreement as an "insured contract" for the performance of indemnity under this Agreement.

A copy of the above policy shall be deposited with the Director of Risk Management as soon as possible prior to the day of the Event. The above policy shall contain the following three clauses:

1. The insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the University of Hawai'i.
2. It is agreed that any insurance maintained by the University of Hawai'i and _____ will apply in excess of, and not contribute with, insurance provided by this policy.
3. The University of Hawai'i and _____ is added as an additional insured with respect to operations of _____ its officers, employees, contractors and agents on University of Hawai'i premises used on behalf of the Event.

Additionally, although UNIVERSITY agrees to use its best efforts to assist _____ in producing a successful Event, _____ agrees to assume all risks associated with booking, promoting and producing the Event. Specifically, _____ shall indemnify, defend and hold harmless UNIVERSITY, the University of Hawai'i and _____ its officers, agents, employees or any person acting on its behalf from and against any and all claims and demands brought or made on account of the non-performance of _____ at the Event, for any reason whatsoever, represents to UNIVERSITY that it can and will secure insurance to cover this possibility, and identify UNIVERSITY, the University of Hawai'i and _____

as additional insureds. A copy of this policy shall be provided to the UNIVERSITY's Director of Athletics before Pre-Sale Ticket sales commence.

11. Responsibility (UNIVERSITY). As an agency of UNIVERSITY is self-insured. UNIVERSITY shall be responsible for damages or injury caused by UNIVERSITY's agents, officers, and employees while acting within the course of their employment under this Agreement to the extent that UNIVERSITY's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by UNIVERSITY, and UNIVERSITY shall pay for such damages and injury to the extent permitted by law and subject to funding being properly appropriated, allotted, and otherwise properly made available for such purpose.

12. Observance of Laws. shall observe all laws, ordinances, policies and procedures of the UNIVERSITY and the agrees that it will not discriminate against any individual or employee because of race, sex, age, religion, color, national origin, ancestry, disability, marital status, arrest and court record, sexual orientation, and status as a covered veteran, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by its attendees. further agrees to be responsible for securing any license and permits that may be required.

13. Condition of Premises. agrees to accept the SSC in the condition as is at the entry time of the Event.

14. Patented and/or Copyrighted Materials. assumes all fees and/or costs arising from the use of patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of the Event, and agrees to indemnify and save harmless the University of Hawai'i and and their duly authorized representatives from all damages, costs, and expenses in law or equity, for or on account of the use of any patented and/or copyrighted materials, equipment, devices, processes, or dramatic rights furnished or used by

in connection with the Event. warrants that it has secured all copyrights and similar permissions prior to use during the Event.

15. Alteration of Premises. No additions or alterations of any kind shall be made to or upon the SSC and the appurtenances herein authorized to be used, without the written consent of UNIVERSITY. The use of the SSC and its appurtenances by its contractors or agents in any manner other than that authorized herein shall be at all times subject to the approval of UNIVERSITY.

16. Political Activity Not Permitted. It is understood and agreed by that no political activity or distribution of political materials shall be conducted or permitted on University property or in the SSC during the Event.

17. Rights Non-Assignable. This Agreement and the use herein granted to shall not be assigned.

18. Rules of University. It is expressly understood and agreed that all rules of the UNIVERSITY governing management, operation, and use of its facilities, and of the University of Hawai'i are incorporated herein by reference, and this Agreement is subject to the provisions of those rules whether or not expressly mentioned in this Agreement. These rules can be found and accessed at <http://www.Hawaii.edu/apis/>.

19. Concessions and Merchandising.

A. All food and beverage concessions and catering services shall be operated by UNIVERSITY's food and beverage provider (hereafter referred to as " ") under contract with the UNIVERSITY on the date of the Event. its contractors, and agents shall contract with for all such services relating to the use of the SSC. All rebates, if any, received from from these concessions shall be the sole property of the UNIVERSITY, and , for itself and on behalf of its contractors and agents, expressly waives any and all claims to any such rebates. Any exceptions to the above must be approved by and UNIVERSITY.

B. Neither its contractors or agents shall sell any merchandise on the premises of the SSC or of the UNIVERSITY, unless specifically agreed to in writing by the UNIVERSITY.

20. Furnished Equipment. The use of UNIVERSITY equipment by or its contractors or agents is prohibited without written authorization from UNIVERSITY.

21. Damage to Premises. agrees not to commit, permit or allow any injury or damage to any part of the SSC and its appurtenances or to any part of the University of Hawai'i at Manoa's campus. If breaches this condition, UNIVERSITY is expressly authorized by to restore the premises or other appurtenances, and to make such repairs as may be necessitated by any such injury or damage, and agrees to pay to UNIVERSITY within ten (10) days after the receipt of a statement of the cost of such repairs, the amount shown on the statement. Inasmuch as UNIVERSITY is not insured against damages to the SSC, it is expressly understood and agreed that shall, at its sole expense, repair all damages to UNIVERSITY premises caused by attendees, patrons, delegates, invitees, and other persons associated with the Event at the SSC, whether or not such damage was occasioned by or through the negligence of. Repairs by shall be made to the satisfaction and approval of UNIVERSITY and such approval shall not be unreasonably withheld.

22. Approvals. All approvals required under this Agreement, whether written or verbal, shall be obtained by from UNIVERSITY's Athletic Director or designee. No other approvals shall be valid.

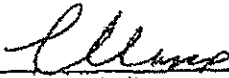
23. Contractors and Agents. agrees that its contractors and agents shall abide by all terms and conditions of this Agreement with respect to their activities at the SSC. recognizes that it shall be responsible for all activities of its contractors and agents on UNIVERSITY premises and shall be liable for all claims, demands, damages, and losses arising from the acts and/or omissions of its contractors and agents.

29. Counterparts. This Agreement may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original, but all counterparts shall constitute one and the same document, and in making proof of this Agreement, it shall not be necessary to prove or account for more than one such counterpart.

30. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all proposals and/or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. This Agreement may be supplemented and/or amended, but only if agreed to in a writing signed by duly authorized officers or representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date above written.

University of Hawai'i at Manoa

By: 
James J. Donovan III
for Director of Athletics

By:

Fwd: August 11th Stan Sheriff

Richard Sheriff [rsheriff@hawaii.edu]

Sent: Thursday, April 05, 2012 10:55 AM

To: James J Donovan III [jdonovan@hawaii.edu]

Attachments: Stan Sheriff 8-11-1~1.xls (33 KB)

Jim,

Attached are the proposed budget figures for the concert. Take a look and then we can discuss if we would like to proceed with UH hosting this event or a straight rental to

Rich

----- Forwarded message -----

From: <>
Date: Tue, Apr 3, 2012 at 4:42 PM
Subject: August 11th Stan Sheriff
To: rsheriff@hawaii.edu

Rich ...

As you remember I have been working on a Sheriff / date since 2008.

I was the promoter who did him last in Hawaii. That was over 15 years ago; three shows at the NBC Arena ... with over 18,000 tickets sold.

The following has been verbally agreed to by 's management.

The contract would be generated and signed under the name of the UH Athletic Department.

Here is an over view of the current deal points.

1. Flat guarantee of \$450,000 (US)
2. Released as follows: \$50,000 binder / \$180,000 w/signed contract / \$220,000 balance before the show (TBA)
3. 17 air fares from USA (a couple 1st class) I have working relationship with Hawaiian Air ...but I am sure yours is better.
4. Hotel rooms (gets a 2 bedroom suite... for he and his valet). I work closely with of the Sheraton Waikiki ...he has frequently been a sponsor and at least given me very favorable rates.

The fact that will be a 100% benefit for the UH Athletic Department has incredible power.

5. I enclose an estimated budget for your review. The numbers are realistic ... but with the benefit angle ... I am sure they can be tightened across the board.
6. I have put the capacity at 10,000 ... however I have asked that he play "in the round" which will maximize the Capacity of the venue (11,000).

My thought is that you could take the 250-500 best seat ... add a reception (which I must clear with These VIP packages could be offered to you best donors.

7. BUDGET:

EXHIBIT C

University-372

I spent several years in the Budget Department of the City and County ... and my budgeting skills are broadly acknowledged.

I have evolved a very straightforward mechanism for dealing with clients ... for whom I produce / promote events.

a) You approve a line item working budget. (see attached).

b) When an expenditure needs to be done ... I will have the vendor generate an invoice. Then I will generate a PURCHASE ORDER that covers the vendor invoice and assigns it to a line item in the working budget.

You will then cut a check to the proper amount to the vendor and periodically ... I will pick up checks from the Department and hand carry them to the vendor. I find that this works best to keep everyone's eye on the project ... and gives me someone on one evaluation time.

This system has worked well with the Sheraton Waikiki ... for whom I have produced New Years Eve and Convention events.

My goal is to keep money in the hands of the University for as long as possible.

I see a net profit for the Department of at least 250K.

I do take into account the vast marketing resources of the Department. I will work closely with your marketing people to "dove-tail" all efforts and make sure all bases are covered.

=====

's usual fee is a guarantee vs 10% of the net proceeds //which ever is greater.

Of course, as mentioned, if there was a temporary full time position open with the department ... that would work.

This first time around we can do a straight services contract. I need to get to work on this project immediately.

We usually charge the Sheraton 10% of the artist's fee ... but for the UH I see half of that.

I would like to see \$22,500 ... tax included versus 10% of the net ... settled after the show.

would be a contractor. Any "casual" labor would be under our umbrella and not be a burden to the Department in any way.

Your will note a line item for insurance. I assume the Department has extensive liability insurance (to which for this project would like to be added as additional insured)

However, I also get "non performance insurance" ... insuring against acts of God / travel / health / etc. If the insurance is invoked we would build in your profit in the final accounting.

=====

would propose the following schedule"

April 15th	\$7,500
May 15th	5,000
June 15th	5,000
July 15th	5,000

=====
\$22,500

August 15th final review / settlement.

I have found it best if you can give me a personal liaison within your department ... to whom I can give Purchase orders and pick up checks for vendor delivery.

Marketing wise ... we would delineate areas of responsibility to make sure all bases are covered.

I herewith attach my proposed "working budget".

Best regards,

--
Richard Sheriff
Manager - Stan Sheriff Center
University of Hawaii
1355 Lower Campus Road
Honolulu, Hawaii 96822

Protected View

M21

VENUE : Sheritt Arena
 DATE : August 11, 2012

IM Sheritt

printed : April 3, 2012 4:37 PM
 days out : 150
 Sheritt

LINE	DESCRIPTION	AMOUNT	ADVERTISING
1	TALENT		
1	Main Act	460,000.00	
2	support		
3	Ground Trans	5,000.00	
4	Catering	7,500.00	
	FACILITY		
5	Rent 5%		41 Radio
6	Equip Rent	1,500.00	42
7	Clean 2 Days		43
8	Technicians	250.00	44 T.V.
9	Furniture		45
10	Piano Tuner	250.00	46 Print
	CHAIRS		47
12	PRODUCTION		48 Posters
12	Sound	25,000.00	49 Flyers
13	Monitors		50
14	Lights	25,000.00	51
15	St Gear	2,500.00	52 Radio Prod
16	Staging	10,000.00	53 TV Prod
17	Fork	1,000.00	54 Print Prod
18	Electric	2,000.00	55 Passes
19	Trucking	1,500.00	56
20	Rigging	3,000.00	57 Adv Total 80,000.00
21	Soft Goods	2,500.00	
22	Telephone		
23	Sp Exp		
24	Video	10,000.00	
	BOX OFFICE		
25	Hall Costs	5,000.00	
26	Tick Profit		

TICKET	PRINTED	SOLD
30.00	0	0.00
5125.00	1,500	187,500.00
399.00	5,000	495,000.00
565.00	2,000	170,000.00
570.00	1,500	105,000.00

N21		154		154	
LINE	DESCRIPTION	AMOUNT	AMOUNT	AMOUNT	AMOUNT
27	VLMHRC		16,000.00	957,500.00	
STAFFING					
28	Stagehands	16,000.00			
29	Ushers/Tech	2,500.00		GROSS REV	957,500.00
30	Police	2,000.00		4.71 % TAX	45,098.25
31	Priv Sec	4,000.00			
32	Post Sec			ADJ GROSS	912,401.75
33	BPE	22,500.00			
34	Fee Labor	2,500.00		HALL RENT	0.00
35	Payrol			TOTAL EXP	689,500.00
OTHER					
36	Insurance	3,500.00		GROSS PROF	222,901.75
37	BPE Fee			(LOSS)	
38	Hotel	20,000.00		BREAK \$	800,641.14
39	Alarms	16,000.00			
40	Misc	500.00		BREAK TRK9	\$,390.
TOTAL EXP		689,500.00	#VALUE!		

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DT 4314

Office of the Chancellor



UNIVERSITY
of HAWAII[®]
MĀNOA

November 10, 2011

MEMORANDUM

TO: M.R.C. Greenwood
President

FROM: Virginia S. Hinshaw *Virginia S. Hinshaw*
Chancellor

SUBJECT: REAPPOINTMENT OF AND SALARY ADJUSTMENT FOR
JAMES J. DONOVAN III AS DIRECTOR OF ATHLETICS, UNIVERSITY OF
HAWAII AT MĀNOA

SPECIFIC ACTION REQUESTED:

SIX

It is requested that you approve the reappointment of and salary adjustment for James J. Donovan III as Director of Athletics, University of Hawai'i at Mānoa, (UH Mānoa), effective March 24, 2013 through March 23, 2018, subject to executive/managerial salary adjustments. This multi-year appointment is subject to a satisfactory evaluation each year. This request for a salary adjustment is from the current unreduced annual salary of \$240,000 (\$20,000 monthly) to proposed \$252,000 (\$21,000 monthly). The current annual salary with the salary reduction of 5% is \$228,000 (\$19,000) and proposed is \$239,500 (\$19,950 monthly).

RECOMMENDED EFFECTIVE DATE:

The recommended effective date is March 24, 2013.

ADDITIONAL COST:

Additional cost of \$12,000 to be within Athletics operating budget

PURPOSE:

The purpose of the reappointment is to provide continued stability and strong leadership for the UH Mānoa athletics program. Under the leadership of Director Donovan, the athletics program has established a strategic plan focused on student-athlete opportunities and academic success, balanced budget, and customer service improvements in a variety of approaches. Director Donovan has effectively established and fostered partnerships within UH Mānoa and with a variety of prominent business, community and other organizations statewide, nationally and internationally. Since his appointment as Director in March 2008, his leadership, business savvy and creative solutions to financial and business issues have been instrumental in moving the athletics program forward and fostering needed support for athletics program team members by internal and external organizations.

2500 Campus Road, Hawai'i Hall 202
Honolulu, Hawai'i 96822
Telephone: (808) 956-7651
Fax: (808) 956-4153

An Equal Opportunity/Affirmative Action Institution

President M.R.C. Greenwood
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BACKGROUND INFORMATION:

Pursuant to Board of Regents Policy 9-12, Executive and Managerial Personnel Policies, approved on April 21, 2011, the President is authorized to appoint, reappoint, and make compensation decisions for positions which are not at least two (2) reporting levels below the Chancellor. Furthermore, pursuant to Executive Policy E9.112, Delegation of Authority for Personnel Actions, approved on November 16, 2006, the President is authorized to approve multi-year appointments.

Director Donovan was appointed as Director of Athletics effective March 24, 2008. Prior to his appointment as Director, he began his career in UH Mānoa Athletics – first as a Graduate Assistant Coach and later served in various management positions including Baseball Stadium Manager, Director of Sports Marketing, Assistant Athletics Director for Administrative Services, and Associate Athletics Director. Prior to his appointment as Director, he served as the Executive Director of the Sheraton Hawai'i Bowl and President and Chief Executive Officer of m2c, Inc. He has served on a number of organizations including the Board of Directors for UH Alumni Association and Shidler College of Business Alumni Association, and continues to serve on behalf of UH Mānoa in a number of speaking engagements internally and to other organizations including Rotary Clubs and business organizations.

He holds his Bachelor of Arts in Geography and Master of Business Administration from UH Mānoa. He also completed the Sports Management Institute program in Los Angeles, California.

When Director Donovan was appointed, I expected that his leadership and previous experience in athletics in higher education coupled with his business education, background and sound decision-making, would move the UH Mānoa athletics program forward in a multitude of ways. He has exceeded the expectations in a number of ways, including academic success, compliance, gender-equity and improved financial stability, such as increased sources of revenues, corporate sponsorships and fundraising. Upon his initial appointment, he worked with corporate community leaders, UH administration, partners, boosters and donors, and UHM athletics department members to develop an athletics department plan focused on student-athlete opportunities and academic success, athletics facilities, operating budget, corporate culture and customer service, in addition to rejuvenating community pride for UH Athletics and getting the athletics department members engaged in community efforts.

In the past three and a half (3-1/2) years, he has led improvements in all of those areas. Such accomplishments include securing stability for our Division I athletics programs in the Mountain West Conference (football) and Big West Conferences (other sport programs) which is anticipated to move the athletics program towards better program success and a balanced budget over time. In addition, Director Donovan has cultivated relationships and partnerships with business and community organizations, resulting in increased services, support for student-athletes and facilities upgrades, such as the T.C. Ching turf field, Les Murakami training room and new roof, Nagatani academic center renovation, Stan Sheriff Center concourse deck repair and installation of instant replay and scoreboard, and other needed repairs and maintenance. He continues to work with the Stadium Authority and other facility authorities to ensure games held off-campus have optimal results for our fans, student-athletes and coaching teams.

President M.R.C. Greenwood
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November 10, 2011

He strongly supports gender equity in student-athletes, as well as coaching staff. There is an increased number of female head coaches and assistant coaches than in previous years. Student-athletes now have increased opportunities for leadership and self-development, community service and academic success and are recognized for their academic, in addition to their athletic, achievements. He is moving the athletics program to another level – as a Division I athletics program, the development of academically and athletically talented student-athletes, and sound business operation. The employees within the department support the sound direction Director Donovan has articulated:

He has effectively developed and implemented sound business strategies to increase attendance, challenged coaches to be successful in fundraising efforts, and reduced operation costs. He has implemented a sound action plan, including pricing strategies, effective marketing campaigns, and proper spending to substantially reduce the annual operating deficit that most athletics programs deal with annually. He has managed a careful balance of revenues, fundraising, corporate sponsorships and expenditures.

In addition, his leadership of the athletics department team increased visibility for the program through agreements with media organizations, outreach efforts statewide with games and activities engaging the neighbor island community 'ohana, and increased customer service utilizing technology, promotional activities and enticing pricing strategies that appeal to families and fan bases. He also worked, and continues to work, with student groups to implement an athletics fee which has resulted in increased student participation and reduced pricing for students at sporting events.

Director Donovan's performance has been outstanding since his appointment in March 2008, and he had a 360 degree evaluation in 2011. He remains committed to the student-athletes, UH Mānoa, the UH and the community and is highly regarded for his efforts in moving our only Division I higher education athletics program forward in a positive and strong manner. In higher education and especially athletics programs, the practice of multi-year appointments and reappointments is common. It provides internal and external stakeholders and constituents – including donors and corporate sponsors - with a reaffirmation of the University's and Athletics Director's investment in one another, and ensures that the leadership for the athletics department will remain stable and successful as the state's only Division I athletics program. It also provides a solid foundation upon which partnerships and relationships may continue to build and advance a shared long term vision and allow an exceptional leader to enhance the program for the future.

Director Donovan is an exemplary leader for the Mānoa campus, and has brought stability to a highly visible and important program for the university, state and the people of Hawai'i. He has continued to build effective working relationships with faculty, staff, administrators and other internal and external groups including prominent business and community organizations and has led the department as a business, infusing business practices, strategies and direction. Based on the foregoing, it is appropriate and critical to approve a multi-year reappointment to provide stable leadership under an accomplished Director and continue to build upon the progress of the past three and a half (3-1/2) years.

In addition, a small increase is proposed for Director Donovan's salary from annual salary of \$240,000 (\$20,000) to \$252,000 (\$21,000 monthly) which takes into consideration the market and CUPA data, the former Director's salary and Director Donovan's exemplary leadership and

President M.R.C. Greenwood
 Page 4
 November 10, 2011

experience as the Mānoa Athletics Director in budget and administration, student-athlete academic success, donor cultivation and overall improvement in the image and stability of the athletics program. The proposed salary is slightly below the CUPA-HR-2010-2011 median salary for Director, Athletics of \$259,875. Given the foregoing factors, especially his leadership and accomplishments as the current Director, this small adjustment is warranted.

I am submitting this request a year in advance to provide continued stability under the leadership of Director Donovan. The major terms of the proposed employment agreement will remain the same as reflected in his current employment agreement effective March 24, 2008 through March 23, 2013 with the exception of the small increase in salary from \$240,000 to \$252,000 and amendments to the incentive plan which are currently being finalized. The amendments to the incentive plan will reflect current and appropriate relationships between the incentive, the metric and the goal achieved. In addition, as I submit this request, we propose that Director Donovan's new agreement effective March 24, 2013 through March 23, 2018 include a period for both parties to enter into renegotiation for sixty (60) days effective July 1, 2014 or otherwise determined to allow both parties to discuss and consider major terms necessary for the remainder of the contract as new terms may need consideration as we conclude the first year of the new appointment period. If there are no mutually agreed revisions, the employment agreement terms for 2013-2018 would remain in effect.

ACTION RECOMMENDED:

It is requested that you approve the reappointment of and salary adjustment for James J. Donovan III as Director of Athletics, University of Hawai'i at Mānoa, (UH Mānoa), effective March 24, 2013 through March 23, 2018, subject to executive/managerial salary adjustments. This multi-year appointment is subject to a satisfactory evaluation each year. This request for a salary adjustment is from the current unreduced annual salary of \$240,000 (\$20,000 monthly) to proposed \$252,000 (\$21,000 monthly). The current annual salary with the salary reduction of 5% is \$228,000 (\$19,000) and proposed is \$239,500 (\$19,950 monthly).

APPROVED/DISAPPROVED:

 M.R.C. Greenwood
 President

 Date

c: Director Tammy Kuniyoshi



UNIVERSITY
of HAWAII
SYSTEM

M.R.C. Greenwood <mrcgreen@hawaii.edu>

James Donovan

3 messages

Virginia Hinshaw <vhinshaw@hawaii.edu>

Mon, Apr 23, 2012 at 2:28 PM

To: "M.R.C. Greenwood (mrcgreenwood@hawaii.edu)" <mrcgreen@hawaii.edu>

Below and attached, you will see a request. I know that you spoke about a one year reappointment with no salary increase, but that is actually a negative signal for any athletic director and can limit any other potential opportunities that individual might have. If that is the limit of reappointment available for him, I do know that such a reappointment would be unacceptable to him, so it would be inappropriate for me to submit such a request. A three year appointment is common here and, during the last year, we have successfully hired deans with appointments for three years, even with the knowledge of a change in leadership, so this situation is really quite similar. Even if this recommendation is not acceptable to you or others at this point, I believe having this information available for any future decision-making is important.

I feel responsible for giving you recommendations that would be beneficial to the programs at UH Mānoa and support UH System and Hawai'i - I do believe that Jim's talents are much needed and appreciated here and that he has demonstrated those talents with the progress we have made. He has strong internal and external support groups and I believe the potential loss of Jim would pose a significant problem, especially for a new chancellor. His development efforts have moved Athletics from \$3m to \$12M in cash and pledges at UHF- that is definitely a positive direction. In addition, the small increase in salary is justified in that his salary is low compared to his peer group and he has taken the executive salary reductions during his time here even though not required to do so based on his contract.

I understand that this is your call and I respect that, but I feel I have to provide the best advice I can. I think this reappointment will be helpful to the new chancellor and enable that person to focus on moving the university forward. That individual will be reviewing Jim's performance and has the opportunity to make changes if desired, but I think the new chancellor would benefit from having expertise and stability in the Athletics Department as they learn and move forward on what needs to be accomplished at UH Manoa. Mahalo - Virginia

SUBJECT: Reappointment of and Salary Adjustment for James Donovan

I am submitting a revised request for the reappointment of and salary adjustment for James Donovan. The major revision is the request for a three (3) year appointment from March 24, 2013 through March 23, 2016. Under the direction of Director Donovan, the athletics department has stabilized and seen growth in terms of its opportunities, student success and more positive financial situation. They have remained focused on their strategic goals and objectives. He continues to work collaboratively and effectively with leadership and student groups across campus. In addition, Director Donovan's partnerships and relationships with business, community and other athletics colleagues have brought renewed and new interest, support and recognition of the UH Mānoa athletics program, as well as the overall UH campus and the various academic and research programs. His solutions to financial, business and operational matters continues to be instrumental in continuing the positive change and direction for the program, our student-athletes, and our leadership and staff.

Considering our program's progress which was recognized in discussions with the recent NCAA accreditation team and Director Donovan's accomplishments in the past four (4) years, I request your consideration of this request to ensure our athletics program and student athletes continue to have stability in its leadership and further advance in academic success, community service and athletic competition.

Virginia S. Hinshaw

Chancellor

University of Hawaii at Manoa

2500 Campus Road, Hawaii Hall 202

Honolulu, HI 96822

Tel: (808) 956-7651

Fax: (808) 956-4153

Email: vhinshaw@hawaii.edu




donovan reappt-3yr(di).docx
31K

M.R.C. Greenwood <mrcgreen@hawaii.edu>
To: David Lonborg <dlonborg@hawaii.edu>

Thu, Apr 26, 2012 at 2:35 PM

[Quoted text hidden]

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MRC Greenwood <mrcgreen@hawaii.edu>
To: David Lonborg <dlonborg@hawaii.edu>

Tue, Sep 11, 2012 at 12:33 PM

Begin forwarded message:

From: Virginia Hinshaw <vhinshaw@hawaii.edu>
Date: April 22, 2012 2:28:43 PM HST
To: "M.R.C. Greenwood (mrcgreenwood@hawaii.edu)" <mrcgreen@hawaii.edu>
Subject: James Donovan

[Quoted text hidden]

MRC Greenwood, Ph.D.
President, University of Hawaii System
mrcgreenwood@hawaii.edu
808 956-9704

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UNIVERSITY
of HAWAII
MĀNOA

April 25, 2012

MEMORANDUM

TO: M.R.C. Greenwood
President

FROM: Virginia S. Hinshaw
Chancellor

A handwritten signature in cursive script that reads "Virginia S. Hinshaw".

SUBJECT: Reappointment of and Salary Adjustment for James Donovan

I am submitting a revised request for the reappointment of and salary adjustment for James Donovan. The major revision is the request for a three (3) year appointment from March 24, 2013 through March 23, 2016. Under the direction of Director Donovan, the athletics department has stabilized and seen growth in terms of its opportunities, student success and more positive financial situation. They have remained focused on their strategic goals and objectives. He continues to work collaboratively and effectively with leadership and student groups across campus. In addition, Director Donovan's partnerships and relationships with business, community and other athletics colleagues have brought renewed and new interest, support and recognition of the UH Mānoa athletics program, as well as the overall UH campus and the various academic and research programs. His solutions to financial, business and operational matters continue to be instrumental in continuing the positive change and direction for the program, our student-athletes, and our leadership and staff.

Considering our program's progress which was recognized in discussions with the recent NCAA accreditation team and Director Donovan's accomplishments in the past four (4) years, I request your consideration of this request to ensure our athletics program and student athletes continue to have stability in its leadership and further advance in academic success, community service and athletic competition.

Attach.



UNIVERSITY
of HAWAI'I
MĀNOA

RECEIVED

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April 25, 2012

MEMORANDUM

TO: M.R.C. Greenwood
President

UNIVERSITY OF HAWAII
PRESIDENT'S OFFICE

FROM: Virginia S. Hinshaw
Chancellor

SUBJECT: REAPPOINTMENT OF AND SALARY ADJUSTMENT FOR
JAMES J. DONOVAN III AS DIRECTOR OF ATHLETICS, UNIVERSITY OF
HAWAI'I AT MĀNOA

SPECIFIC ACTION REQUESTED:

It is requested that you approve the reappointment of and salary adjustment for James J. Donovan III as Director of Athletics, University of Hawai'i at Mānoa (UH Mānoa), effective March 24, 2013 through March 23, 2016, subject to executive/managerial salary adjustments. This multi-year appointment is subject to a satisfactory evaluation each year. This request for a salary adjustment is from the current unreduced annual salary of \$240,000 (\$20,000 monthly) to proposed \$252,000 (\$21,000 monthly). The current annual salary with the salary reduction of 5% is \$228,000 (\$19,000) and proposed is \$239,400 (\$19,950 monthly).

RECOMMENDED EFFECTIVE DATE:

The recommended effective date is March 24, 2013.

ADDITIONAL COST:

Additional cost of \$12,000 to be within Athletics operating budget.

PURPOSE:

The purpose of the reappointment is to provide continued stability and strong leadership for the UH Mānoa athletics program. Under the leadership of Director Donovan, the athletics program has established a strategic plan focused on student-athlete opportunities and academic success, balanced budget, and customer service improvements in a variety of approaches. Director Donovan has effectively established and fostered partnerships within UH Mānoa and with a variety of prominent business, community and other organizations statewide, nationally and internationally. Since his appointment as Director in March 2008, his leadership, business savvy and creative solutions to financial and business issues have been instrumental in moving the athletics program forward and fostering needed support for athletics program team members by internal and external organizations. He has significantly increased the amount of contributions via the UH Foundation and this has significantly benefited the student-athletes and the athletics program.

President M.R.C. Greenwood
April 25, 2012
Page 2

BACKGROUND INFORMATION:

Pursuant to Board of Regents Policy 9-12, Executive and Managerial Personnel Policies, approved on April 21, 2011, the President is authorized to appoint, reappoint, and make compensation decisions for positions which are not at least two (2) reporting levels below the Chancellor. Furthermore, pursuant to Executive Policy E9.112, Delegation of Authority for Personnel Actions, approved on November 16, 2006, the President is authorized to approve multi-year appointments.

Director Donovan was appointed as Director of Athletics effective March 24, 2008. Prior to his appointment as Director, he began his career in UH Mānoa Athletics – first as a Graduate Assistant Coach and later served in various management positions including Baseball Stadium Manager, Director of Sports Marketing, Assistant Athletics Director for Administrative Services, and Associate Athletics Director. Prior to his appointment as Director, he served as the Executive Director of the Sheraton Hawai'i Bowl and President and Chief Executive Officer of m2c, Inc. He has served on a number of organizations including the Board of Directors for UH Alumni Association and Shidler College of Business Alumni Association, and continues to serve on behalf of UH Mānoa in a number of speaking engagements internally and to other organizations, including Rotary Clubs and business organizations.

He holds his Bachelor of Arts in Geography and Master of Business Administration from UH Mānoa. He also completed the Sports Management Institute program in Los Angeles, California.

When Director Donovan was appointed, I expected that his leadership and previous experience in athletics in higher education coupled with his business education, background and sound decision-making, would move the UH Mānoa athletics program forward in a multitude of ways. He has exceeded the expectations in a number of ways, including academic success, compliance, gender-equity and improved financial stability, such as increased sources of revenues, corporate sponsorships and fundraising. Upon his initial appointment, he worked with corporate community leaders, UH administration, partners, boosters and donors, and UHM athletics department members to develop an athletics department plan focused on student-athlete opportunities and academic success, athletics facilities, operating budget, corporate culture and customer service, in addition to rejuvenating community pride for UH Athletics and getting the athletics department members engaged in community efforts.

In the past four (4) years, he has led improvements in all of those areas. Such accomplishments include securing stability for our Division I athletics programs in the Mountain West Conference (football) and Big West Conferences (other sport programs) which is anticipated to move the athletics program towards better program success and a balanced budget over time. In addition, Director Donovan has cultivated relationships and partnerships with business and community organizations, resulting in increased services, support for student-athletes and facilities upgrades, such as the T.C. Ching turf field, Les Murakami training room and new roof, Nagatani academic center renovation, Stan Sheriff Center concourse deck repair and installation of instant replay and scoreboard, and other needed repairs and maintenance. He continues to work with the Stadium Authority and other facility authorities to ensure games held off-campus have optimal results for our fans, student-athletes and coaching teams.

President M.R.C. Greenwood
April 25, 2012
Page 3

He strongly supports gender equity in student-athletes, as well as coaching staff. There is an increased number of female head coaches and assistant coaches than in previous years. Student-athletes now have increased opportunities for leadership and self-development, community service and academic success and are recognized for their academic, in addition to their athletic, achievements. He is moving the athletics program to another level – as a Division I athletics program, the development of academically and athletically talented student-athletes, and sound business operation. The employees within the department support the sound direction Director Donovan has articulated.

He has effectively developed and implemented sound business strategies to increase attendance, challenged coaches and his athletics department to be successful in fundraising efforts, and reduced operation costs. He has implemented a sound action plan, including pricing strategies, effective marketing campaigns, and proper spending to substantially reduce the annual operating deficit that most athletics programs deal with annually. He has managed a careful balance of revenues, fundraising, corporate sponsorships and expenditures. For example, he has significantly increased the amount of gifts through foundation via methods as in-kind gifts, estate planning, trusts, etc. from \$4 million to \$12 million since he became director. This is a significant growth from the program status in 2007 to present.

In addition, his leadership of the athletics department team increased visibility for the program through agreements with media organizations, outreach efforts statewide with games and activities engaging the neighbor island community 'ohana, and increased customer service utilizing technology, promotional activities and enticing pricing strategies that appeal to families and fan bases. He also worked, and continues to work, with student groups to implement an athletics fee which has resulted in increased student participation and reduced pricing for students at sporting events.

Director Donovan's performance has been outstanding since his appointment in March 2008, and he had a 360 degree evaluation in 2011 which indicated strong support internally and externally for his performance. He remains committed to the student-athletes, UH Mānoa, the UH and the community and is highly regarded for his efforts in moving our only Division I higher education athletics program forward in a positive and strong manner. In higher education and especially athletics programs, the practice of multi-year appointments and reappointments is common. It provides internal and external stakeholders and constituents – including donors and corporate sponsors - with a reaffirmation of the University's and Athletics Director's investment in one another, and ensures that the leadership for the athletics department will remain stable and successful as the state's only Division I athletics program. It also provides a solid foundation upon which partnerships and relationships may continue to build and advance a shared long term vision and allow an exceptional leader to enhance the program for the future.

Director Donovan is an exemplary leader for the Mānoa campus and has brought stability to a highly visible and important program for the university, state and the people of Hawai'i. He has continued to build effective working relationships with faculty, staff, administrators and other internal and external groups including prominent business and community organizations and has led the department as a business, infusing business practices, strategies and direction. Based on the foregoing, it is appropriate and critical to approve a multi-year reappointment to provide stable leadership under an accomplished Director and continue to build upon the progress of the past four years.

President M.R.C. Greenwood
April 25, 2012
Page 4

In addition, a small increase is proposed for Director Donovan's salary from annual salary of \$240,000 (\$20,000) to \$252,000 (\$21,000 monthly) which takes into consideration the market and CUPA data, the former Director's salary and Director Donovan's exemplary leadership and experience as the Mānoa Athletics Director in budget and administration, student-athlete academic success, donor cultivation and overall improvement in the image and stability of the athletics program. The proposed salary is slightly below the CUPA-HR 2010-2011 median salary for Director, Athletics of \$259,875. Given the foregoing factors, especially his leadership and accomplishments as the current Director, this small adjustment is warranted.

I am submitting this to provide continued stability under the leadership of Director Donovan. The major terms of the proposed employment agreement will remain the same as reflected in his current employment agreement effective March 24, 2008 through March 23, 2013 with the exception of the small increase in salary from \$240,000 to \$252,000 and amendments to the incentive plan which are currently being finalized. The amendments to the incentive plan will reflect current and appropriate relationships between the incentive, the metric and the goal achieved. In addition, as I submit this request, we propose that Director Donovan's new agreement effective March 24, 2013 through March 23, 2016 include a period for both parties to enter into renegotiation for sixty (60) days effective July 1, 2014 or otherwise determined to allow both parties to discuss and consider major terms necessary for the remainder of the contract as new terms may need consideration as we conclude the first year of the new appointment period. If there are no mutually agreed revisions, the employment agreement terms for 2013-2016 would remain in effect.

ACTION RECOMMENDED:

It is requested that you approve the reappointment of and salary adjustment for James J. Donovan III as Director of Athletics, University of Hawai'i at Mānoa (UH Mānoa), effective March 24, 2013 through March 23, 2016, subject to executive/managerial salary adjustments. This multi-year appointment is subject to a satisfactory evaluation each year. This request for a salary adjustment is from the current unreduced annual salary of \$240,000 (\$20,000 monthly) to proposed \$252,000 (\$21,000 monthly). The current annual salary with the salary reduction of 5% is \$228,000 (\$19,000) and proposed is \$239,400 (\$19,950 monthly).

APPROVED/DISAPPROVED:

M.R.C. Greenwood
President

Date

c: Director Tammy Kuniyoshi



UNIVERSITY
of HAWAII[®]
MĀNOA

Tom Apple
Chancellor

July 11, 2012

James Donovan, III
1445 Maloo Place
Honolulu, Hawai'i 96825

SUBJECT: NOTIFICATION OF INVESTIGATION

Dear Jim:

This is to inform you that, effective immediately, you are placed on leave with pay pending resolution of the circumstances relating to a fact-finding investigation that is being initiated as a result of allegations regarding your involvement in the possible inappropriate management, planning, organization, and administration of the Stevie Wonder benefit concert scheduled for August 18, 2012 at the Stan Sheriff Center, and/or violations of University of Hawai'i ("University") policies and procedures or other related violations, as may be determined.

The decision to place you on leave with pay is not a disciplinary action. You will remain on paid active status and your conditions of employment, including health and retirement benefits, leave accrual, etc., will remain unchanged. While you are reassigned to your home, you may be contacted by University employees and/or agents regarding work related matters. We expect your timely and complete cooperation with all inquiries, requests, and instructions.

If you wish to access your office for your belongings, or have questions related to personal access, please contact James Nishimoto, Executive Assistant, at 956-4590. Mr. Nishimoto will serve as your designated intermediary and will assist in making any necessary arrangements.

You are not authorized to come onto University property during this period without prior arrangements being made through Mr. Nishimoto. You are also not authorized to contact individuals in Intercollegiate Athletics, University of Hawai'i Mānoa, whether by e-mail, telephone or in person.

A violation of this prohibition may be considered trespass and/or insubordinate behavior and the University will take appropriate action, as well as taking other security measures as appropriate, up to and including discharge.

2500 Campus Road, Hawai'i Hall 202
Honolulu, Hawai'i 96822
Telephone: (808) 956-7651
Email: tapple@hawaii.edu
Fax: (808) 956-4153

Mr. James Donovan III
July 11, 2012
Page 2

I have appointed Mr. Dennis W. Chong Kee as fact-finder to investigate these allegations. He will conduct a fact-finding investigation and provide a report to me for my review and determination if any further actions are warranted. He will contact you to schedule a time and place for your interview. As you are on paid leave status, your presence at the meeting is required. I appreciate your full cooperation in this matter and your assistance in ensuring that an open and fair investigation is conducted.

I ask for your full cooperation and that you do not interfere, coerce, impede, or hamper the investigation so that it can be completed in a timely and professional manner. Please be advised that retaliation against any person involved in the investigation is strictly prohibited by the University. The University is an institution which maintains a safe and secure environment for faculty and staff to fulfill its mission of teaching, research and service. Failure on the part of the University to address any egregious retaliatory actions will chill the environment such that no student, faculty or staff member will step forward to report and participate in investigations regarding inappropriate actions. The University, as a responsible institution with the obligations to maintain a safe and secure environment, has no choice but to seriously consider any retaliatory actions made. Any allegations of retaliatory actions will be subject to a separate investigation and may result in disciplinary action.

Upon completion of the investigation, I will determine whether any administrative action is warranted and you will be notified regarding the final disposition of this matter.

Sincerely,



Tom Apple
Chancellor



LAW OFFICE OF DAVID F. SIMONS

PERSONAL & CONFIDENTIAL
FOR ADDRESSEE ONLY

July 16, 2012

Via Email Only
President M.R.C. Greenwood
University of Hawaii
mrcgreenwood@hawaii.edu

Tom Apple, Chancellor
University of Hawaii Manoa Campus
tapple@hawaii.edu

Re: Jim Donovan

Dear President Greenwood and Chancellor Apple:

I, on behalf of my client Jim Donovan, request that by Thursday noon, July 19, 2012, you publicly reinstate Mr. Donovan to his position as athletic director at the University of Hawaii at Manoa.

Your public suspension of Mr. Donovan defamed him and ruined his reputation. The suspension was unnecessary. There were no facts to support it. The suspension was in breach of Mr. Donovan's contract, his constitutional rights to due process prior to his liberty and property interests being taken, and was contrary to clear, consistent, express University of Hawaii policy, which prohibits disclosure to the public that a University of Hawaii at Manoa employee had been placed on leave. By having a news conference, and publicly suspending Mr. Donovan, you deliberately made Mr. Donovan a scapegoat for what was a systematic problem at the University of Hawaii, not at the athletic department. The truth is, as you know, Mr. Donovan had little to do with the possible loss to the University of \$200,000.00. Because this matter was embarrassing to both of you; you panicked and acted peremptorily to suspend Jim in order to deflect criticism from yourselves, and people who reported to you. By suspending Jim, you falsely made it appear that it was all his fault. Legally we call that putting someone in a "false light" which is tortious conduct, for which Mr. Donovan can seek compensatory and punitive damages from each of you.

You suspended Mr. Donovan even though the facts that were known to you at the time of the suspension made it clear he was not responsible for the possible \$200,000 loss and had engaged in no personal misconduct. Worse, you not only suspended him, but you also ordered him to stay silent so he could not let people know the truth, while you held a press conference at which you defamed and humiliated him. At the time you did that, you knew the following facts:

1. Mr. Donovan was not even in the State when the contract was signed;
2. Mr. Donovan was not in the State when the money was sent;
3. Mr. Donovan had no direct involvement in the crucial decision-making mistakes that resulted in the possible \$200,000 loss;
4. These crucial decision-making mistakes were made by your general counsel's office and your fiscal office.
5. The money was sent to Florida without Mr. Donovan's knowledge, or consent, much less his authorization. It was sent to an entity with which UH had no past dealings; nor did UH have any contractual relationship with Epic. To the contrary, UH's Office of General Counsel decided not to enter into a contract with Epic. How and why both your legal and fiscal office – which are autonomous and do not report to Mr. Donovan, nor are they controlled by the Athletic Department - decided and did send \$200,000 of UH funds to an Epic bank account in Florida, should be the focus of your inquiry. This happened while Mr. Donovan was out of town and at a National Meeting of Athletic Directors in Dallas, Texas. It happened, as you know, without Mr. Donovan's knowledge, consent or authorization. How, why, and who approved sending the money is the question that needs to be investigated – an action in which Mr. Donovan had no involvement.

There was no operational reason, need or justification to publicly suspend Mr. Donovan. The obvious and only reason you publicly suspended him was to deflect criticism toward him and away from both of you, and from the people who caused this problem, who are people who report to you, not to Mr. Donovan, including your general counsel's office and your fiscal office.

You chose to scapegoat Mr. Donovan rather than appropriately investigating first. You breached UH policy. By not investigating first and instead publicly labeling Mr. Donovan as the culprit, you have denied him his constitutional right to due process, and breached clear and established UH policy.

In addition to reinstating Mr. Donovan we ask you to be honest and confirm to the press the following facts, and also make it clear that these facts were known to you at the time you publicly labeled Mr. Donovan as a "disciplinary problem" (a statement that was completely false even based upon your own letter to him which stated his leave was "not

a disciplinary action"). We ask you to confirm to the press that in your letter putting Mr. Donovan on leave with full pay, you wrote, "This is not disciplinary action". Despite your own words in your letter to Mr. Donovan in breach of Mr. Donovan's contract, constitutional rights and UH policy after delivering that letter, you both held an unprecedented news conference at which you, in breach of policy, not only disclosed Mr. Donovan was on leave, you also made him the scapegoat for the scandal. It was reported that Mr. Apple said no "other disciplinary action" would be taken against people other than Mr. Donovan and Mr. Sheriff until after the investigation was finished. By saying that, Mr. Apple clearly and falsely implied that the action taken against Mr. Donovan was a "disciplinary" action. It was not a disciplinary action, nor was it based on any facts showing wrongdoing by Mr. Donovan.

The suspension made it appear that Mr. Donovan was involved in the decision to send the money to Florida, a decision he did not even know about. It was that decision, to send the money that caused the problem. Had the money not been sent to an unknown account and disappeared, there would have been no problem cancelling the concert. Concerts often get canceled. There would have been no public outcry. 95% of the tickets were refunded within hours of the cancellation. Publicity for the concert had just begun. What caused the embarrassment for you and UH was that UH had sent \$200,000 to an unknown bank account in Florida. Mr. Donovan had nothing to do with the decision, and your suspension of him, clearly implied he had.

At the time you publicly humiliated Mr. Donovan there was a clear policy in place at the UH implemented by UH's HR and legal department which required that, when people were placed on leave pending investigation, that no information would be made public about the matter until an investigation had been completed. That policy expressly recognized that if the UH publicly disclosed that a person had been placed on leave pending investigation, that that information would be understood by the public as a clear indication that the person is guilty - why would they be placed on leave immediately, before an investigation, if the facts did not clearly show the person who was guilty? That is exactly what happened here. The press and public all immediately came to the conclusion that the decision to send \$200,000.00 to an unknown Florida bank account, was Mr. Donovan's fault, and he was responsible for it. They came to that conclusion because you placed him on leave and because you publicly announced it and because you implied that it was a disciplinary action. None of that was true. It was defamatory, it was false, it put him in a false light, and breached Mr. Donovan's contract, constitutional rights and clear UH policy. Also, it was completely unnecessary. There was no reason, need, or justification to immediately suspend him prior to investigation.

In addition to reinstating Mr. Donovan we ask that you publicly release the following information to the press:

1. Mr. Donovan did not sign the contract for the Stevie Wonder concert. He was out of State when it was signed. His instructions to the athletic department before he left was that the contract was not to be signed until it had been cleared and approved by UH's general counsel's office, which was

drafting and redrafting the contract, negotiating the specific provisions of it. It was the job of the University's lawyer to make sure the contract was drafted in such a way that protected UH from loss. Once the general counsel approved the contract, Mr. Donovan instructed the associate athletic director to review and sign the contract on his behalf if the associate athletic director was okay with the language. Epic was not a party to that contract.

2. Mr. Donovan was not in the State nor aware of the fact that the fiscal office had approved release of the money and sent it to an unknown Florida company, with which UH had no contractual relationship.
3. He was unaware any money was sent by UH, to anyone, much less that it was sent to Epic Productions.
4. The financial approval to send the money to Epic Productions was a decision made not by the athletic department, but rather by the UH fiscal office, which controls the funds.
5. From the evening of June 2nd to the evening of the 4th, Mr. Donovan was attending Mountain West meetings in San Diego with Ms. Greenwood. From June 7th to June 20th Mr. Donovan was out of State on a previously approved, planned vacation. He returned to Hawaii for a couple of days on June 21st and 22nd, during which nothing significant transpired in connection with the concert. He then left the State to attend a national athletic director's conference in Dallas and take some additional vacation in Los Angeles, and was there from June 24th to July 1st. He did not return to his office until July 2nd. It was during this time in late June that the money was sent to Florida without Mr. Donovan's knowledge, approval or consent.

Please reinstate Mr. Donovan. He did not deserve to be publically suspended, nor do the facts provide any basis for his suspension, much less the public disclosure of it. The false labeling of the suspension as a disciplinary action, was a conscious decision by you to imply to the public that Mr. Donovan was responsible for this fiasco, when you knew it was not his fault. Please also confirm not only that the facts stated above are accurate, and that those facts show that Mr. Donovan had no involvement in the transmission of the \$200,000.00, but that it was UH's legal office and fiscal office that were involved in drafting and approval of the contract and also transmission of the payment.

Warren Buffet said: "It takes 20 years to build a good reputation but only five minutes to destroy it." In five minutes you destroyed Mr. Donovan's reputation by breaching policy, making false assertions and not disclosing the relevant facts, which would have made it clear that the possible loss of the \$200,000.00 was not Mr. Donovan's fault. You now have until Thursday at noon to reinstate Mr. Donovan to his position, disclose the facts that were known which prove he was not at fault, and thereby, to the extent it is possible, restore his reputation.

If Mr. Donovan is not reinstated by Thursday at noon we reserve all our legal options. I will have no choice but to pursue Mr. Donovan's legal rights in court. It would be much better for UH, including its athletic department, if rather than the facts having to come out in a lawsuit showing that both of you acted prematurely and unfairly against Mr. Donovan, that, instead, quietly, Mr. Donovan is reinstated, the reasons for the reinstatement are made known, and Mr. Donovan and you work together to both resolve this affair, and also move forward with UH athletics. The football season approaches with Norm Chow at the helm; the basketball season approaches with Gib Arnold having a strong team ready to go, and UH has new valuable conference alliances. There are so many good things about UH athletics that should be the focus of the department and the public, rather than having the department and UH bogged down in a lawsuit. We hope you will make the right decision and reinstate Mr. Donovan.

All statements made in this letter are made for the purpose of resolving a legal dispute without litigation. Pursuant to HRE & FRE Rule 408 they are made without prejudice to any right my client may have or position he may take should litigation be necessary.

Sincerely,



David F. Simons

DFS:ceb





UNIVERSITY
of HAWAII
MĀNOA

OFFICE OF THE CHANCELLOR

MEMORANDUM AND AGREEMENT

August 11, 2012

TO: James Donovan
Athletics Director *[Signature]*

FROM: Tom Apple
Chancellor *[Signature]*

SUBJECT: Return from Leave With Pay

1. I want to thank you for your understanding and cooperation during these recent events. It has been a difficult time for all of us and in particular for you and your family. During this period, you have conducted yourself with great honor and as a gentleman for whom I have developed an even higher regard and respect.

2. Subject to the approval of the President, effective with the date of this memorandum, I am returning you from leave with pay to full active service. Coincident with your return to full active service, as we discussed and with your agreement, I am reassigning you to the Office of the Chancellor, University of Hawai'i at Mānoa as provided for in Board of Regents Policy Chapter 9-12, Executive and Managerial Personnel Policies, Part II Recruitment and Appointment of Executive and Managerial Personnel, Section C2.Reappointment, Reassignments and Non-renewal of Appointments.

3. In conjunction with your reassignment, you will continue to receive your current reduced base compensation. Your reduced base compensation rate of pay will continue through the end of your current appointment, which ends March 23, 2013, but you will not be receiving any bonuses that may have been payable under your contract. The University of Hawaii will pay your attorney David Simons \$30,000 in payment of attorneys' fees incurred in connection with the investigation and related matters (with a 1099 form issued to Mr. Simons).

4. I will be submitting prior to the expiration of your current appointment a memorandum to the President requesting your appointment to a managerial position that we discussed that will report to me with responsibility for among other activities enhancing the University's missions, including its land grant mission, marketing and branding, promotion, community communications and outreach for UHM, and otherwise promoting the UHM. I will recommend a three (3) year appointment beginning effective March 24, 2013 to this new managerial position, at a salary of \$211,200 (temporarily reduced to \$200,640) that shall be subject to any other executive/managerial adjustments as appropriate. All applicable policies and procedures of the University will apply with the exception that the University may terminate you only for cause during the three (3) year appointment. My recommendation shall be submitted in accordance with applicable policies and procedures.

5. In exchange for the above, you agree to and do fully and completely release and hold harmless the University of Hawai'i and all past or present regents, officers, agents, attorneys, predecessors, successors, parents, subsidiaries, divisions and any affiliated entities of the University of Hawai'i, including all campuses in the University of Hawai'i system, from any and all past and present claims or causes of action of any kind that you have or may have related to your employment with the University, including any and all claims relating in any way to the Stevie Wonder concert, your leave, and the investigation of that matter. You agree that you have not filed and will not file any form of charge, claim or complaint against the University involving any matter occurring on or prior to the effective date of this memorandum, or

2500 Campus Road, Hawai'i Hall 202
Honolulu, Hawai'i 96822
Telephone: (808) 956-7651
Fax: (808) 956-4153

An Equal Opportunity / Affirmative Action Institution

involving the alleged continuing effects of actions or practices which arose prior to the effective date of this memorandum. In the event that the appointment set forth in paragraph 4 is not made, the release in this paragraph will not be effective.

6. The terms and provisions of this Agreement shall not be construed as a precedent for any future claims or matters by any person.


I look forward to working with you to help our University of Hawai'i at Mānoa (UHM) become an even greater institution. Together I believe we can make it happen.

Agreed and Approved:


James Donovan Date
Athletic Director

8/4/12

Agreed and Approved:


M.R.C. Greenwood Date
President

8/14/12

- C: Chair of the Board of Regents Eric Martinson
- Executive Administrator and Secretary of the Board Keith Amemiya
- Vice President for Student Affairs and University/Community Relations Rockne Freitas
- UHM Human Resource Director Tammy Kuniyoshi
- System Director of Human Resources Debra Ishii

360 EXECUTIVE EVALUATION 2010-2011

USAGE STATISTICS FOR: JIM DONOVAN

CATEGORY	#SENT	#RESPONDED
Constituents	23	16
Peer	48	32
Staff	30	61
TOTAL	101	61

Attached you will find a copy of the 360 Executive Evaluation that was completed as part of Jim Donovan's performance evaluation for 2010-2011.

The evaluation consists of a survey of constituents, peers and staff. The survey asks various questions relating performance and effectiveness to be rated on a scale of 1-5, 1 being the lowest and 5 being the highest. The survey also invited comments.

The Constituent responders were from outside of the University's community, Peer responders were outside of Athletics.

This survey is conducted and administered every 3 years by the University of Hawaii Human Resources department.

View Group: [All](#) | [Constituent](#) | [Peer](#) | [Staff](#) | [Only Survey Stats](#)

Constituent:

#	Constituent - Question	Needs Improvement	Effective	Very Effective	Don't Know
1	Effectively represents college/school/department to internal constituencies.	Avg: 4.7857 (14) Std Dev: 0.4103 Median: 4.5000			(2)
2	Effectively promotes college/school/department to outside constituents and larger community.	Avg: 4.9375 (16) Std Dev: 0.2421 Median: 4.5000			(0)
3	Articulates the position of the college/school/department with clarity and conviction.	Avg: 4.8750 (16) Std Dev: 0.3307 Median: 4.5000			(0)
4	Ensures that students are educated and prepared to meet the needs of the workforce.	Avg: 4.6000 (10) Std Dev: 0.4899 Median: 4.5000			(6)
5	Listens and responds to the needs/concerns of other colleges and constituents.	Avg: 4.7333 (15) Std Dev: 0.4422 Median: 4.5000			(1)
6	Develops a positive image of his/her college/school/department.	Avg: 4.8125 (16) Std Dev: 0.5266 Median: 4.0000			(0)
7	Promotes cross-college/school/department educational and scholarly activities.	Avg: 4.4000 (10) Std Dev: 0.6633 Median: 4.0000			(6)
8	Supports innovative and creative endeavors when working with other colleges/schools/departments, companies, agencies, and institutions.	Avg: 4.8750 (16) Std Dev: 0.3307 Median: 4.5000			(0)
9	Ensures college/school/department works well with other colleges/schools/departments to enhance the college/school/department.	Avg: 4.6667 (12) Std Dev: 0.4714 Median: 4.5000			(4)
10	Overall Evaluation	Avg: 4.8125 (16) Std Dev: 0.3903 Median: 4.5000			(0)

Written comments provide important and specific information that cannot be obtained by the questionnaire responses. You are strongly encouraged to offer both positive and constructive comments for areas needing improvement. Please take the time to explain your ratings and written comments.

Comments:

Average 4.77305

Jim, in my opinion, has been a breath of fresh air after taking over the athletics department that was disorganized, one that lacked clarity of vision and one that had poor morale. He brings business

discipline and organizational skills that was severely lacking.

There are less people that I can count with one hand that has vision and sports marketing skills that can take the University of Hawaii to the next level. I strongly believe that he will do so. However, I can see that he took care of first things first, which was to rebuild an organization that was broken. I can further see that he is almost done building a solid foundation. Once the UH Athletic Department is resurrected with firm footing, I cannot wait to see what Jim will do with the program.

Jim Donovan is a breath of fresh air to the athletic department, he listens to community, students and administration and has brought back connectivity between the university and the community which was really lacking with the last AD. He has had to make some tough decisions and has always pursued what was in the schools and student athletes best interest.

It is very apparent that Jim's passion and love for the school is deep having been locally cultivated within the UH system. I am especially pleased to see the university extend itself out to the neighbor islands truly making it Hawaii's team.

Jim is a true gentleman with integrity and compassion for the program, he has overcome the tarnish from the debacle of the last administration and has won the community back!!!

Please don't let this one get away like we let June Jones get away!!!!

As a former Regent, I sincerely regret in not interviewing Jim for the position of Athletic Director when Hugh Yoshida retired. I worked with Jim when he headed the Hawaii Bowl and found him to be one of the "Rising Stars" in our community. He's not only smart but has the vision and personality to get the job done. My only concern is his health....I hope he has time to exercise!

Jim is the "real deal"! I would hire him in a minute to run my business.

I have found Jim to work way beyond his job description. He is sensitive to everyone's needs, whether they are singing for a sport or the team member, or a return guest at an event. He is ever working. We have talked about how important it is to have an education when they leave Hawaii, because not all of them will be playing in professional sports and, after all, education is what we should be about.

Jim is doing a great job. Our concern is: He is overweight & needs to trim down.

I find Jim to be a great representative to the University Of Hawaii, he always conducts himself professionally and with integrity.

Jim is a good communicator which makes him very effective in getting the business community engaged with activities in support of the University. When Jim ask us to support something important to his program, we are happy to do so based on the relationship and trust fostered over the many years. Jim is a big asset to our community and to our University.

Jim assumed his position at a time of significant change at the University. During and since, he has been an exemplary example of strength, sound decision-making, professionalism, highest standards/ethics, vision and meaningful community outreach. He is an outstanding representative for the University. I am a community executive, active in a variety of endeavors working with local and mainland CEOs, and Jim is highly-regarded in all circles. He is intelligent, fair, objective and inclusive in all internal and external projects in which I have been involved. While we can all improve in various segments of our

lives, Jim sets the bar for most of us.

Jim inherited a real financial challenge and is very slowly bringing the Athletic Department back to its rightful place. If given the time and resources there is no doubt in my mind that he will develop the program into one of the best in the country.

Jim is an excellent leader, solid mentor and loyal soldier! He bleeds green and truly desires to make the University of Hawaii a better place each and every day. In addition to his superior intellect, he is a tireless worker and does not quit until the job is done. His previous work experience including Student Athlete, Coach, Administrator, Bowl Director and small business owner has prepared him well for this very challenging job.

He is well respected and liked in both the business community and academic community. He has developed great rapport with mainland counterparts as well as corporate sponsors and broadcast partners (i.e ESPN).

He is an "out of the box" thinker and has demonstrated this with developing new revenue streams such as the Reverse Auction for parking at Aloha Stadium. His biggest gift is his ability to analyze a current situation and accurately forecast what is going to occur and to make a game plan to proactively address the situation. Jim is an advocate for Student Athletes and Title IX. He has been in the Student Athlete role and he understands the dedication and challenges that they face each and every day.

He motivates people to be the best they can be and to continually skill build. He has demonstrated the importance of education by going back to school to get his MBA from the Shidler College of Business.

Jim is a team player and always deflects credit towards the team and accepts responsibility for the criticisms that come with this very unique position. Jim's courage and conviction make him the leader that he is today. He understands that he is a steward of UH Athletics and that no one is bigger than the program.

In summary, Jim's hard work, humility, and caring (passion) coupled with his superior skill set makes him a leader that the University of Hawaii needs in these very challenging and uncertain times!

Jim has represented UHM Athletics with a great sense of pride and an exceptional sense of business. In my meetings and conversations with him, he always fights for what he thinks is right for UHM Athletics and presents his convictions with factual data rather than fabricated information. In meetings regarding the closure of the Aloha Stadium Swap Meet on UHM football Saturdays, there was strong opposition from Swap Meet vendors. Arguments were heated in public meetings, the vendors were attacking Jim and UHM Athletics, but Jim stood by his opinions and fought back with facts and dismissed the attacks with class and dignity. Yet, he got his points across with conviction. This a representation of true character and savvy business. To stay calm and on point when you are being attacked in public meetings is a trait that Jim has developed to the advantage of UHM Athletics and/or whomever he works for. Working with and negotiating with Aloha Stadium has always been a challenge with previous UHM Administrations. Jim has helped develop a strong relationship with the Aloha Stadium Authority Board Members and Management staff to improve the guest experience for UHM football and create a beneficial contract for UHM Athletics. The parking procedures (operational and financial) have been elevated, the guest experience has been much improved, and most importantly, the working relationships with UHM staff and the stadium staff has been strengthened through mutual understanding and trust. Many ideas are bounced around between Jim and stadium management to accomplish goals on both ends. Jim has been instrumental in bringing ideas to the table to help both entities reach their goals.

Jim is extremely passionate about his role at UH and the related responsibilities. He works with people very well and gets things done.

Peer

#	Peer - Question	Needs Improvement	Effective	Very Effective	Don't Know
1	Effectively represents college/school/department to internal constituencies.	Avg: 4.3438 (32) Std Dev: 0.8877 Median: 3.0000			(0)
2	Effectively promotes college/school/department to outside constituents and larger community.	Avg: 4.6333 (30) Std Dev: 0.5467 Median: 4.0000			(2)
3	Articulates the position of the college/school/department with clarity and conviction.	Avg: 4.5313 (32) Std Dev: 0.6116 Median: 4.0000			(0)
4	Ensures that students are educated and prepared to meet the needs of the workforce.	Avg: 4.0588 (17) Std Dev: 0.6390 Median: 4.0000			(15)
5	Listens and responds to the needs/concerns of other colleges and constituents.	Avg: 4.2400 (25) Std Dev: 0.8616 Median: 3.5000			(7)
6	Develops a positive image of his/her college/school/department.	Avg: 4.4516 (31) Std Dev: 0.7111 Median: 4.0000			(1)
7	Promotes cross-college/school/department educational and scholarly activities.	Avg: 3.8571 (21) Std Dev: 0.7737 Median: 3.5000			(11)
8	Supports innovative and creative endeavors when working with other colleges/schools/departments, companies, agencies, and institutions.	Avg: 4.3846 (26) Std Dev: 0.8356 Median: 3.5000			(6)
9	Ensures college/school/department works well with other colleges/schools/departments to enhance the college/school/department.	Avg: 4.2414 (29) Std Dev: 0.8572 Median: 3.5000			(3)
10	Overall Evaluation	Avg: 4.3871 (31) Std Dev: 0.6052 Median: 4.0000			(1)

Written comments provide important and specific information that cannot be obtained by the questionnaire responses. You are strongly encouraged to offer both positive and constructive comments for areas needing improvement. Please take the time to explain your ratings and written comments.

Comments:

Average 4.34307

A very dedicated professional who believes in the University of Hawaii and the concept of the scholar-athlete.

The questions on this questionnaire don't match very well the responsibilities of the Athletics Director, but Jim still manages to receive the highest marks on each of them, in my view. He has been the best

Athletics Director among the three that I have worked with: the most knowledgeable, the one most familiar with the complexities and interests of the upper campus, the one who has been the most effective at establishing productive working relationships between the Athletics Department and all of its constituencies (the university administration, the general student body, the alumni, the student-athletes, the general public, the press, and the state administration, to name just a few), and the one who has been most alert to protecting and supporting the students who are under his charge because they happen to be athletes. He has also created a healthy, productive working environment within the Athletics Department, where everyone is aware of and comfortable with his or her own responsibilities. He is a leader who has made an enormous difference. He gets my highest commendation.

Jim is an excellent "face" for UH athletics.

For the most part, Jim has supported efforts by athletic staff to partner with Hawaiian programs. He has encouraged his staff to be culturally aware and respectful, and has made a commitment to ensure cultural protocol (when appropriate) is respected.

Given financial situations, this has been an increasingly tough position. It may be helpful to maintain a higher public profile and to emphasize the academic success of the student athletes and not just academic success. Jim is a team player and represents the Campus well.

Jim promotes the University better than anyone I know. His presence at every sporting event and his openness to the general public provides a positive assurance that each and every supporter is welcomed, needed, and important to his program. He works diligently to address the needs of the athletes, students, staff members, and administrators at the sacrifice of his own personal time. I applaud the University for his appointment as Athletic Director.

Athletic Directors have a difficult job in meeting the demands of alumni, boosters and the internal relationships expected within a University. Jim Donovan is O.K., but certainly not strong in meeting these multiple demands. Athletic Directors have the greatest opportunity to shape the "image" and "reputation" of the University than any other administrator (other than the President and Chancellor). The survey questions point to the very weaknesses of Mr. Donovan. I am confident other questions which focus on broader (less internal) responsibilities would improve his score significantly. With that said, I am hopeful he will be able to integrate athletics into the University community in a much stronger way. It would help to build much needed support for athletics from the students, faculty and administrators.

I have been particularly impressed with Jim's commitment to the academic success of student athletes. He is a very able administrator during trying times who bleeds green.

Jim provides "outside of the box" ideas and alternatives in addressing problems. He searches for win-win solutions that both parties can accept. It is always a pleasure to work with Jim on any issue.

I think Jim has done an outstanding job representing athletics to the community in general. Not sure if the same energy has gone into including the broad UHM community, especially faculty into the same agenda. While we are seeing fiscal responsibility return to athletics, I do not see the same level of support on the student side. It appears we are not putting additional funds into developing and finding more support levels for academics. The study center is the same size it was 11 years ago, the amount

spent has not increased with need, and pressure on long road trips remain.

I think it is time for a real focus on what and how we are support the academics of athletes. Do we have the right facilities, do we have enough technology, do we have enough people to do the job effectively to support our student athletics? I hope these become the main focus areas once the budget issues and past shortfalls are addressed.

On the athletics side, I think Jim has done an outstanding job in guiding Hawaii back into the Mountain West and the Big West. The very best case became real life, and Jim made it happen. Now bring the student athlete side into focus too.

Jim has done a superb job in a very difficult time.

I have worked with Jim for over 20 years, and while we have not always agreed on all matters on which we have worked, I have never had reason to question his integrity, character, administrative abilities and commitment to the University.

The job expectations of Mr. Donovan are unlike those of many other UHM staff. He has little opportunity, or need, to develop strong inter-departmental ties. However, I do think that, given the cultural diversity of athletic and of the State, that more could be made of the harmony that can develop within a multi-cultural athletic context and how that harmony could be instilled in other contexts on campus and in the community. Thus, I have ranked Mr. Donovan low on these items. I must make a plea here: These scores in no way suggest that he is doing a poor job. Perhaps there should be another option of "not applicable." And I mean no disrespect whatsoever to Mr. Donovan.

I find his public demeanor to be outstanding. He does articulate his program's goals and achievements exceedingly well. Because of the prominence of UH athletics in the media and public eye, he has an opportunity to promote his program in a way that is not afforded to other UH programs. This is a blessing and a curse, I am sure. I just hope that he remembers (and I'm sure he does) that UH athletics serves us all. Budget shortfalls are borne by us all. Surpluses would be celebrated by us all. So, athletics is not in its own bubble, but is part of a larger context.

Overall, I think Mr. Donovan is a breath of fresh air and I wish him every success.

Jim is an outstanding and highly effective AD. He is respected by his staff and by faculty, administrators and others throughout the campus. He has managed the program with effectiveness, bringing down the deficits and improving morale within the Athletics Department. We are fortunate to have him on campus. He did an outstanding job with the student activities fee process and is making positive steps to ensure the success of our student-athletes. Especially with the huge challenges ahead involving the change in conferences as well as increased demands to increase academic excellence of our student athletes he needs the continued support and participation of UH administration and faculty.

Jim took over the UH-Manoa Athletics Program at a very difficult time. Given the situation Jim inherited, I believe he has done an admirable job in elevating the program to new heights. While much more needs to be done, I believe Jim has the knowledge and experience to bring our program to levels where the State of Hawaii can be proud of.

Jim has done a great job given the difficult situation in which he was placed. The right man for the time.

Jim has encouraged his staff to develop new and more effective ways to ensure scholastic as well as athletic success for his students. I think this is difficult for an athletic director to do, especially in tight financial times, but Jim is a strong leader.

I personally believe that since Jim's appointment to AD, the entire UH sports program's visibility, viability, and recognition in Division IA athletics have risen in every sport, as well as, the stewardship in guiding the program out of its financial deficit that accumulated over the prior years under the former AD. I believe that the student athletes are also being well served and recognized in the programs based on the coaches ability to recruit prospective players. The recent implosion of the WAC by the defection of three conference schools could have dealt the final chapter in UH athletics, but due to Jim's foresight and understanding of college athletics the movement of the football team to the MWC and the remaining sports to the Big West has opened doors of opportunity for the department, the program, the school, and our community at large. There is a renewed sense of excitement and anticipation in UH sports that is bringing the program the national attention and recognition that is well deserved.

Unfortunately, I am not sufficiently familiar with Jim Donovan's performance to adequately evaluate him.

Jim is an excellent leader - and has been able to lead the department to another level and to work collaboratively with various offices. He has addressed issues and concerns directly - be accountable and responsible for not only his actions, but those within his department - and does so in a highly respectful manner. He cares passionately not only for Athletics and the employees, but for the overall Manoa campus - ensuring that Athletics continues to do its best to support the campus mission and goals. He is a team player - and a highly intelligent business person. A great leader for this department that must survive in such a dynamic industry.

I do not have much direct contact with Jim Donovan, but I have always been impressed with his dedication, forthrightness and advocacy for the athletic program at UHM. He appears to be a team player and a capable administrator. He has been truthful about the financial difficulties facing his program.

Staff:

#	Staff - Question	Needs Improvement	Effective	Very Effective	Don't Know
I. Leadership					
1	Articulates and frames a shared vision for the future, based on the strategic goals and missions for the college/school/department, UHM and the University.				(0)
		Avg: 4.4615 (13) Std Dev: 0.6343 Median: 4.0000			
2	Develops and fosters creative and innovative solutions to college/school/department problems.				(0)
		Avg: 4.3077 (13) Std Dev: 0.6057 Median: 4.0000			
3	Builds a consensus within the college/school/department.				(0)
		Avg: 4.0769 (13) Std Dev: 1.0714 Median: 3.5000			
4	Fosters a work environment that promotes and supports open, respectful, honest discussions that contribute to effective decision-making.				(0)
		Avg: 4.1538 (13) Std Dev: 1.1666 Median: 3.0000			
5	Creates a respectful environment in which individuals work in partnership and demonstrate teamwork at all levels.				(0)
		Avg: 4.1538 (13) Std Dev: 1.1666 Median: 3.0000			
6	Creates an atmosphere of trust.				(0)
		Avg: 4.1538 (13) Std Dev: 1.1666 Median: 3.0000			
7	Has been effective in strategic planning and implementation.				(0)
		Avg: 4.0000 (13) Std Dev: 0.9608 Median: 3.5000			
8	Makes timely decisions and recognizes when decisions are required.				(0)
		Avg: 4.3077 (13) Std Dev: 1.0659 Median: 3.5000			
9	Takes risks and embarks on new and innovative directions to improve the college/school/department.				(0)
		Avg: 4.2308 (13) Std Dev: 1.0491 Median: 3.5000			
10	Works effectively with private citizens, companies, foundations, etc. to enhance gifts and resource support.				(2)
		Avg: 4.7273 (11) Std Dev: 0.4454 Median: 4.5000			
II. Administration and Management					
11	Develops and maintains budgets based on the strategic goals to be accomplished. Manages and allocates funds and makes budget decisions with responsibility and fairness.				(0)
		Avg: 4.2308 (13) Std Dev: 1.0491 Median: 3.5000			
12	Manages and makes good use of human, financial, and physical resources to accomplish teaching, research, and service goals for the college/school/department, UHM and the University.				(0)
		Avg: 4.2308 (13) Std Dev: 0.9730 Median: 3.5000			

- 13 Provides employees with frequent feedback about performance and attainment of goals. Provides coaching and identifies and supports training and development needs. Avg: 4.2500 (12) | Std Dev: 0.9242
Median: 3.5000 (1)
- 14 Is effective in resolving conflicts. Avg: 4.4615 (13) | Std Dev: 0.8427
Median: 3.5000 (0)
- 15 Creates and supports a friendly climate in offices and classes. Avg: 4.3077 (13) | Std Dev: 0.9911
Median: 3.5000 (0)

III. Communication

- 16 Effectively represents the college/school/department to University Administration. Avg: 4.6154 (13) | Std Dev: 0.6249
Median: 4.0000 (0)
- 17 Effectively represents the college/school/department to various constituency groups outside the University. Avg: 4.5000 (12) | Std Dev: 0.6455
Median: 4.0000 (1)
- 18 Keeps faculty, staff, and administrators informed about issues important to them. Avg: 4.3846 (13) | Std Dev: 0.9231
Median: 3.5000 (0)
- 19 Promotes open communication and is accessible to faculty, staff, students, and administrators. Avg: 4.0769 (13) | Std Dev: 1.2686
Median: 3.0000 (0)

IV. Diversity/EE/AA

- 20 Demonstrates commitment and leadership in advancing and supporting equal employment opportunity and affirmative action programs. Avg: 4.3636 (11) | Std Dev: 0.8814
Median: 3.5000 (2)
- 21 Demonstrates effective recruitment, retention and promotion of members of historically underrepresented groups. Avg: 4.2727 (11) | Std Dev: 0.8624
Median: 3.5000 (2)
- 22 Overall Evaluation Avg: 4.3846 (13) | Std Dev: 0.8356
Median: 3.5000 (0)

Written comments provide important and specific information that cannot be obtained by the questionnaire responses. You are strongly encouraged to offer both positive and constructive comments for areas needing improvement. Please take the time to explain your ratings and written comments.

Comments:

Average 4.29855

Jim genuinely cares about his staff and as busy as he is, takes the time to meet with us and is available at all times. He fosters positive relationships and has a great rapport with all staff.

Mr. Jim Donovan is doing a great job as our Athletic Director in keeping us moving forward in this ever changing Division I landscape. There are numerous challenges to sustaining a major Division I athletics program in the middle of the Pacific Ocean, and he has handled each challenge to the best of our

department and for the University of Hawaii.

Provides strong leadership and certainly has his heart in the right place. He has a real affinity for the university and the athletics department and wants the best for both. He does not shy away from challenges and attacks problems aggressively. Overall, a solid administrator.

Jim has done an outstanding job of providing leadership for the Athletics Department. He has the perfect set of skills for the position. Jim develops and nurtures relationships within the Department and with key external constituencies including donors, media, legislators, and others. He has developed and implemented a strategic plan for the Department. The corporate culture has been improved by placing emphasis on communication, being transparent and clear performance expectations and evaluation. He has enhanced revenue generation by developing and implementing new strategies. Jim has taken on a very challenging job and has exceeded expectations.

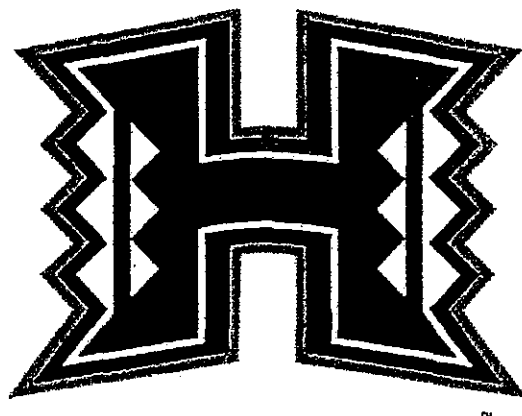
Very effective administrator who builds trust and confidence inside the dept. Easy to communicate with and very accessible.

Jim is a great leader. He has done an outstanding job during difficult financial times and he is a great people person. I trust him, respect and highly admire him :)

OPERATIONAL REVIEW

**University of Hawai'i at Mānoa
Athletics Department**

June 30, 2009



**University of Hawai'i at Mānoa Athletics Department
Operational Review
June 30, 2009**

OVERVIEW

I was asked by the University of Hawai'i Office of Internal Audit to conduct a review of the University of Hawai'i at Mānoa Athletics Department (Athletics Department) operations. My extensive experience in Intercollegiate Athletics having served as an Athletics Director for 29 years at four different institutions serve as strong qualifications to conduct this external review. I served as Athletics Director for the University of Wyoming for five years and Fresno State University for nine years. Both of the previous institutions were in the Western Athletic Conference (WAC) and have provided me with extensive knowledge of the inner-workings and institutional relationships of the Western Athletic Conference. My resume is included at the end of this report (See Exhibit 1). I worked with Mr. Glenn Shizumura, Director of the Office of Internal Audit, on this report. I read and analyzed numerous documents to prepare this report. Also, I spent Monday, March 1 through Thursday, March 4 on campus. During this time I conducted 22 interviews with stakeholders, coaches, athletic administrators, campus people and external constituents of the University. Those interviewed are listed at the end of this report (See Exhibit 2). Also, I visited all of the on campus athletic facilities.

The University of Hawai'i at Mānoa Athletics Department has a very successful athletics program. The Athletics Department faces many unique challenges in participating as a NCAA Division 1A athletics program. The University of Hawai'i at Mānoa (the University or University of Hawai'i) is the most geographically isolated NCAA Division 1A institution in the country. Athletics is part of the culture for the approximately 1.3 million people of the State of Hawai'i. The expectations are high for successful teams and winning teams serve as a sense of pride to the population. The athletics program is a window for the University to the community and provides young people with aspirations to become future student-athletes at the University. The Athletics Department constantly faces close scrutiny by the local population in terms of strong opinions regarding winning and losing, coaching changes and operation of the Athletics Department. Costs to run a Division 1A athletics program in Hawai'i are much higher than other similar institutions given the cost of living and distances traveled in order to recruit and compete with other institutions. It is important for the institution to define the type of program it desires in the future.

This report has been organized by areas pertaining to the operation of the Athletics Department. The final part of the report will deal with needs, cost saving ideas and revenue generating opportunities.

CONCLUSIONS

The Athletics Department faces many challenges in participating as a NCAA Division 1A program. The University of Hawai'i Athletic Department has a very successful athletics program. It is balanced in sport opportunities and meets the requirements of Title IX. The University is the most geographically isolated NCAA Division 1A institution in the country. Athletics is a part of the culture for the 1.3 million people of the State of Hawai'i. The athletics program is a window for the University to the community and is a model for young people. Many young people aspire to become future student-athletes at the University of Hawai'i. The Athletics Department is constantly scrutinized by the local population in terms of strong opinions regarding winning and losing, coaching changes and operation of the Athletics Department. Costs to run a Division 1A athletics program in Hawai'i are much higher than other similar mainland institutions given cost of living and distances traveled in order to recruit and compete with other institutions.

The University of Hawai'i Athletics Department is doing a good job in generating revenue. It is first in revenue generation when compared to other Western Athletic Conference institutions. The Athletics Department generated 81% of its total revenues from outside sources in fiscal year 2009. Jim Donovan, who was appointed Athletics Director in 2008, inherited a sizeable accumulated deficit from the previous Athletics Director. Also, the Athletics Department finished the 2009 fiscal year with a net loss. Interest is also assessed on overdrawn cash balances. Increasing income to the Athletics Department is a very complex equation. Ticket sales are very important to the budget and are affected by winning and losing teams in addition to the state of the economy. Increasing corporate donors is related to winning, the economy and corporations believing in the athletics program. Revenue from 'Ahahui Koa Ānuenuue is important for scholarships and, hopefully, will continue to increase its contributions. The success of

**University of Hawai'i at Mānoa Athletics Department
Operational Review
June 30, 2009**

the football team is a key element in increasing the budget. Uncontrollable costs affecting the budget are escalating airfares, guarantees, airline baggage assessment, recruiting, hotels, tuition, room and board, books, supplies and insurance. The University of Hawai'i is the only institution in the Western Athletic Conference that does not have a student athletic fee. The range of income from student athletic fees in the Western Athletic Conference (excluding the University's Athletic Department) is \$233,000 to \$4.7 million and \$344,000 to \$6.3 million in the Mountain West Conference (excluding BYU and TCU). Imposing a student athletic fee would be an enormous help in financing the athletics program. Reducing sponsored sports is not a solution and could have a profound effect on meeting the Title IX requirements. Also, cost saving from reducing the number of sponsored sports is temporary solution to a long-term problem. The University of Hawai'i needs to define the type of program it desires in the future. The strategic plan that was completed in July 1, 2009 is a good start in defining the athletics program.

The Athletics Department's top-level administration is outstanding. They are very committed to moving the athletics program forward in terms of success in sports, mentoring young people and graduating student-athletes. They are working closely together with heart, passion and drive to grow the Athletics Department in terms of excellence. Jim Donovan is the right person for the Athletics Director's position. He is well liked by the external constituency, University personnel and the employees of the Athletics Department. Mr. Donovan faces many challenges, but he is very skilled and the correct fit for the University.

The University of Hawai'i Athletic Department has quality facilities, but many are in need of maintenance. Most of the facilities need some type of painting, plaster replacement, concrete repairs and other types of maintenance. Lockers in most venues need to be replaced and new showers installed in some of the locker rooms. The Nagatani Academic Center needs to be expanded to accommodate the approximately 450 student-athletes in the athletics program. The administration area on the first floor needs to be reconfigured to create a more healthy work environment. Storage area also needs to be addressed in the work areas. I have proposed a solution to this problem in the Facility Needs section of this report. Another proposal is to build a practice gym for the intercollegiate athletics program. The facility could solve many conflicts in scheduling practices and individual workouts. Additionally, the facility could eliminate early morning practices for the student-athlete prior to attending class. The Clarence T.C. Ching Complex will be a wonderful addition to the athletics venues. I have expressed my ideas on this new venue in the Facility Needs section of this report. The Athletics Department has the potential to get better and quality facilities are a big part of attracting student-athletes and meeting needs of student-athlete welfare. I would strongly recommend the Athletics Department develop a master plan for current and future facilities.

University of Hawai'i at Mānoa Athletics Department
Operational Review
June 30, 2009

The Athletics Department faces many challenges in the future. The major obstacle for the athletics program is finding ways to increase the revenue needed to administer a quality NCAA Division 1A program. Football success and an improved economy are key factors in generating more revenue. Also, income from other sports such as men's basketball and volleyball and women's volleyball are vital for the future. Corporate sponsorships and income from 'Ahahui Koa Ānuenue are vital for the future budget. Expenses in all areas will continue to escalate and the Athletics Department must meet this challenge in order to maintain its successful program. Forgiving the deficit and implementing a student athletic fee would be an enormous help. Again, the University must decide the type of athletics program that is best suited for the institution. To compete in Division 1A will require more money in the future. I strongly believe the athletics program is important to the institution and its success is very beneficial to all stakeholders.

Gary A. Cunningham

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EMPLOYMENT

1995-2008	Athletics Director	University of California, Santa Barbara
1986-1995	Athletics Director	Fresno State University
1981-1986	Athletics Director	University of Wyoming
1979-1981	Athletics Director	Western Oregon State College
	Associate Professor	
	Health and Physical Education Chair	
1977-1979	Head Basketball Coach	University of California, Los Angeles
1975-1977	Assistant Vice-Chancellor	University of California, Los Angeles
	Alumni Association	
1967-1975	Assistant Basketball Coach	University of California, Los Angeles
	under John Wooden	
1965-1967	Lecturer, Physical Education Department	University of California, Los Angeles
	Freshman Basketball Coach	

EDUCATION

Doctor of Education in Education Administration
University of California, Los Angeles

- Examination fields for Doctorate:
 - Administration
 - Higher Education
 - Comprehensive Curriculum
- Units beyond Masters Degree: 116

24 units course work in Education
University of Southern California

Master of Science in Physical Education
University of California, Los Angeles

Bachelor of Science in Physical Education
University of California, Los Angeles

California Credentials:

- General Secondary

- Junior College Supervisory - Life Credential

PROFESSIONAL ORGANIZATION MEMBERSHIP

- Phi Delta Kappa
- National Association of Basketball Coaches
- National Association of Collegiate Directors of Athletics

HONORS AND AWARDS

- UCSB Baseball Gino Filippin Tenth Man Award, 2008
- Santa Barbara Athletic Round Table President's Award, 2008
- UCSB Men's Basketball Sixth Man Award, 2008
- District 8 National Athletic Trainers Association Special Service Award, 2007
- United States Sports Academy Carl Maddox Sports Management Award, 2006
- NCAA Division IAAA Lifetime Achievement Award named the Gary Cunningham NCAA Division I AAA Lifetime Achievement Award, 2006
- NCAA Division IAAA Lifetime Achievement Award, 2005
- NACDA James J. Corbett Award, 2003
- NACDA Hall of Fame Induction, 2003
- The Sports Management Institute Honorary Degree, 2003
- UCLA Hall of Fame Induction, 2001
- National Association of Collegiate Gymnastics Coaches Award for Outstanding Service, 2001
- NACDA / NIT Athletics Director Award, 2000
- NACDA Division IAA/IAAA Athletics Director of the Year, 1998-1999
- All American Football Foundation "General Robert N. Neyland Lifetime Achievement Award," 1998
- Honorary Lieutenant Colonel Aid-de-Camp in the Alabama State Militia, 1991
- Merit Award for Distinguished Service by University of Wyoming Trustees, 1986 (only fifth such award given by the University Trustees)
- Certificate of Appreciation for Patriotic Civilian Service awarded by U.S. Department of the Army, 1986
- Named one of the 200 Outstanding Athletes in Los Angeles during past 100 years by the Mayor of Los Angeles, 1981
- Pacific 8 and District 8 (West Coast) Basketball Coach of the Year, 1978-1979
- Inglewood High School Alumnus of the Year, 1978
- Commissioned a Kentucky Colonel by the Governor of Kentucky, 1974
- Doctoral Dissertation received second place award - North American Society for Psychology of Sport and Physical Activity, 1971

BOARDS AND COMMITTEES

National Collegiate Athletic Association (NCAA)

- National Association of Basketball Coaches Blue Ribbon Committee, 2008
- College Basketball Partnership Committee, February 2005-July 2008
- Chair of NCAA Business and Finance Cabinet, 1997-1999

- Basketball Marketing Sub-Committee of the Division I Business and Finance Cabinet, 1997-1999
- Chair, Men's Committee on Committees, 1993-1995
- Division I Basketball Selection Committee, 1988-1994
- Women's Issues Committee, 1986-1994
- Committee on Basketball Officiating, 1984-1994; Chair, 1990-1994

National Association of Collegiate Directors of Athletics (NACDA)

- NACDA Real Estate Committee, 2004-Present
- Continuing Education Chair, 2003-July 2008
- Selection Committee for NACDA Athletics Director of the Year Award, 1999-2003
- Investment Committee, 1997-Present
- Finance and Management Committee, 1986-Present; Chair, 1997-July 2008
- Long Range Planning Committee, 1998-Present
- Honors and Awards Committee, 1994-Present; Chair, 2004-July 2008
- Division IA Football Directors Liaison, 1994-July 2008
- Pre-season Football Games Committee, 1988-2003
- President, 1988-1989
- First Vice President, 1987-1988
- Second Vice President, 1986-1987
- Executive Committee, 1983-1986

Big West Conference (1986-1992 and 1996-Present)

- Chair, Big West Championships Committee, 2007-July 2008
- Chair, Planning Committee, 2006-2007
- Executive Committee, 2003-2005
- Chair, Basketball Issues Committee, 1999-July 2008
- Chair, Men's Basketball Administrative Liaison Committee, 1997-2006
- Compliance Committee, 1997-1999
- Chair, Basketball and Football Officiating Committee, 1989-1992
- Television Committee, 1988-1992
- Executive Committee, 1987-1992
- Post Season Basketball Tournament Committee, 1986-1992
- Long Range Planning Committee, 1986-1992, 1996-1997
- Compliance Committee, 1986-89
- Search Committee for new Commissioner, 1988
- Promotions Committee, 1987
- Drug Education Committee, 1987
- Distribution of Television Monies Committee, 1987

Western Athletic Conference (1981-1986 and 1992-1995)

- Men's Basketball Tournament Committee, 1994-1995
- Chair, Championships Committee, 1993-1995
- Finance Committee, 1993-1994
- Television Negotiating Committee, 1992-1995
- Compliance Committee, 1992-1995; Chair, 1993-1995
- Long Range Planning Committee, 1984-1985

- NCAA Rules Committee, 1984
- Finance Committee, 1983-1985

Other Organizations/Committees

- Trustee, United States Sports Academy, 2006-present
- Division IAAA Executive Committee, January 2003-July 2008
- Consultant, Basketball Travelers Incorporated, 1999-present
- U.S.A. International University Sports Federation, 1990-Present; President, 1996-Present
- Santa Barbara Mayor's Sports Committee, 1997 - 2001
- Mountain Pacific Sports Federation Committee, 1995
- Santa Barbara Round Table Executive Committee, 1995-Present
- President's Cabinet at Fresno State, 1993-95
- Consultant, Creative Sports Services, 1993-94
- President's Developmental Audit Committee, Fresno State University, 1991-1993
- Honorary Chair, Fresno Heart Association "Open Heart Open", 1991; Committee, 1987-1988
- Fresno Citizens for Community Enrichment Committee, 1988-1992
- Fresno Cultural Tax Committee, 1988-1992
- Consultant to Raycom Management Group, Inc., 1987-1990
- Treasurer, Division IA Athletics Directors' Association, 1990-1992
- Division IA Athletics Directors' Executive Committee, 1986-1990
- Consultant to review Illinois State University Athletics program, July 1988
- President's Blue Ribbon Committee for future facilities - Fresno State, 1987-1988
- College Football Association Board of Directors, 1985-1986
- President's National Council for Health and Fitness, 1980-1981
- Study Team to review the University of Oregon Department of Intercollegiate Athletics, appointed by the Oregon State Board of Higher Education, 1980-1981
- Spaulding Advisory Board, 1977-1979
- UCLA Chancellor's External Affairs Committee, Public Ceremonies Committee and Associated Students Board of Control, 1975-1977
- Westwood Community Relations Committee, 1975-1977

OTHER ACCOMPLISHMENTS/SPECIAL CIRCUMSTANCES

- Chef de Mission for the United States delegations to:
 - Summer World University Games in Bangkok, Thailand, August, 2007
 - Winter World University Games in Torino, Italy, January 2007
 - Summer World University Games in Izmir, Turkey, August 2005
 - Winter World University Games in Innsbruck, Austria, January 2005
 - Summer World University Games in Daegu, Korea, August 2003
 - Winter World University Games in Tarviso, Italy, January 2003
 - Summer World University Games in Beijing, China, August 2001
 - Winter World University Games in Zakopane, Poland, January 2001
 - Summer World University Games in Palma Majorca, Spain, July 1999

- Winter World University Games in Slovakia, January 1999
 - Summer World University Games in Sicily, August 1997
 - Winter World University Games in Korea, January 1997
 - Winter World University Games in Jaca, Spain, February 1995
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- UCLA Basketball Coaching:
 - Head Coach, 1977-1979: Two Pacific 8 Championships and 50 wins-8 losses
 - Assistant Coach under John Wooden, 1965-1975: Nine Pacific 8 Championships, Eight National Championships, One third place finish in the NCAA
 - Freshman Head Coach, 1965-1971: 101 wins-15 losses

PROFESSIONAL PRESENTATIONS

National Association of Collegiate Directors of Athletics Conventions

- Presentation with Canon Design on the new UCSB Intercollegiate Athletics Building, November 2007
- As First Vice President, I was responsible for all programming and obtaining keynote and luncheon speakers; also chaired a presentation entitled "Football and Basketball Scheduling", June 1988
- Chaired a presentation entitled "Football and Basketball Scheduling", June 1987
- Chaired a panel entitled "NCAA" Legislative Compliance and Enforcement Procedures" and a presentation entitled "Crowd Control", June 1986
- Chaired a panel entitled "Recruiting from an Athlete's Point of View", June 1985

Other

- Keynote Address - Montana State Superintendents' Annual Meeting, September 1985
- Presentation on Alumni Programming - Council for the Support and Advancement of Education Convention, June 1976
- Numerous speeches and presentations

International

- Conducted a workshop on administration and NCAA structure for executives in the Republic of China, December 2005
- Taught 15-day course on basketball fundamentals to 75 coaches in Spain, July 1987
- Organized and participated in a 15-day course for 60 of the best players in Spain, July 1974; also followed up on the youth program implemented in 1972
- Organized and participated in a youth development program for future Olympic players in Spain; helped organize a program stressing fundamentals for the entire country, July 1972