



STATE OF HAWAII
BOARD OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

June 21, 2016

TO: Finance and Infrastructure Committee

FROM: Grant Chun
Committee Chairperson, Finance and Infrastructure Committee

AGENDA ITEM: Committee Action on Friends of the Library of Hawaii
Memorandum of Understanding

I. BACKGROUND

On September 16, 2014, the Board of Education ("Board") adopted a Memorandum of Understanding ("MOU") with the Friends of the Library of Hawaii ("FLH") which had a termination date of June 1, 2015. At this same meeting, the former State Librarian stated that the intent was to present the MOU to the Board for approval on an annual basis.

The Hawaii State Public Library System and FLH have requested that the Board enter into a new MOU. The substance of the new MOU is basically the same as the one the Board approved on September 16, 2014, and similar to the previous agreement, is non-exclusive.

A draft of the new MOU is attached as **Exhibit A**. This draft has been reviewed and approved by the FLH Executive Director Nainoa Mau, State Librarian Stacey Aldrich, and the Board's Deputy Attorney General (as to form).

II. RECOMMENDATION

That the Finance and Infrastructure Committee recommend that the Board approve the Memorandum of Understanding with the Friends of the Library of Hawaii, which is attached as **Exhibit A** to this memorandum dated June 21, 2016 and authorize Board Chairperson Lance Mizumoto to sign the Memorandum of Understanding on behalf of the Board.

Exhibit A

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE BOARD OF EDUCATION OF THE STATE OF HAWAII,
THE FRIENDS OF THE LIBRARY OF HAWAII, AND
THE HAWAII STATE PUBLIC LIBRARY SYSTEM**

This Memorandum of Understanding ("Agreement") between THE BOARD OF EDUCATION OF THE STATE OF HAWAII ("Board of Education"), THE FRIENDS OF THE LIBRARY OF HAWAII ("FLH"), and the HAWAII STATE PUBLIC LIBRARY SYSTEM ("Public Library System") describes the relationship between the parties and the fundraising services provided by FLH for the benefit of the Public Library System. The Agreement is effective as of the date of the last executed signature of this Agreement, and shall terminate on June 1, 2020 unless extended or terminated in accordance with its terms.

This Agreement is being entered on a non-exclusive basis and does not preclude the parties from entering into similar agreements with other parties.

WHEREAS, the Public Library System consists of public library branches ("Public Libraries") established by the Constitution of the State of Hawaii; and

WHEREAS, the FLH is an I.R.C. section 501(c)(3) corporation and is organized under the laws of the State of Hawaii as a non-profit corporation; and

WHEREAS, in fulfilling its purposes, and not for profit, FLH is organized to, among other activities, promote and support the Public Library System, and to receive, hold, manage, and expend private funds for the benefit of the Public Libraries and their programs; and

WHEREAS, FLH has provided support to the Public Library System since its founding in 1879 and continues to provide services, support, and enhancement for Public Library System activity; and

WHEREAS, the Public Library System desires that FLH continue to provide such services, support, and enhancements, and FLH desires to provide the same;

NOW, THEREFORE, the parties recognize and agree as follows:

ARTICLE I
Definitions

1.1 "Agreement" shall mean this Agreement as made effective on the date provided herein.

1.2 "Board of Education" shall mean the Board of Education of the State of Hawaii.

- 1.3 “Board of Directors” shall mean the Board of Directors of the Friends of the Library of Hawaii.
- 1.4 “Concession” shall mean the grant of the privilege to conduct operations involving the sale of goods or services to the public.
- 1.5 “Contract” or “grant” shall mean any contract, grant, cooperative agreement, or other agreement between the Public Library System or FLH and an outside sponsoring agency relating to services, research, materials, or a training project.
- 1.6 “Deferred gifts” shall include those gifts that represent a legally binding deferred pledge agreement or other irrevocable document consummated with FLH.
- 1.7 “Enterprise activity” means activity intended to generate revenues, and includes, without limitation, copier machines, vending machines, concessions, retail operations, and the like.
- 1.8 “Fiscal Year” or “FY” shall mean the period from July 1st of a calendar year through June 30th of the following calendar year.
- 1.9 “FLH” shall mean the Friends of the Library of Hawaii.
- 1.10 “FLH Affiliate[s]” shall have the meaning as defined in Section 312-3.8(g).
- 1.11 “Gift” shall mean assets, including cash, that are transferred irrevocably to FLH to support its mission.
- 1.12 “IRS” shall mean the Internal Revenue Service.
- 1.13 “Net proceeds” shall mean all revenues generated from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility minus the costs incurred in generating those revenues, including but not limited to payments to third-party vendors and any expenses associated with operating the organization.
- 1.14 “Public Library” shall mean an individual public library branch within the Hawaii State Public Library System; “Public Libraries” shall mean the collective of public library branches within the Hawaii State Public Library System; “Public Library System” shall mean the Hawaii State Public Library System, State of Hawaii.
- 1.15 “Section 312-3.8” shall mean the most current version of Hawaii Revised Statutes, Section 312-3.8 that is in effect at the time the Agreement is being construed.

- 1.16 “State Librarian” shall mean the State Librarian of the Hawaii State Public Library System.

ARTICLE II

Responsibilities of the Parties

- 2.1 Scope. FLH shall serve the entire Public Library System. Consistent with the Public Library System’s goals and plans, FLH will seek to maximize private gifts for the benefit of all Public Libraries.
- 2.2 Fundraising and Stewardship. FLH shall provide fundraising and stewardship services for the Public Library System. These services shall include, but not be limited to, the solicitation of gifts outright and deferred and the stewardship of the gifts to ensure they are used to fulfill the specifications of the donor. FLH shall provide the necessary services to be a central fundraising organization for the Public Library System. It shall conduct campaigns for Public Library System priorities, and provide central services to raise funds, manage assets and administer gift accounts for the Public Library System. It shall also serve as a resource for the Public Library System’s development officers.
- 2.3 Services and Activities. FLH shall provide specific services and activities, including, but not limited to the following:
- a. Coordinating fundraising activity on behalf of the Public Libraries.
 - b. Soliciting contributions to benefit all units and branches of the Public Libraries.
 - c. Receiving gifts that are cash or are converted to cash for the benefit of any program at any Public Library.
 - d. Processing gifts, including cash and non-cash contributions. (In instances where gifts of property are to be retained and used in a specific program or activity at the Public Libraries, FLH shall facilitate the transfer of such gifts to the Public Libraries.)
 - e. Accepting deferred gifts, bequests, and estate gifts to be held in trust and managed for the benefit of a Public Library or the Public Library System.
 - f. Providing Internal Revenue Service (“IRS”) auditable receipts for gifts to FLH.
 - g. Acknowledging and thanking all donors for gifts to FLH.
 - h. Managing relationships with prospective donors.

- i. Managing investments.
 - j. Providing accounting services for endowments and expendable funds received.
- 2.4 Gift Solicitation and Receipt of Gifts. FLH shall be responsible for the coordination of gift solicitation and receipt of gifts, to ensure appropriateness, legality, and minimization of conflicting appeals. The Public Library System will determine the goals and purposes of gift solicitation on its behalf.
- 2.5 Protection of Public Library System Interests. FLH shall prudently manage its affairs and investments so as to protect the interests of the Public Library System. FLH shall maintain at all times adequate levels of insurance to protect assets held in trust for the Public Library System, as well as take other actions necessary to ensure their safety.
- 2.6 Other Services. If requested by the Public Library System, FLH may provide other services that FLH determines are consistent with its articles and bylaws, do not violate applicable laws and regulations, and will provide benefit to the Public Libraries.
- 2.7 Standards. FLH will conform to reasonable legal, ethical, and professional standards for tax-exempt charitable organizations, pertaining to the solicitation, management, and accounting of gifts and meeting of obligations to donors. FLH will also protect the legitimate interests of donors related to confidentiality, gift records, acknowledgement of gifts for tax purposes, and reporting requirements to the IRS.
- 2.8 Government and Quasi-Governmental Agencies. All support from federal, state, local, and foreign governmental or quasi-governmental agencies will be solicited and accepted directly by the Public Library System unless application can only be made by a non-profit corporation.
- 2.9 Acceptance of Gifts. Contracts, grants, and gifts from individuals and private organizations to FLH may be solicited and accepted directly by the Public Library System, or FLH as permitted by law. All gifts will be used by FLH in support of its mission.
- 2.10 Donation Restrictions. FLH shall provide in writing to the Public Library System any terms and conditions provided by a donor at the time a gift is made and accepted. The Public Library System is responsible for appropriately and prudently expending gifts received by FLH, in accord with any donor-designated restrictions as represented by FLH.
- 2.11 Use of Logo. FLH's use of the name, logo, and other indicia of any Public Library for any purpose shall be in accord with the Public Library System's policy and procedures.

- 2.12 FLH Annual Audit. FLH shall submit to the State Librarian a copy of its annual audited financial statements as prepared by a certified public accountant, a copy of its annual report to the State Department of Commerce and Consumer Affairs, a copy of its tax returns, a copy of the annual audit of its trust fund, the Friends of the Library of Hawaii Trust Fund (“FLH Trust Fund”), and an annual financial report of affiliate fundraising on state property as required by Hawaii Revised Statutes, Section 312-3.8 (“Section 312-3.8”). FLH shall require an annual audit of the FLH Trust Fund, the results of which shall be submitted to the Board of Education and the legislature not more than thirty days after receipt by the FLH. FLH shall retain for a period of six years, any documents, papers, books, records, and other evidence that is pertinent to the FLH Trust Fund, and permit inspection or access thereto by the Board of Education, the State Librarian, the Department of Accounting and General Services, state legislators, and the state auditor, or their duly authorized representatives.
- 2.13 Transfer of State Funds. The Public Library System shall not deposit or transfer to FLH any state appropriated Public Library System funds, or funds properly payable to the Public Library System, as required under the laws of the State of Hawaii. However, this shall not preclude the Public Library System from making payment to FLH for obligations, rights, goods, or services pursuant to this or any other properly executed agreement between FLH and the Public Library System.
- 2.14 Employees and Volunteers. The Public Library System and FLH will provide direction to all employees and volunteers concerning adherence to the spirit and terms of this Agreement, and to the policies and procedures that may result from this Agreement.
- 2.15 Examination of Accounts. FLH shall permit the State Librarian or designee to examine annually all program accounts managed by FLH for the benefit of the Public Libraries.
- 2.16 Copies of Proposals. If FLH serves as the applicant or fiscal agent on any fundraising proposals (including contract and grant proposals) that are prepared by Public Library System staff members, a copy of the proposals shall be forwarded to the executive director at FLH for review and approval, in accordance with the policies enumerated in this Agreement.
- 2.17 Communications with Donors. Any communication with a potential donor shall follow the policies enumerated in this Agreement. If desired, the Public Library System may request the advice or assistance of FLH.

ARTICLE III

Compensation; Professional Investment Management Fee

FLH has established the FLH Trust Fund (“Trust Fund”). All funds contributed to the FLH Trust Fund raised through statewide contracts, including income and capital gains earned therefrom,

shall be used exclusively for the programs of Public Libraries. The FLH Trust Fund is administered by a private trust company as trustee, and FLH shall pay all reasonable account fees assessed by the investment management consultant or the private trust company from the Trust Fund.

ARTICLE IV

Enterprise Activities on Public Library Property

- 4.1 **Enterprise Activity.** FLH and its affiliates (“FLH Affiliate[s]”), as defined in Section 312-3.8(g), Hawaii Revised Statutes, have the right to conduct enterprise activity on Public Library property. “Enterprise activity” means activity intended to generate revenues, and includes, without limitation, copier machines, vending machines, concessions, retail operations, and the like.
- 4.2 **Third Party Licensing Agreements.** FLH, with the approval of the State Librarian, in consultation with the Board of Education, may enter into a licensing agreement with a third party as long as any revenue generated by this activity goes directly to support the programs of the Public Libraries pursuant to the procedures set forth in Section 312-3.8. Any such licensing agreement will be in accordance with Section 312-3.8. No fees are charged for use of the facilities; however, all net proceeds received by FLH will be deposited in accordance with Section 312-3.8.
- 4.3 **Use of Facilities and Proceeds.** Each FLH Affiliate is authorized to use Public Library facilities for book sales, concessions, vending machines, and other activities at its respective library branch(es). All proceeds go directly to that FLH Affiliate for support of the programs of its library branch(es). FLH shall require that all net proceeds received by the FLH Affiliate be deposited into an account in a federally insured financial institution with such account being held in that organization’s name.
- 4.4 **Collection Proceeds.** All proceeds from books discarded from public library collections are to be used to the benefit of the Public Libraries pursuant to the procedures set forth in Section 312-3.8. Notwithstanding any law to the contrary, all net proceeds received by FLH or any FLH Affiliate from the operation of any concession, vending machine, or other activity within, or on the grounds of, any Public Library facility shall be deposited into an account in a federally insured financial institution, with such account being held in that organization’s name and controlled exclusively by that organization, which shall have the sole authority and discretion in the disbursement of its funds.

ARTICLE V
Miscellaneous

- 5.1 Amendments. This Agreement may be amended or supplemented by and only by written instrument duly executed by each of the parties.
- 5.2 Severability of Provisions. In the event a court or other tribunal of competent jurisdiction at any time holds that any provision of this Agreement is invalid, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.
- 5.3 Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 5.4 Entire Contract. This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party.
- 5.5 Applicable Law/Forum. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each party agrees and consents that any dispute arising out of this Agreement, however defined, shall be brought in the State of Hawaii in a court of competent jurisdiction.
- 5.6 Compliance with Laws. The parties shall comply with all applicable laws and regulations governing the activities covered by this Agreement, including without limitation the provisions of Chapter 312 of the Hawaii Revised Statutes.
- 5.7 Termination. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days' prior written notice of termination.
- 5.8 Powers relating to Funds. Nothing herein is intended to limit the powers of the Public Library System with respect to collection and/or disbursement of appropriated funds and funds donated directly by the public.
- 5.9 Entity Status. The parties recognize and agree that FLH is not a department or entity of the State of Hawaii, and the performance of such services and provision of such support does not evidence that FLH is an instrumentality or agent of the State. FLH functions as a private organization despite any participation in cooperative endeavors with the Public Library System, such as an annual giving program, capital campaigns, deferred giving, and special campaigns. The parties recognize and agree that FLH directs and controls its own program and activities.

- 5.10 Authority of Board of Education. The Board of Education is entering into this Agreement pursuant to the powers enumerated in Hawaii Revised Statutes, Section 312-2, as in effect on the date of this agreement.
- 5.11 Authority of Public Library System. The Public Library System is entering into this Agreement pursuant to the powers enumerated in Hawaii Revised Statutes, Section 312-2.1(d).
- 5.12 Indemnification. FLH shall defend, indemnify, and hold harmless the State of Hawaii, the Board of Education and Public Library System, 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 therefore, arising out of or resulting from the acts or omissions of FLH, FLH affiliates, or employees, officers, agents, or subcontractors of FLH or FLH affiliates.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by appropriate representatives of each as of the dates indicated.

BOARD OF EDUCATION OF THE STATE OF HAWAII

By _____

Its _____

DATE: _____

FRIENDS OF THE LIBRARY OF HAWAII

By _____

Its _____

DATE: _____

HAWAII STATE PUBLIC LIBRARY SYSTEM

By _____

Its _____

DATE: _____

GOVERNOR DAVID IGE

DATE: _____

Approved As to Form:

Deputy Attorney General