



January 24, 2013

Per the request of the Senate Committee on Ways and Means and the Senate Special Committee on Accountability, the following responses to the Special Committee's recommendations are submitted on behalf of the Board of Regents and University administration. The responses are numbered in accordance with the recommendations in the Special Committee's report.

1. This recommendation is not directed to the University. The University is audited annually by an independent accounting firm, and the Advisory Task Group formed by the Board of Regents is currently working to review and further improve the University's financial and operational management, as discussed in more detail in response (5) below.
2. This recommendation is not directed to the University.
3. This recommendation is not directed to the University. However, the University is mindful of the Committee's comments and is applying additional scrutiny to procurements for services to ensure that they are conducted in accordance with the Procurement Code and that any use of procurement exemptions under the Code is in accordance with the terms and purposes of such exemptions. With respect to the use of the expert witness exemption to procure investigators in employment-related matters, the University has used that process in the past because such investigators, though often attorneys, are not being retained to provide legal services and are frequently called upon and are expected to testify as experts regarding the investigations they conducted. The University is re-examining that process in light of the Committee's comments and consulting with other agencies, including the Office of the Attorney General, to develop an alternate approach to enable the prompt, efficient, and compliant procurement of investigators when necessary.
4. The Board of Regents concurs that a review of policies and procedures is appropriate. Its work to date is summarized in (5) below.
5. The Board of Regents is engaged in extensive review of policies and procedures through its Advisory Task Group, committees, and the full Board.

The Advisory Task Group on Operational and Financial Controls Improvement was established by the Board of Regents at its meeting on September 5, 2012. Phase 1 of its review focused on the operational and financial processes of the financial transactions relating to the

Stevie Wonder concert. The scope of that phase included the following:

- Review of applicable University policies, procedures and delegation of authority specific to the procurement, contracting, cash disbursements and related financial transactions associated with the Stevie Wonder transaction. In addition to State of Hawaii statutes and regulations where applicable, existing at the time of the Stevie Wonder transaction.

- Review of University policy and procedure revisions or proposed revisions resulting from the Stevie Wonder transaction.

- Specific to the Stevie Wonder transaction noted above, assess compliance with the applicable University policies, procedures and related internal controls.

- Identification of deficiencies in the design of the University's operational and financial processes, internal controls, and/or policies and procedures, specific to the planned Stevie Wonder transaction.

The Task Group issued its report on Phase 1 of its work to the Board of Regents' Committee on University Audits and made presentations of the report in public sessions of the Committee on University Audits and the Board of Regents on November 15, 2012. Excerpts from the report are as follows:

“The Athletics Director assumed authority for entering the Agreement and responsibility for ensuring that the University and BPE complied with the terms of the Agreement. The Athletic Director authorized the Associate Athletics Director for Administrative Services to sign the contract on his behalf. The SSC Manager also assumed direct responsibility for ensuring compliance with the terms of the Agreement. The SSC Manager and Associate Athletics Director were responsible for ensuring that the Athletics Department had the necessary authority to authorize the \$200,000 payment and were responsible to see that necessary or relevant contract terms had been complied with prior to the sale of tickets and payment to Epic. As noted above, the Agreement required the BPE provide cancellation insurance, and evidence of such insurance was not provided to the University before tickets were sold or before the \$200,000 was disbursed to Epic. The Assistant Athletics Director for Business Operations has broad responsibilities for the financial and business activities of the Athletics Department and had the responsibility to make inquiries regarding whether the terms of the Agreement had been complied with prior to approving the \$200,000 payment.”

“The Athletics Department did have authority to approve disbursements on behalf of the

University Athletics Department and it was under that authority that it initiated and caused the \$200,000 payment to Epic from the agency (custodial) account.”

“Notwithstanding the good intentions of individuals within the Athletics Department to benefit the University, a lack of judgment and taking overall responsibility by individuals involved with these financial transactions resulted in the loss to the University.”

A copy of the report is provided as Attachment 1 which provides details of the Task Group’s work, findings, and recommendations from Phase 1 of its review.

The University administration has reported to the Board’s Audit Committee on its responses to the Advisory Task Group’s Phase 1 report in a public session of the Committee on University Audits on December 12, 2012. A copy of the response is provided as Attachment 2 and includes actions taken and revisions to policies and procedures implemented by administration as well as plans addressing the recommendations of the Task Group’s report.

The Board authorized reconstitution of the Advisory Task Group for Phase 2 of its work, which is anticipated to involve broader-scope review and recommendations regarding the University’s operational management and organizational structure, at its meeting on January 24, 2013. The scope of this additional work will be discussed and approved at the February board meeting.

The Board’s committees are also engaged in reviewing policies and practices in their areas of responsibility. The Committee on Personnel met on January 23, 2013, to discuss potential recommendations to the full Board for revisions to the Board of Regents policies regarding professional improvement leaves and leaves pending investigation. The administration also discussed with the committee the scope of a proposed executive/managerial compensation study.

Prior to the current reviews, the Board of Regents conducted a full review and updating of its Policies during the 2010-2011 academic year.

Also, on a related matter that does not involve any policy change but may be of interest in light of the Special Committee’s discussion, Chancellor Apple has fully assumed responsibility for all aspects of UH Mānoa Athletics, including representation on the Board of Directors of the Mountain West Conference. The conference transition was completed with the December 9-10, 2012 Mountain West Board meeting, at which Chancellor Apple represented UHM.

6. The Board of Regents receives training on policies and procedures through orientation sessions provided to new Board members in accordance with Section II.E. of the Board's Bylaws, which provides as follows:

New Board members shall be scheduled to receive an orientation within one month of the beginning of their term. The orientation shall include, among other things, an overview of the University system, BOR responsibilities, accreditation standards for Board governance, and BOR policies and practices. New Board members shall also be provided with a Reference Guide covering these and other topics.

In addition to the BOR Reference Guide, Board members (and the public) can access the Board's policies at www.hawaii.edu/offices/bor/policy/index.html. Furthermore, all action items going to the board cite the appropriate policies.

The Board also uses the Association of Governing Boards (AGB), the national organization of higher education governing boards, as a source of guidance and expertise, through circulation of AGB materials to Board members, Board members' participation in AGB programs, and periodic workshops with an AGB expert, Dr. Terry MacTaggart. Dr. MacTaggart most recently conducted an in-person workshop with the Board of Regents on October 18, 2012.

The Board may schedule further training, which may include additional work with Dr. MacTaggart, in light of the Committee's recommendations.

7. The Board of Regents Office will be working with the Office of Information Practices (OIP) to schedule such training.

8. The Board of Regents and University understand that the Special Committee on Accountability has asked OIP to review this matter and are open to OIP's guidance. The Special Committee received both unredacted and redacted copies of documents, and University employees' names were not redacted from materials relating to the concert matter (other than a small number of inadvertent redactions of former Chancellor Virginia Hinshaw's name) to provide transparency regarding the acts and omissions of University employees. The University has not received or denied any public or media requests for further, unredacted copies of documents produced to the Committee.

9. The Board of Regents concurs with this recommendation and is following it.

10. The Board of Regents will report in open session on its discussions in executive session.
11. The Board of Regents notes the Committee's recommendation. The Board's minutes are prepared from audiotapes of its meetings and are quite extensive and detailed. The Board will give additional attention to ensuring that they are as clear as possible.
12. The Board of Regents will consider this recommendation as it prepares for the President's annual evaluation. The Board's current evaluation process is based on guidance from AGB regarding best practices.
13. The Board of Regents recognizes its responsibility under the State Constitution and statutes to oversee the management of the University, including appropriate transparency, accountability, and operational management. The Board is actively engaged in meeting its responsibilities and believes that its current statutory authority is sufficient to enable it to do so. Should the Board determine that additional legislation is needed, it will so inform the Legislature.
14. The Board of Regents will consider this recommendation in determining how to ensure that appropriate monitoring and follow-up measures are in place. The Board anticipates that its Advisory Task Group will be asked to provide specific recommendations in this area.
15. The Board of Regents concurs with the intent of this recommendation and is working with the University administration to establish an appropriate format for expenditure reporting of this sort.
16. Detailed information is attached as requested. Where appropriate, the attachments include explanatory notes describing how the requested data was compiled and what is included.
 - (A): Please see Attachment 3.
 - (B): Please see Attachment 4.
 - (C): Please see Attachment 5.
 - (D): The Office of General Counsel is currently discussing and negotiating the projected fees and costs of outside legal counsel for Fiscal 2014 with each outside legal counsel. Since

each matter is based upon different facts and circumstances, at different stages of development and litigation, and require different legal strategies that are tailored to each matter, in depth discussions with outside legal counsel must occur in order to determine a reasonable projection of fees and costs. The University will provide the projected costs as soon as OGC completes these discussions and negotiations with outside legal counsel. All outside legal counsel have been contacted with regard to determining the projected fees and costs of outside legal counsel for Fiscal 2014.

With respect to items (E) and (F), the university does not have specific “public relations departments” and instead has units that include multiple functional areas such as communication, marketing, government relations, website management, media production, and others. The functional areas vary from unit to unit. We have assembled and are attaching information regarding staffing costs for the UH System Office of External Affairs and University Relations and the communications-related sections of the UH Manoa Chancellor’s office and UH Hilo Chancellor’s office, which are the largest units with communications-related functions. The explanatory notes provide additional detail regarding the range of functions performed these offices. We are working on a more complete and detailed system-wide response to inquiries from the Committee on Ways and Means, which will also supplement this response as to other, smaller units and individuals (e.g. executives and managers) whose duties include communications, public outreach, development, government relations, etc. That response will be forthcoming shortly.

(E) – (F): Please see Attachment 6.

(G): Please see Attachment 7.

(H): The University System does not currently project any procurement of external public relations services for the 2013-2014 fiscal year, other than as required and funded by external grants. Recruiting and outreach expenses will be incurred by individual campuses and units. For example, the University expects to continue promotion relating to the Hawaii Graduation Initiative. The University does not have a comprehensive list or projection of planned efforts of that nature at this time.

17. The Board of Regents has delegated its rights and privileges to retain outside legal counsel to the UH Administration on the University's behalf. There are three circumstances by which outside legal counsel is retained by the UH Administration - (1) there is a legal or ethical conflict which would prevent the Office of General Counsel from representing parties involved

in a University dispute; or (2) the matter is one of a specialized area in which the Office of General Counsel does not have specific expertise or specialization; or (3) the matter is so complex or would severely impact the daily operations of the Office of General Counsel because of the complexity or size of the matter in which the University is involved.

After appropriate procurement of outside legal services, the Office of General Counsel negotiates the scope of work and the hourly rates of outside legal services in consultation with the "client" (UH Administration). A legal services contract with the selected attorney/firm is then executed. In matters in which the Office of General Counsel may have a conflict, OGC attorneys may be "screened" and the selected attorney/firm may discuss the scope of services and the hourly rates with the UH Administration directly. OGC assists the UH Administration with the processing of the paperwork.

When legal billing invoices are received, the Office of General Counsel reviews the detailed legal billing invoices and either approves the legal billing invoices for payment, or determines that the legal billing invoices are not reasonable or necessary or are outside the scope of legal services. The Office of General Counsel does reject legal billing invoices which are not reasonable or necessary or are outside the scope of legal services. The UH Administration may also review the legal billing invoices and make a determination that the legal services are not reasonable or necessary or are outside the scope of legal services. The UH Administration may also reject legal billing invoices. In matters in which the Office of General Counsel may have a conflict, the UH Administration reviews and approves legal billing invoices. The Office of General Counsel assists the UH Administration with the processing of the paperwork.

If the Office of General Counsel is not satisfied with the quality of the legal services rendered, then it consults with the UH Administration in terminating the legal services contract. In matters where the Office of General Counsel may have a conflict, the UH Administration would make a determination on whether it is satisfied with the legal services rendered and may make a determination to terminate the contract.

When and if external public relations services are needed, they are contracted in accordance with the University's contracting processes, including a defined scope of services and receipt of required internal approvals. The office responsible for administration of the contract (which could be a campus or system-level office, depending on the nature of the contract) is responsible for monitoring compliance with the contract and for verifying that services were delivered as agreed before payment is made. These contractual processes also apply indirectly in the case of subcontracts, as the primary contractor will be monitored for

contract compliance both as to services performed directly and services of subcontractors.

Most RCUH public relations contracts are specifically grant-oriented and grant-mandated in nature. Each grant generally has specific required public relations/communications/public outreach requirements and specifications. These services are retained on a case-by-case basis as required by the grant and paid for by the grant. The scope of services dictates what services are required, the timetable in which they are required, and the reporting processes for satisfaction of service delivery. Each P.I. (Principal Investigator) of the grant supervises the planning, execution and delivery of these services and either approves or denies payment until services are delivered as specified. When RCUH enters into a services contract in support of a University project that is not specifically grant-funded, both the University Principal Investigator and RCUH fiscal personnel are involved in formation and management of the contract, including verification that services were delivered as agreed.

18. In February, 2011, the University hired its current Associate Vice President for External Affairs and University Relations and tasked her to build a communications organization to effectively inform the public about the work being done at the University. In March of 2012, she presented a report and proposed plan to the Board of Regents. A copy of that presentation is Attachment 9. It has been substantially executed as presented to date, with a few elements outstanding. The 2013-2014 Communications Plan (with no additional expenditures) will closely mirror this plan. Our video unit is up and operational, providing regular feeds to local newscasts, local television stations, and as pre-game and half-time roll-ins during UH sports events on cable tv. Our regular "News at UH" email blasts are delivered weekly to subscribers. Additional upgrades to our website and social media platforms will be ongoing. The Board of Regents and University leadership have also conducted a "listening tour" of UH campuses seeking feedback from the community. Those sessions have been constructive.

Attachment 1

**University of Hawaii System
Board of Regents
Advisory Task Group on Operational and Financial Controls Improvement**

Report to the Board of Regents' Committee on University Audits

November 12, 2012

Mr. James H. Q. Lee, Chair
Committee on University Audits
2444 Dole Street, Bachman Hall, Room 209
Honolulu, Hawaii 96822

Dear Chair Lee:

The Advisory Task Group on Operational and Financial Controls Improvement is pleased to submit its report on the completion of Phase 1 of its work.

The Advisory Task Group ("ATG") was established by the Board of Regents ("BOR") to "...oversee, provide input, monitor activities, and guide the scope of an evaluation and improvement initiative specific to the significant operational and financial processes and related internal controls of the University of Hawaii." The ATG is to conduct its work in phases. Phase 1 focused on evaluating the operational and financial processes associated with the planned Stevie Wonder Concert ("Concert"). The ATG will determine a more detailed scope and timing of subsequent phases after this report on Phase 1 has been reviewed by the Committee on University Audits.

The ATG is comprised of nine members: five from the Board of Regents and four *ex-officio* members with expertise in financial processes and organizational internal controls. The members of the ATG are:

- James H.Q. Lee, Vice Chair, Board of Regents
- Barry Mizuno, Regent
- Saedene Ota, Regent
- Jan N. Sullivan, Regent
- Benjamin A. Kudo, Regent
- Terri Fujii, Office Managing Partner, Honolulu Office of Ernst & Young LLP
- Cory Kubota, Assurance Principal, Accuity LLP
- Patrick Oki, Managing Partner, PKF Pacific Hawaii LLP
- Lawrence D. Rodriguez, Business Consultant

As previously stated, Phase 1 focused on the operational and financial processes of the financial transactions of the Concert and the scope of Phase 1 was as follows:

- Review the investigative report prepared by the Factfinders (“Factfinders Report”), including all related attachments and exhibits.
- Review of applicable University policies, procedures and delegation of authority specific to the procurement, contracting, cash disbursements and related financial transactions associated with the Stevie Wonder transaction. In addition to State of Hawai’i statutes and regulations where applicable, existing at the time of the Stevie Wonder transaction.
- Review of University policy and procedure revisions or proposed revisions resulting from the Stevie Wonder transaction.
- Specific to the Stevie Wonder transaction noted above, assess compliance with the applicable University policies, procedures and related internal controls.
- Identification of deficiencies in the design of the University’s operational and financial processes, internal controls, and/or policies and procedures, specific to the planned Stevie wonder transaction.
- Where deemed necessary, interview University management, members of the BOR, the Factfinders and other relevant individuals. In addition, review other applicable documents that will supplement the above noted procedures.

KMH LLP (“KMH”) was contracted by the University to assist the ATG by conducting an evaluation and review of the financial transactions related to the Concert and submitting a report to the ATG. KMH in consultation with the ATG, identified four financial transactions relating to the Concert. The four transactions were:

- The “Agreement between University of Hawaii at Manoa and BPE Productions, Inc., for the use of the Stan Sheriff Center;”
- The sale of Concert tickets by the Athletics Department Ticket Office with the proceeds deposited to an agency (custodial) account for the benefit of BPE;
- The \$200,000 disbursement of funds via wire transfer from the agency (custodial) account to Epic Talent LLC by the University Disbursing Office; and
- The refunding of Concert ticket proceeds to the various ticketholders and transferring of funds from the Athletics Department Revolving Fund to the agency (custodial) account used to hold proceeds from ticket sales on behalf of BPE.

KMH has completed its work and has issued its report dated November 9, 2012. Included in its report are recommendations that reflect business practices meant to improve internal controls, processes, and operations at the University. The KMH report is attached to and made part of this summary report to the Board of Regents’ Committee on University Audits. Based on the review performed by KMH and the information provided in KMH’s report, the ATG has prepared this

summary of its observations, conclusions and recommendations. I am pleased to inform you that this report has the unanimous support of the ATG.

The ATG agreed to address the following seven questions related to the financial transactions of the Stevie Wonder Concert.

1. What were the relevant agreement(s) entered into, who were they with and what was each party responsible for?

There was one relevant agreement, the Facilities Use Agreement (“Agreement”) between the University and BPE that allowed BPE to use the Stan Sheriff Center (“SSC”) for a “Stevie Wonder Concert”. The fee for the use of the SSC was to be a percentage of the proceeds: “10% of gross revenues from ticket sales or 75% of the net revenue after expenses, whichever is greater.” The Agreement was drafted by the University’s Office of General Counsel (“OGC”) and signed by the Associate Athletics Director for Administrative Services for the Director of the Athletic Department. There were no other agreements between the University and BPE. Requirements related to the University’s responsibilities to print and sell tickets, collect and deposit tickets sales proceeds, disburse funds on behalf of BPE, or to make payment of ticket refunds were not documented. There were no other agreements between the University and any other party (i.e., Epic) that may have been involved with the Stevie Wonder Concert.

BPE was responsible for the Concert at the SSC. Per the Agreement, BPE was also responsible to obtain event cancellation insurance before any Concert tickets were sold. The University’s role was to provide BPE with the use of the SSC. The Athletics Department, however, became more involved with the Concert as the Concert was promoted as an event for the benefit of UH Manoa Athletics and the UH Athletics Ticket Office (Ticket Office) oversaw the ticket sales and refunds. The Athletics Department authorized the \$200,000 disbursement to Epic on behalf of BPE from the proceeds of the ticket sales held in the agency (custodial) account.

Also see KMH report, Sections 2.1.2; 2.1.3; 2.2.2; 2.3.1; and 2.4.1.

2. Who was authorized to approve each of the transaction(s) and was there the proper authorization?

Based on existing policies, only the UH Manoa Chancellor was authorized to sign the facilities use agreements, yet the contract was drafted for the Athletics Director’s signature by the OGC. As noted above, there were no other agreements between the University and BPE other than for the use of the SSC. The Athletics Department had no specific agreement with BPE for the printing and sale of tickets. Neither the Factfinders nor KMH could determine who authorized the printing and sale of the tickets; nor is there any written documentation to support the decision and authorization to print and sell the tickets by the Ticket Office. The proceeds from the ticket sales were held in a University agency (custodial) account for BPE. The authorization from BPE to disburse the \$200,000 payment to Epic was done via email. The Athletics Department did have authority to approve disbursements on behalf of the University Athletics Department and it was under that authority that it initiated and caused the \$200,000 payment to Epic from the agency (custodial) account.

Also see KMH report, Sections 2.1.5; 2.2.2; 2.3; 2.3.3; and 2.3.4.

3. What responsibility was each person assuming when authorizing each part of the transaction(s)?

The Athletics Director assumed authority for entering the Agreement and responsibility for ensuring that the University and BPE complied with the terms of the Agreement. The Athletic Director authorized the Associate Athletics Director for Administrative Services to sign the contract on his behalf. The SSC Manager also assumed direct responsibility for ensuring compliance with the terms of the Agreement. The SSC Manager and Associate Athletics Director were responsible for ensuring that the Athletics Department had the necessary authority to authorize the \$200,000 payment and were responsible to see that necessary or relevant contract terms had been complied with prior to the sale of tickets and payment to Epic. As noted above, the Agreement required that BPE provide cancellation insurance, and evidence of such insurance was not provided to the University before tickets were sold or before the \$200,000 was disbursed to Epic. The Assistant Athletics Director for Business Operations has broad responsibilities for the financial and business activities of the Athletics Department and had the responsibility to make inquiries regarding whether the terms of the Agreement had been complied with prior to approving the \$200,000 payment.

Also see KMH report, Sections 2.1.6 and 2.3.4.

4. Were the policies and procedures followed as was documented at that time?

Two policies with respect to facilities use agreements were not followed. Without the written delegation of authority from the UH Manoa Chancellor to the Athletics Director, the Agreement between the University and BPE should have been prepared for the signature of, and signed by the UH Manoa Chancellor. Additionally, a rental deposit is normally required, however a deposit was not required by the Agreement.

There are no policies or procedures with respect to the University acting as an agent with respect to printing and selling tickets and the receipt and disbursing funds for others. The only guidelines for disbursing funds are for the purchase of goods and services for the University. However, the ATG has determined that this transaction was not to be a procurement of goods or services and was also determined not to be a fundraising campaign that would have had to follow the policies and procedures of the UH Foundation. The University Disbursing Office was provided with the necessary documentation to disburse the \$200,000 to Epic following the existing disbursing procedures. One of the documents supporting the disbursement was an invoice prepared by Athletics Department personnel (pro-forma invoice) as no invoice was received from BPE or Epic requesting the \$200,000 payment. The approval to disburse the funds was received from BPE via email.

See also KMH report, Sections 2.1.1; 2.1.2; 2.1.5; 2.1.7; 2.1.8; 2.2.1; 2.3; 2.3.1; 2.3.2; 2.3.3; and 2.4.1.

5. Where did there appear to be a lack of policies and procedures or where were the existing policies and procedures unclear or ambiguous?

Policies involving the use of University facilities (facilities use agreements) need to be enhanced and procedures for entering into such agreements should be developed. There are no policies or procedures for the University to follow when it takes on the responsibility of acting as an agent for those presenting events at UH facilities. Additionally, policies and procedures over the printing of tickets and processing of refunds need to be enhanced.

See also KMH report sections 2.1.3; 2.2.1; 2.3.1; 2.3.2; and 2.4.1.

6. Was the manner in which the transaction(s) completed unusual or out of the ordinary – wire transfer, use or non-use of standard forms or agreements, etc.?

While wire transfers from the Athletics Department are unusual (there were only four others during the fiscal year ended June 30, 2012), they are not unusual for the University Disbursing Office. The \$200,000 wire transfer had all the necessary approvals by the Athletics Department for the University Disbursing Office to process the wire transfer. The “pro-forma” invoice used to support the payment was not unusual as such pro-forma invoices are used by other UH departments, but the pro-forma invoice for the Epic disbursement was not readily identifiable as being “pro-forma”. The University needs to establish procedures and standardized forms for use when an invoice in support of a disbursement is not available. Transactions for which pro-forma invoices are usually used relate to the purchase of a goods or services in certain situations (e.g., athletic event referee fees, off-duty police officers for traffic control, and replenishment of postage meters).

The University does not frequently act as an agent for those putting on events at its facilities. The University allows other organizations to use its facilities, but does not generally print or sell tickets for such events. Despite its infrequency, policies and procedures are needed. Additionally, events such as concerts, mixed martial arts fights and other such uses of University facilities are infrequent and the facilities use agreements are not consistently prepared for the Chancellor’s signature, thus ensuring the Chancellor has exercised the authority and taken the responsibility for such agreements.

See also KMH report, Sections 2.1; 2.1.5; 2.2.1; 2.2.2; and 2.3.3.

7. What appeared to be the key failures in UH policy or practice in the transaction(s)? For example, not having the cancellation insurance?
 - Facilities use agreements required a cash deposit. No deposit to cover expenditures in excess of ticket sales was obtained. No deposit was required in the Agreement.
 - The Agreement was processed through the Athletics Department although such agreements, by policy, are the responsibility of the Chancellor’s office and there was no written delegation of such authority to the Athletics Department.
 - “Due diligence” on BPE was lacking and/or not documented.

- The required cancellation insurance was not obtained before selling tickets and before the disbursement to Epic. Those that were responsible for managing the Agreement and ensuring compliance with the Agreement did not obtain evidence of BPE obtaining the cancellation insurance.
- Documentation as to who authorized the printing of the tickets and the sale of the tickets was not available.
- A pro-forma invoice was used to document the requested disbursement that was not identified as a pro-forma invoice.
- There is a lack of policies and procedures for the various aspects of similar such events.
- See also KMH report sections 2.1.3; 2.1.4; 2.1.5; 2.1.6; 2.1.7; 2.2.3; and 2.3.4.

Summary

There was only one agreement between the University and BPE for the use of the SSC. The Agreement was drafted by the University's Office of General Counsel for signature by the Athletics Director and not the UH Manoa Chancellor. The Agreement did not require a deposit, but did require that BPE obtain event cancellation insurance, which BPE did not obtain. The proceeds from the sale of the tickets were held in a University agency (custodial) account. The proceeds in such accounts belong to the organizer of an event, BPE, but remain under University control.

There was at least \$200,000 in ticket sales proceeds in the agency (custodial) account at the time the wire transfer was made to Epic. The request from BPE to release \$200,000 to Epic was made via email. The wire transfer was done using a pro-forma invoice that was not identified as such. The responsibility for the \$200,000 and the refunds to the ticketholders is ultimately the responsibility of BPE. However, as noted above, due to the University's involvement in the sale of the tickets and in the promotion of the Concert for the benefit of the Athletics Department, the Athletics Director announced that the University would refund the tickets sold. As a result, the University took on the responsibility to replenish the \$200,000 paid from the agency (custodial) account out of its Athletics Revolving Fund.

Notwithstanding the good intentions of individuals within the Athletics Department to benefit the University, a lack of judgment and taking overall responsibility by individuals involved with these financial transactions resulted in the loss to the University.

The ATG has not reviewed the policy changes, actions, or other steps taken by the University, which includes addressing the above matters since the concert was cancelled.

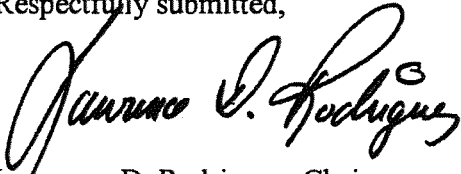
The ATG is requesting the University Administration to submit a response to this report which should include plans, action items, and next steps to address issues identified. The response should be submitted by the next scheduled meeting date of the Committee on University Audits. In its response, the University should also consider the next steps suggested in the KMH report.

Phase 2 of the ATG work will include determining if the University's current policies (Board, Executive, and Administrative) require clarification and revision with respect to the assignment

of responsibility, delegation of authority, and accountability for duties performed by University personnel. Subsequent to the review and acceptance of this Phase 1 report, the ATG will schedule its next meeting to discuss and develop specific steps and timeline for the completion of Phase 2. Prior to beginning actual work on Phase 2, the ATG will provide its plan for Phase 2 to the Committee on University Audits.

The ATG would like to acknowledge the cooperation and considerations provided it and KMH by the management and staff of the University to enable us to complete Phase 1 and provide this report.

Respectfully submitted,

A handwritten signature in black ink, reading "Lawrence D. Rodriguez". The signature is written in a cursive style with a large, stylized initial "L".

Lawrence D. Rodriguez, Chair
Advisory Task Group on Operational and Financial Controls Improvement

K M H L L P

**University of Hawaii Board of Regents
Operational and Financial Controls Improvement
Advisory Task Group**

Report of Findings & Recommendations – Phase I



November 9, 2012

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1. BACKGROUND, PROJECT SCOPE, AND WORK PERFORMED

Background

The University of Hawaii System (“University”) comprises a number of campuses, colleges and programs on various islands throughout the State. The University’s operations are primarily decentralized, with varying degrees of authorities delegated to the different colleges, programs, and offices. The overall responsibility for the University’s operations is vested in the Office of the President. Supporting that office are a number of institutional administrative offices dealing with legal, accounting and finance, facilities, and other University functions. Operating responsibilities for the various campuses have been delegated to Chancellors of those campuses. The Chancellor of the University of Hawaii at Manoa (“UH Manoa”) oversees the Office of Intercollegiate Athletics, UH Manoa. The UH Manoa Director of Intercollegiate Athletics, commonly referred to as the “Athletics Director,” is responsible for the management of the Office of Intercollegiate Athletics (“Athletics Department”).

During June 2012, the UH Manoa, through the Athletics Director, entered into an agreement with BPE Productions, Inc. (“BPE”) for BPE to use the Stan Sheriff Center (“SSC”) for the purpose of a Stevie Wonder Benefit Concert (“Concert”). The Concert was initially publicized as a “fundraiser” for UH Manoa as the rental fee revenue would benefit the Athletics Department. On June 23, 2012, the first set of ticket sales were processed by the UH Manoa Athletics Department Ticket Office¹. On June 26, 2012, the University Disbursing Office processed a wire transfer of \$200,000 to Epic Talent LLC (“Epic”) at the request of BPE². The \$200,000 payment came from advance ticket sales for the Concert.

In early July 2012, the University President and the Athletics Director were contacted by another talent agent that informed them that it, and not Epic, was the agent for Stevie Wonder and that it had no knowledge of, nor had entered into any agreement for Stevie Wonder to perform at the SSC. After management of the University determined that Stevie Wonder would not perform the Concert, the Athletics Director announced publicly on July 10, 2012 that the Concert would not take place and the ticketholders would be refunded their money³. Attempts to recover the \$200,000 from Epic have not been successful. Until these funds are recovered, and absent that recovery, the University Athletics Revolving Fund has made up the shortfall.

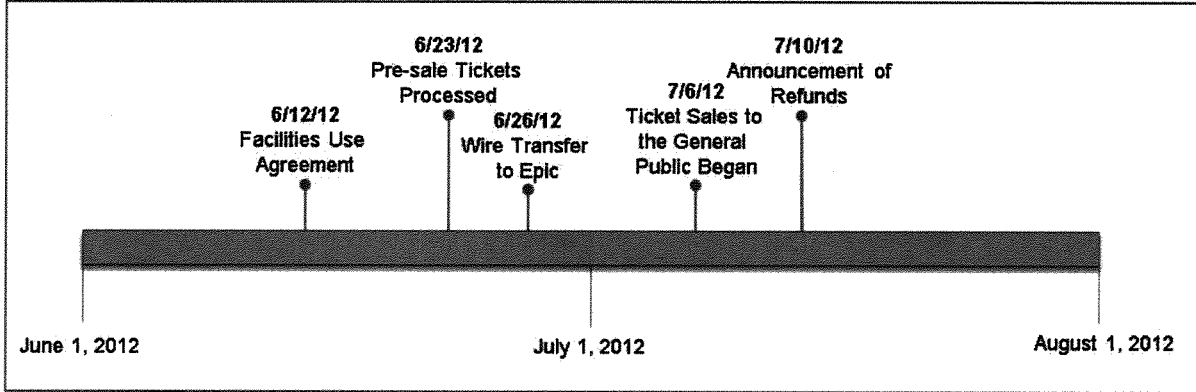
¹ KMH Interview with the Athletics Department Ticket Office Manager, October 1, 2012.

² Factfinders Report, Paragraph 172.

³ Factfinders Report, Paragraph 226.

The following is a timeline of the key financial transactions described above:

**Figure 1.0
 Timeline of Key Financial Transactions⁴**



On July 13, 2012, three days after the cancellation was announced, the Board of Regents and the University President appointed a local law firm, Cades Schutte (“Factfinders”), to “investigate the possible inappropriate management, planning, organization, and administration of the Stevie Wonder benefit concert” and report to the University of Hawaii Board of Regents (“BOR”) and University President. The Factfinders issued its report on August 21, 2012.

On September 5, 2012, the BOR approved the formation of an Operational and Financial Controls Improvement Advisory Task Group (“ATG”) to assist the BOR with its oversight of the University’s actions and improvements to problematic policies, internal controls, and practices that were identified during the investigation by the Factfinders. The purpose and primary function of the ATG is to oversee, provide input, monitor activities, and guide the scope of an evaluation and improvement initiative specific to operational and financial processes and related internal controls of the University.

The University subsequently contracted KMH LLP (“KMH”) to consult with and assist the ATG in developing its report for submission to the BOR’s Committee on University Audits. That Committee will then submit the report to the BOR.

Project Scope

Given the project’s significance and timing, the ATG decided to conduct its work in phases. The initial scope for Phase I was to assess and evaluate the operational and financial processes that resulted in the failed Stevie Wonder Concert. The ATG agreed the scope of Phase I would be as follows:

- Review the investigative report prepared by the Factfinders (“Factfinders Report”), including all related attachments and exhibits.

⁴ Factfinders Report and Ticket Office Manager

- Review of applicable University policies, procedures, and delegation of authority specific to the procurement, contracting, cash disbursements and related financial transactions associated with the Stevie Wonder transaction, in addition to State of Hawai'i statutes and regulations where applicable, existing at the time of the Stevie Wonder transaction.
- Review of University policy and procedure revisions or proposed revisions resulting from the Stevie Wonder transaction.
- Specific to the Stevie Wonder transaction noted above, assess compliance with the applicable University policies, procedures and related internal controls existing at the time of the Stevie Wonder transaction.
- Identification of deficiencies in the design of the University's operational and financial processes, internal controls, and/or policies and procedures, specific to the Stevie Wonder transaction. This may involve performing walk-throughs and reviewing documents to corroborate an understanding of the operational and financial processes and related internal controls.
- Where deemed necessary, interview University management, members of the BOR, the Factfinders and other relevant individuals. In addition, review other applicable documents that will supplement the procedures noted above.
- Preparation of a report summarizing the work performed, observations, conclusions and recommendations, if any. Also recommendation of next steps for the ATG to consider in guiding the improvement initiatives in subsequent phases to strengthen the University's internal controls and related operational and financial processes.

Summary of Work Performed

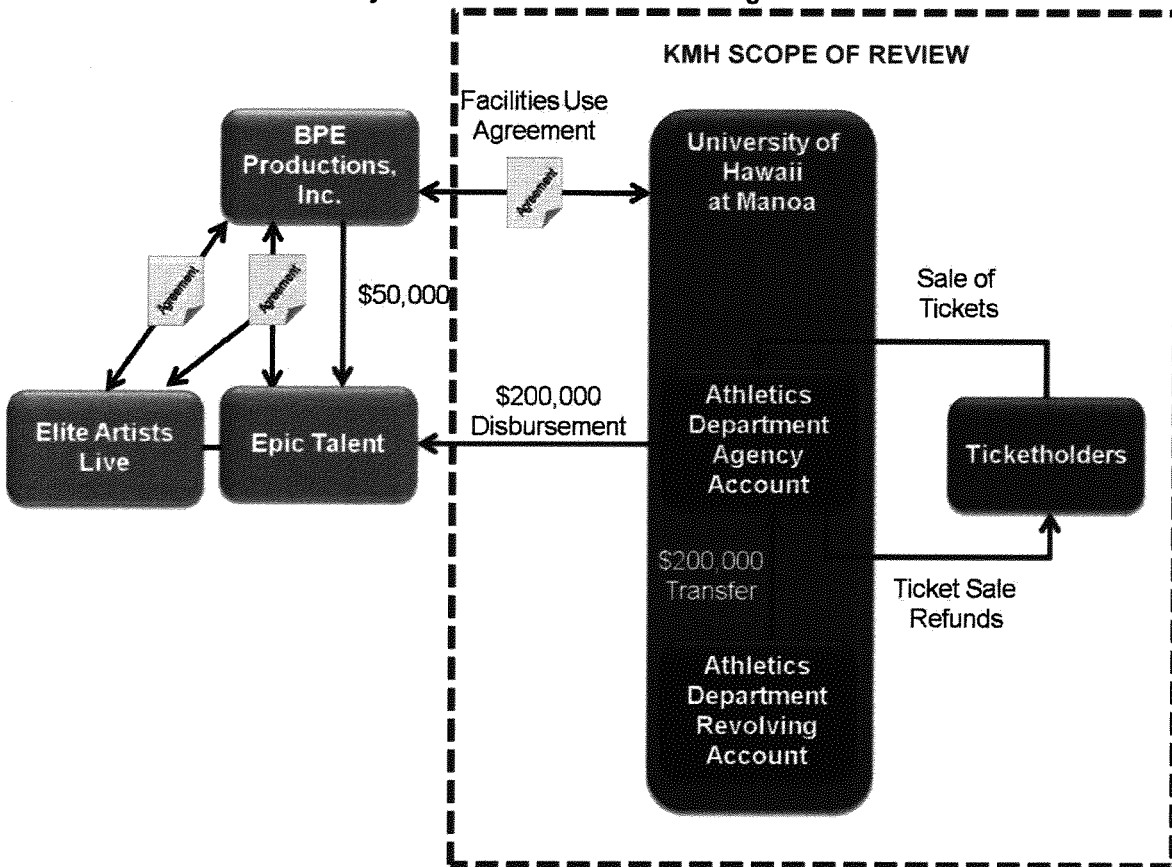
To avoid duplicating effort, the ATG directed KMH to utilize the Factfinders Report and accompanying attachments and exhibits as the basis for its work. The work performed by KMH was as follows:

- Reviewed the Factfinders Report and accompanying attachments and exhibits.
- Reviewed the following chapters of Hawaii Revised Statutes:
 - Chapter 40, Audit and Accounting
 - Chapter 103, Expenditure of Public Money and Public Contracts
 - Chapter 103D, Hawaii Public Procurement Code
 - Chapter 304A, University of Hawaii System
- Reviewed applicable University policies and procedures promulgated by the BOR, Executive Offices, Athletics Department, and Financial Management Office.
- Conducted additional interviews of the personnel at the Office of General Counsel, Athletics Department, Financial Management Office, as well as the University President. We sought additional information from the then Manoa Chancellor. We also interviewed the President and the Chief Financial Officer ("CFO") of the UH Foundation ("Foundation"). See **Appendix I** for the list of individuals interviewed and contacted.

- Obtained additional documentation considered necessary to further our understanding of the policies, procedures, and practices applicable to the financial transactions surrounding the event.

Presented below in **Figure 2.0** is a summary of the key financial transactions and agreements discussed in the Factfinders Report. The Factfinders Report included transactions and documents representing agreements between Epic, Elite Artists Live (“Elite”), who represented to be agents of Stevie Wonder, and BPE, the local promoter for the event. For purposes of conducting our work and as noted in the scope for Phase I, KMH focused on the *financial transactions* that were under the control and responsibility of the University. Other than the \$200,000 wire transfer disbursement of funds to Epic, the UH Manoa had no involvement with, nor entered into, any signed agreements with Epic and Elite. As such, financial or other transactions directly between BPE, Epic, and Elite were excluded from our review.

Figure 2.0
 Key Financial Transactions and Agreements⁵



⁵ Factfinders Report and other documents obtained

The Agency Account depicted above is the account used periodically by the Athletics Department to account for moneys received and disbursed on behalf of others. These moneys do not belong to the Athletics Department and are accounted for separately in an Agency (or custodial) Account. The Athletics Department's Revolving Account is used for the various operating activities of the Department. Receipts include athletic ticket sales, concession revenues, contributions and other support received. Disbursements out of the Revolving Account include those for staff salaries and wages, utilities, athletic events, and other costs.

Agency funds "are used to account for situations where the government's role is primarily custodial, such as the receipt, temporary investment and remittance of fiduciary resources to individuals, private organizations, or other governments⁶." Accordingly, given the custodial relationship created by the use of agency (custodial) accounts, there should be a written agreement defining responsibilities governing the receipts and disbursements from the account.

For each *financial transaction*, we identified the applicable policies, procedures and practices and evaluated compliance, noting areas in which these policies, procedures, and practices were not complied with. We also noted deficiencies in the design of the respective operational and financial processes, internal controls, and policies and procedures.

⁶ Stephen J. Gauthier *Governmental Accounting, Auditing and Financial Reporting*, Chicago, IL, 2005.

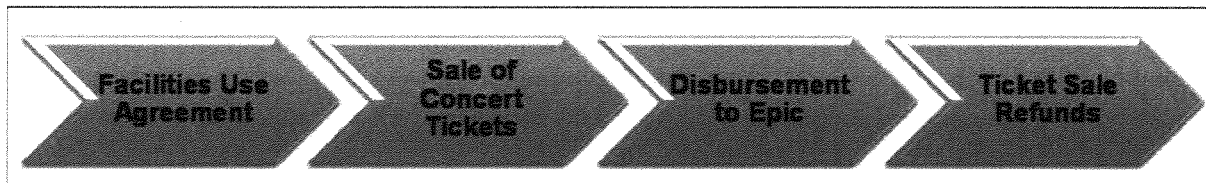
2. KEY FINANCIAL TRANSACTIONS & SUMMARY OF FINDINGS

Key Financial Transactions

There was a significant amount of information provided by the Factfinders relating to the failed concert event, but ultimately, there were four key financial transactions involving the University:

1. The entering of a contract between the UH Manoa and BPE for the use of the SSC for the purpose of the Stevie Wonder Benefit Concert (“Facilities Use Agreement” or the “Agreement”)
2. The sale of Concert tickets by the Athletics Department Ticket Office
3. The \$200,000 disbursement of funds via wire transfer to Epic by the University Disbursing Office
4. The refunding of Concert ticket proceeds to the various ticketholders and transferring of funds from the Athletics Department Revolving Fund to the agency (custodial) account used to hold proceeds from ticket sales on behalf of BPE

Figure 3.0
Key Financial Transactions



Summary of Findings

Our findings are summarized here and discussed in more detail in each of the following sections. Certain findings occur in two or more of the financial transactions and will, therefore be repeated in subsequent sections. In summary, our findings are:

- The Concert was intended to be a single event and not a *fundraising campaign* that would require the involvement of the Foundation. Since the Concert was not a fundraising campaign but rather an event to benefit the Athletics Department through a facilities rental fee charged to the promoter and ticket purchasers would receive no tax benefit, the University’s fundraising policies did not apply.
- The Agreement with BPE and the disbursement to Epic were not for the procurement of goods and services and therefore were not subject to the University’s procurement policies and procedures and the provisions of the Hawaii State Procurement Code.
- There is a lack of written policies and procedures with respect to the:
 - Performance of due diligence procedures prior to executing facilities use agreements;

- Execution and administration of facilities use agreements;
 - Printing, distribution, and selling of tickets for non-University and non-athletic events;
 - Establishment and use of agency (custodial) accounts;
 - Disbursement of funds held in agency (custodial) accounts; and
 - Refunds of ticket sales for non-University and non-athletic events.
- There was a lack of due diligence performed by the Athletics Department to determine whether BPE had the capability to fulfill the terms of the Agreement.
 - There was no written delegation of authority from the UH Manoa Chancellor for the Athletics Director to enter into the Agreement.
 - The Arena Manager of the SSC (“SSC Manager”) and the Athletics Director were responsible for ensuring that terms of the Agreement were complied with, and a key contract provision of the Agreement requiring event cancellation insurance was not enforced prior to selling tickets for the Concert.
 - There was no written agreement authorizing the Athletics Department Ticket Office to sell tickets, collect ticket sale proceeds, and disburse sales proceeds held in an agency (custodial) account on behalf of BPE. The \$200,000 disbursement to Epic should not have been initiated or approved by the Athletics Department without a written agreement with BPE authorizing the Athletics Department to collect, deposit and disburse ticket sale proceeds, and it was known the cancellation insurance had not been received.

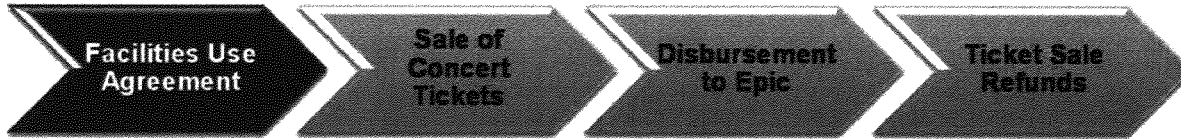
Total direct cost to the Athletics Department Revolving Fund resulting from these transactions was \$211,970. The University has incurred various costs subsequent to, and resulting from its actions taken with respect to the unfolding of events surrounding the financial transactions discussed. The direct transaction costs are summarized in the table below.

Figure 4.0
Direct Transaction Costs – Athletics Revolving Funds

Cost to replenish agency (custodial) account (see Section 2.4.3)	\$200,000
Cost to print and sell tickets (see Section 2.2.2, Figure 5.0)	11,955
Cost of wire transfer (see Section 2.3)	<u>15</u>
Total	\$211,970

The details and explanation of these costs are included in our discussion of the financial transactions that follow in **Section 2.2** and **Section 2.3** relating to the ticket printing and the \$200,000 wire transfer.

2.1 Facilities Use Agreement



The UH Manoa, through the Athletics Department, entered into a contract with BPE for the use of the SSC from August 16, 2012 through August 18, 2012 to hold a Stevie Wonder Benefit Concert. The Facilities Use Agreement, as noted in **Figure 1.0**, between the UH Manoa and BPE was dated June 12, 2012.

There are two separate documents used by the UH Manoa to enter into facilities use agreements for the SSC. One is a standard one-page form, the Application and Agreement for Evening and Holiday Use of University Facilities (“Facilities Application Form”), which contains the name of the using organization, facilities to be used, date(s), hours and nature of use, and usage fee. The other is in the form of a written contractual agreement to cover the use of the facility for a specific event. The latter is prepared for events that require unique terms and conditions that must be further detailed and agreed upon via a contract. In the case of the Agreement with BPE, the SSC Manager worked with the University’s Office of General Counsel (“OGC”) to draft the Agreement to ensure that the contract contained necessary elements and met required legal form and content.

These written contractual facilities use agreements, while infrequent in nature, are not unusual to the University.

Applicable Statutes, Rules, Policies, and Procedures

The statutes, rules, policies, and procedures applicable to this Agreement are identified below.

Category	Name
<i>Hawaii Administrative Rules</i>	Title 20 University of Hawaii, Chapter 13 – Use of University-Owned Facilities
	Title 20 University of Hawaii, Chapter 23 – UH Special Events Arena Admission Fees and Charges
<i>Board of Regents Policy</i>	Chapter 8 – Business and Finance <ul style="list-style-type: none"> ▪ Section 8-1: Contracts and Official Documents
	Chapter 10 – Land and Physical Facilities <ul style="list-style-type: none"> ▪ Section 10-3: Use of University-Owned Facilities
<i>UH Executive Policy</i>	E1.000 – General Provisions <ul style="list-style-type: none"> ▪ E1.102: Authority to Manage and Control the Financial Affairs of the Unit as Stated in the Regents Bylaws and Policies

Category	Name
	E10.000 – Land and Physical Facilities <ul style="list-style-type: none"> ▪ E10.101: Authority to Develop Procedures and to Implement Control of the Board of Regents Policy on Use of University-Owned Facilities ▪ E10.201: Facilities Use ▪ E10.301: Policy to Govern the Use of University-Owned or Operated Facilities
<i>UH Systemwide Administrative Procedures</i>	General Provisions – Land and Physical Facilities <ul style="list-style-type: none"> ▪ A1.200: UH-Manoa Facilities Use Practices and Procedures
<i>UH Athletics Department Manual (2010-11)</i>	Section 16 – Facilities

Findings

[2.1.1] *The Concert was not a “fundraising campaign” and therefore UH Foundation fundraising policies were not applicable.*

UH Executive Policy E8.209, *Fundraising*, requires the Foundation to coordinate all *fundraising campaigns* in accordance with the Foundation’s policies and procedures. While the Concert was initially promoted and publicized as a fundraiser for the Athletics Department, these respective fundraising policies do not apply to this event. The Concert was intended to be a single event and not a *fundraising campaign* that would require the involvement of the Foundation. Furthermore, it is important to clarify that the Concert was not a fundraising event, but rather an event that benefited the Athletics Department through a facilities rental fee charged to BPE that was based on a percentage of BPE’s revenue from ticket sales. The President and the CFO of the Foundation confirmed that since the ticket purchasers would receive no tax benefit, the Foundation, as a matter of practice, would not become involved and, accordingly Foundation policies were not applicable.

[2.1.2] *The Agreement between the UH Manoa and BPE was not a procurement.*

The Agreement between the UH Manoa and BPE was not a procurement of goods or services, but rather it was an agreement that allowed BPE to use the UH Manoa facilities. Accordingly, the Agreement was not subject to the Hawaii Revised Statutes Chapter 103D, Hawaii Public Procurement Code, and University procurement policies and procedures. This was confirmed by both the University’s Office of Procurement and Real Property Management (“OPRPM”) and the State Procurement Office. OPRPM informed us that an agreement between the University and an outside third party for the use of University facilities has never been considered a ‘procurement.’ Additionally, the State Procurement Office confirmed that an agreement between a state agency and an outside third party for the use of state agency facilities is not considered a ‘procurement’ and therefore is not subject to the State Procurement Code.

Likewise, the \$200,000 disbursement to Epic described in **Section 2.3** was not a 'procurement' of goods and services. In addition, the payment was not made from University funds, but rather from funds held in an agency (custodial) account on behalf of BPE into which proceeds from advance sale of Concert tickets were deposited. In other words, the payment to Epic was made using BPE's funds that the Athletics Department held in an agency (custodial) account.

[2.1.3] Policies and procedures regarding the execution and administration of facilities use agreements are insufficient.

While there are rules, policies, and procedures applicable to facilities use, we were unable to identify policies and/or procedures that:

- Provide guidance on when contracts for facilities usage are required or preferred;
- Define the roles and responsibilities for the execution, management, and administration of such agreements;
- Identify the departments that should be involved in drafting the terms of the agreement;
- Provide guidelines on the use of appropriate fee structures in renting University facilities to ensure the University, at a minimum, is able to cover its expenses related to the event;
- Specify the conditions that require the involvement of legal counsel;
- Describe the distribution or routing requirements for executed agreements to ensure all affected individuals/departments understand the terms of the agreement;
- Define the roles and responsibilities with respect to overseeing and administering the executed contract; and
- Establish minimum due diligence procedures to be performed on individuals or organizations requesting to use University facilities.

[2.1.4] The Athletics Department did not conduct and document adequate due diligence on BPE prior to entering the Agreement.

The Athletics Department did not adequately investigate and evaluate BPE before entering into the Agreement, which would have raised several "red flags" regarding the promoter. Through our review, we were unable to identify any written due diligence procedures relating to facilities use agreements, which provided guidance on evaluating third parties prior to entering into a contract. These due diligence procedures would address activities such as verifying the third party's current business registration, creditworthiness, and compliance status for federal, state, and employment taxes. Due diligence efforts could also have included a review of the promoter's history or record of putting on similar events and following up with references provided by the promoter. None of this was done, nor are there any procedures in place requiring due diligence on parties requesting to use University facilities for non-University events.

[2.1.5] There was no written delegation of authority for the Athletics Director to enter into the Facilities Use Agreement with BPE.

Through our review of the Factfinders Report and subsequent interviews, it is apparent that there was misinterpretation or misapplication of UH Executive Policy 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 Hawaii at Manoa*. This policy delegates the authority to the Athletics Director and his designees to execute contracts related to (1) the procurement of goods and services and (2) cooperative agreements for the Athletics Department. The parties involved in drafting the Agreement, including the Athletics Director, SSC Manager, and the Associate General Counsel, did not clearly understand or chose to ignore the limits of this delegation of authority to the Athletics Director, and prepared the Agreement for the signature of the Athletics Director.

The delegation of authority for entering agreements for the rental (use) of University facilities is found in UH Executive Policy E10.201, *Facilities Use*. The existing delegation of authority for entering facilities use agreements is from the University President to the various Chancellors. Consistent with the Factfinders Report, we could not find a delegation of this authority from the UH Manoa Chancellor to the Athletics Director with respect to facilities use agreements⁷.

Despite the absence of any written delegation of authority to the Athletics Director, the Associate General Counsel of the Office of General Counsel drafted the Agreement for the signature of Athletics Director on behalf of the UH Manoa. The Agreement should have been signed by the UH Manoa Chancellor, and not the Athletics Director, as the agreement did not relate to (1) a procurement of goods and services nor (2) a cooperative agreement.

In addition to the Associate General Counsel, the Athletics Director also assumed that he had the authority to execute the Agreement as evidenced by Section 28 of the Agreement, which specifically stated "Individual Authority – *The individual executing this document represent that they have full authority to bind their respective party to the terms of this Agreement*"⁸.

It is unclear as to why the Agreement was drafted for signature by the Athletics Director rather than the UH Manoa Chancellor. There was also no written documentation in the legal services request of the OGC as to who should sign the Agreement⁹. In review of two other facilities use agreements for use of the SSC by outside third parties (one for an event held in 2006, the other for an event held in 2008), both of these agreements were drafted for the signature of the UH Manoa Chancellor. In addition, the Associate General Counsel informed us that he had drafted two prior facilities use agreements for the signature of the Athletics Director.

⁷ Factfinders Report, Paragraph 10.

⁸ Factfinders Report, Attachment 38, Exhibit B, Paragraph 28

⁹ Factfinders Report, Attachment 63.

[2.1.6] The SSC Manager and Athletics Director were responsible to ensure the terms of the Agreement were complied with.

To protect the University, the Agreement contained two separate insurance requirements: The first required BPE to provide a certificate of liability insurance naming the University and the State of Hawaii as additional insured and the second required BPE to obtain event cancellation insurance naming the University and the State of Hawaii as additional insured.

Terms of the Agreement with BPE provided that BPE could use proceeds from the Pre-Sale Tickets (i.e., advance ticket sales) to "...secure the talents and services of Stevie Wonder, the performer for the Event, prior to Event tickets being made available for purchase by the general public"¹⁰. Use of the proceeds from the advance ticket sales posed a potential risk to BPE and the University. In the event the Concert was cancelled after tickets were sold, the total dollar amount of refunds made to ticketholders would exceed what was available as the proceeds from the ticket sales were used to secure the performer's services. To mitigate this risk, the Agreement required BPE to obtain insurance against any loss due to event cancellation, naming the University and State of Hawaii as additional insured. The Agreement required that "[a] copy of this policy shall be provided to the University's Director of Athletics before Pre-Sale Ticket sales commence"¹¹.

The SSC Manager was aware that BPE had not obtained the necessary insurance, yet tickets were sold (see **Section 2.2.3**). The SSC Manager was also aware that the insurance was not provided when he signed the requisition to disburse \$200,000 to Epic (see **Section 2.3.4**)¹². Failure to ensure that the insurance was in place prior to the ticket sales and disbursement of funds was a significant breakdown in compliance with the Agreement terms. That breakdown resulted in the Athletics Department Ticket Office prematurely selling tickets which provided the means to fund the \$200,000 disbursement to Epic.

As identified in the Factfinders Report, the Athletics Director delegated authority to the SSC Manager to negotiate the specific terms of the Agreement¹³. Furthermore, the duties and responsibilities of the SSC Manager's position include "[n]egotiate and write contractual agreements for outside user organizations" and "[o]versee and administer written contracts"¹⁴. As previously mentioned in **Section 2.1.3**, we found insufficient written policies, procedures, or other documentation that clearly describes the steps that are necessary to oversee and administer facilities use agreements. Despite the lack of written policies and procedures, as the individual responsible to oversee and administer written contracts, it was the responsibility of the SSC Manager to ensure that all terms of the Agreement were complied with.

¹⁰ Factfinders Report, Attachment 38, Exhibit B, Paragraph 5.B

¹¹ Factfinders Report, Attachment 38, Exhibit B, Paragraph 10.B

¹² Factfinders Report, Attachment 26.

¹³ Factfinders Report, Paragraph 94.

¹⁴ Position Description, Arena Manager of the Stan Sheriff Center (0080072)

While it was primarily the responsibility of the SSC Manager to monitor compliance with the Agreement terms and conditions, the Athletics Director was ultimately responsible to ensure that terms of the Agreement were followed. There is considerable evidence in the Factfinders Report that the Athletics Director had knowledge of the general terms of the Agreement. Furthermore, the fact that the Agreement was drafted for the signature of the Athletics Director, and signed for him by the Associate Athletics Director for Administrative Services, reinforces the Athletics Director's ultimate responsibility for ensuring that the terms of the Agreement were complied with. Additionally, the Athletics Director's position description includes the responsibility to "negotiate and administer contracts in the best interests of the University"¹⁵. Although a delegation of authority was made to sign the Agreement and manage the execution of the terms of the Agreement, it does not absolve the Athletics Director from any oversight responsibility.

[2.1.7] *The payment of an advance deposit was not made as required by the UH Systemwide Administrative Procedures.*

The UH Systemwide Administrative Procedure A1.200, *University of Hawaii-Manoa Facilities Use Practices and Procedures*, requires that "prior to the scheduled event, the organizations shall be required to make a payment in full for the use and services"¹⁶. This requirement is generally applicable to facilities use agreements that are based upon a fixed rental/usage fee. The Agreement with BPE stipulated that the fee would be the greater of 10 percent of gross ticket sales or 75 percent of net revenue after expenses¹⁷. These negotiated terms would have required a final fee determination and settlement upon event completion.

Having a usage fee that is dependent upon ticket sales has not precluded the University from including non-refundable deposits in facilities use contracts. A 2008 contract for the use of the SSC by FEG USA, Inc. included a usage fee of the greater of \$20,000 or 10 percent of gross ticket sales. That contract included the requirement for a \$20,000 non-refundable deposit upon execution of the contract. The Agreement with BPE did not contain a non-refundable deposit requirement and therefore a deposit was not obtained from BPE.

[2.1.8] *The application to use the SSC was not completed as required.*

The UH Systemwide Administrative Procedure A1.200, *University of Hawaii-Manoa Facilities Use Practices and Procedures*, requires that a Facilities Application Form be submitted 30 days prior to the scheduled event¹⁸. This form was not completed for this event. Through our interviews with the Associate Athletics Director for Facilities and Events Management, we were informed that when a rental of the SSC necessitates a written contract, the Facilities Application Form is not prepared. As previously discussed in **Section 2.1.3**, there are no written policies or

¹⁵ UH Manoa Position Description, Director of Athletics

¹⁶ UH Administrative Procedures, A1.200 - University of Hawaii-Manoa Facilities Use Practices and Procedures, Section 9.g.4.

¹⁷ Factfinders Report, Attachment 38, Exhibit B, Paragraph 4.

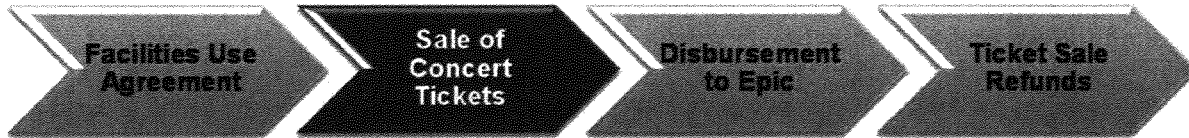
¹⁸ UH Administrative Procedures, A1.200 - University of Hawaii-Manoa Facilities Use Practices and Procedures, Section 9.c.

procedures that specify how facilities use applications should be processed, or when contracts for facilities usage are preferable or required.

Recommendations

1. The University should adopt policies related to the development, execution, and administration of facilities use agreements. The policies, at a minimum, should specify:
 - a. When a written contractual agreement is preferable or required;
 - b. When and what due diligence procedures should be performed;
 - c. When legal counsel and other departments should be involved in drafting or reviewing contracts;
 - d. Who has the authority to sign and approve these types of contracts; and
 - e. Who is responsible to oversee and administer contracts.
2. The University should develop procedures related to the development, execution, and administration of agreements for use of University facilities. The procedures should describe:
 - a. The steps necessary to conduct proper due diligence of third parties;
 - b. The guidelines on the use of appropriate fee structures in renting University facilities to ensure the University, at a minimum, is able to cover its expenses related to the event;
 - c. The distribution or routing procedures to ensure all parties review and approve the agreement;
 - d. The distribution or routing requirements for executed agreements to ensure all affected individuals/departments understand the terms of the agreement;
 - e. The roles and responsibilities with respect to overseeing and administering the executed contract; and
 - f. The guidelines for the preparation of written agreements by the OGC.
3. The University should develop tools and templates (i.e., checklists) to ensure that all necessary steps are taken to ensure compliance with (1) University facilities use agreement requirements and (2) contract terms and conditions.
4. Staff should be provided with the necessary training once the policies, procedures, tools, and templates are developed and implemented to ensure roles and responsibilities are clearly understood.

2.2 Sale of Concert Tickets



Ticket sales for the Concert were handled by the Athletics Department Ticket Office (“Ticket Office”). This included the printing of tickets, collection of ticket proceeds, and ensuring proceeds were deposited into an agency (custodial) account on behalf of BPE. Pre-Sale Tickets were announced to select groups beginning June 18, 2012. Shortly thereafter, the first set of ticket sales were processed on June 23, 2012. Ticket sales to the general public began on July 6, 2012. At the time the Concert was cancelled, a total of 5,582 tickets were sold generating \$632,421 in sales¹⁹.

Applicable Statutes, Rules, Policies, and Procedures

Category	Name
<i>UH Athletics Department Manual (2010-11)</i>	Section 19 – Ticket Operations
<i>Ticket Office Desktop Procedures</i>	<i>UH Athletics Ticket Office and Stadium Revenue Procedures</i> ²⁰
	<i>UH Athletics Ticket Office Procedures (non-UH events)</i> ²¹

Findings

[2.2.1] *There is a lack of policies and procedures relating to the printing, sale, and distribution of tickets for non-University and/or non-athletic events.*

The UH Manoa Athletics Department Manual (“Athletics Manual”) includes policies and procedures relating to various aspects of the Athletics Department’s operations. Section 19, Ticket Operations, generally covers the sale and distribution of tickets for athletic events, including specific procedures related to ticket printing for various University sporting events (i.e., football season tickets). However, through our review of the Athletics Manual, we noted that there are no procedures related to the printing, sale, and distribution of tickets for non-University and/or non-athletic events.

In addition to the Athletics Manual, we also reviewed a document entitled “UH Athletics Ticket Office Procedures (non-UH events)” that was provided by the Ticket Office Manager. This document specifies the procedures relating to the processing and accounting of ticket sales for non-University events. Specifically, the document mentions the following:

¹⁹ FMIS printouts provided by the Assistant Athletics Director of Business Operations

²⁰ Provided by the Athletics Department Ticket Office Manager

²¹ Provided by the Athletics Department Ticket Office Manager

- If ticketing services are needed for an event, ticket office operation and services will be outlined within the contract.
- The Ticket Office Manager will assist when requested to review contract details regarding the sale and distribution of tickets for an event.

While there are some written procedures relating to ticket printing and sales, they do not provide adequate guidance and instruction to ensure tickets for non-University and/or non-athletic events are printed, distributed, and processed in accordance with agreed upon terms and with proper approvals and authorization.

[2.2.2] *There was no contractual or other written agreement authorizing the Ticket Office to sell tickets.*

As mentioned above, the “UH Athletics Ticket Office Procedures (non-UH events)” specify that if ticketing services are needed for a non-University event, ticket office operation and services will be outlined in the associated contract. The Agreement between BPE and UH Manoa only stated that Pre-Sale Tickets would be made available for purchase through Ahahui Koa Anuenue. It acknowledged that BPE would use revenues from Pre-Sale Tickets to secure the services of Stevie Wonder prior to the actual event. Nothing in the Agreement provided for the Ticket Office to print and sell the Concert tickets. We were also informed there was no separate agreement between BPE and the Ticket Office for the printing and sale of Concert tickets.

The printing and sale of tickets for non-University events and the specifics around the handling and accounting for the receipt and disbursement of ticket sale proceeds should be pursuant to a written agreement. The agreement should identify responsibilities for costs incurred, depositing and accounting for receipts, and authorizations needed for disbursement of the proceeds. Additionally, the agreement should ensure that funds are not comingled with operating funds by requiring that receipts be deposited into and disbursements made from a separate agency (custodial) account and final disbursements made subject to terms of the agreement.

The sale of tickets by the Ticket Office and the receipt and deposit of sales proceeds on behalf of BPE placed responsibilities on the Ticket Office that were undefined lacking a written agreement. The Ticket Office deposited the proceeds into an agency (custodial) account and therefore, did not comingle the ticket sales proceeds with University funds. However, without a written agreement defining responsibilities, there was no authorization for the Ticket Office to print and sell tickets, nor was there a requirement for BPE to reimburse the University for the costs associated with printing and selling tickets. These costs amounted to \$11,955 and are detailed in **Figure 5.0** below.

**Figure 5.0
 Cost of Printing and Selling Tickets²²**

Internet host ticket processing fees	\$10,962
Ticket printing cost	212
Ticket Office Saturday student help	781
Total	\$11,955

There is language in the Agreement for BPE to be responsible for all expenses to staff and operate the SSC and return it to its pre-event status. However, there is no specific language regarding the printing and sale of tickets by the Ticket Office and the \$11,955 has not been recovered from BPE.

[2.2.3] *Tickets should not have been sold as a key term of the Agreement was not fulfilled by BPE.*

The pre-sale of tickets should not have commenced as the insurance policy described in **Section 2.1.6** was not provided by BPE. In accordance with Section 10 of the Agreement, “a copy of this policy shall be provided to the University’s Director of Athletics before Pre-Sale Ticket sales commence”²³. The Factfinders were unable to confirm and there is no documentation available to determine who actually authorized the Ticket Office to print and sell the tickets. However, in an interview with the Ticket Office Manager, he indicated that the SSC Manager provided verbal authorization to begin ticket sales. According to the SSC Manager, he denies providing such authorization citing that the authorizations “must have come from higher ups”. Regardless of where the authorization came from, the sales did occur.

Recommendations

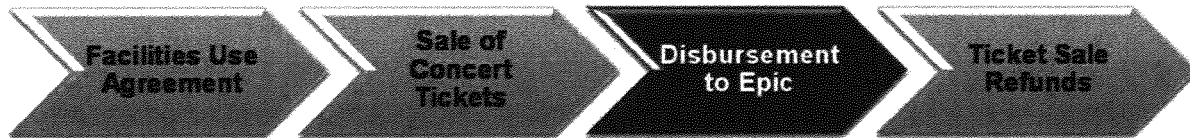
1. The University should assess whether it will continue to offer ticketing services for non-University and/or non-athletic events, and if so, the University should adopt policies over the printing, sale, and distribution of tickets for non-University and/or non-athletic events. Such ticketing policies should specify:
 - a. The circumstances in which ticketing services are allowed for non-University and/or non-athletic events;
 - b. Ticketing services should only be provided pursuant to a written agreement or contract;
 - c. The general terms that are required as part of the agreement; and
 - d. The approvals necessary to print, sell, and distribute event tickets.
2. The University should develop and implement procedures to ensure that:
 - a. The printing and/or sale of tickets for non-University and/or non-athletic events are done pursuant to a written agreement or contract; and

²² Figures provided by the Athletics Department Ticket Office Manager

²³ Factfinders Report, Attachment 38, Exhibit B, Paragraph 10.

- b. Necessary authorizations and sign-offs are completed before tickets for non-University organizations are printed and/or sold.
- 3. Staff should be provided with the necessary training once the policies and procedures are developed and implemented to ensure roles and responsibilities are clearly understood.

2.3 \$200,000 Disbursement to Epic Talent, LLC



On June 19, 2012, the SSC Manager received an email from BPE requesting a wire transfer of the \$200,000 deposit to the “agent’s escrow” account²⁴. On June 26, 2012, the University Disbursing Office processed a wire transfer of \$200,000 to the bank account of Epic at the request of BPE. As previously mentioned, the Agreement provided that the revenues from pre-sale tickets would be used by BPE to reserve and secure the services of Stevie Wonder. The \$200,000 wire transfer was not from University funds, but rather from funds held in an agency (custodial) account into which proceeds from advance sale of concert tickets were deposited. Ticket sales proceeds of \$203,231 had been deposited into the agency (custodial) account prior to the disbursement.

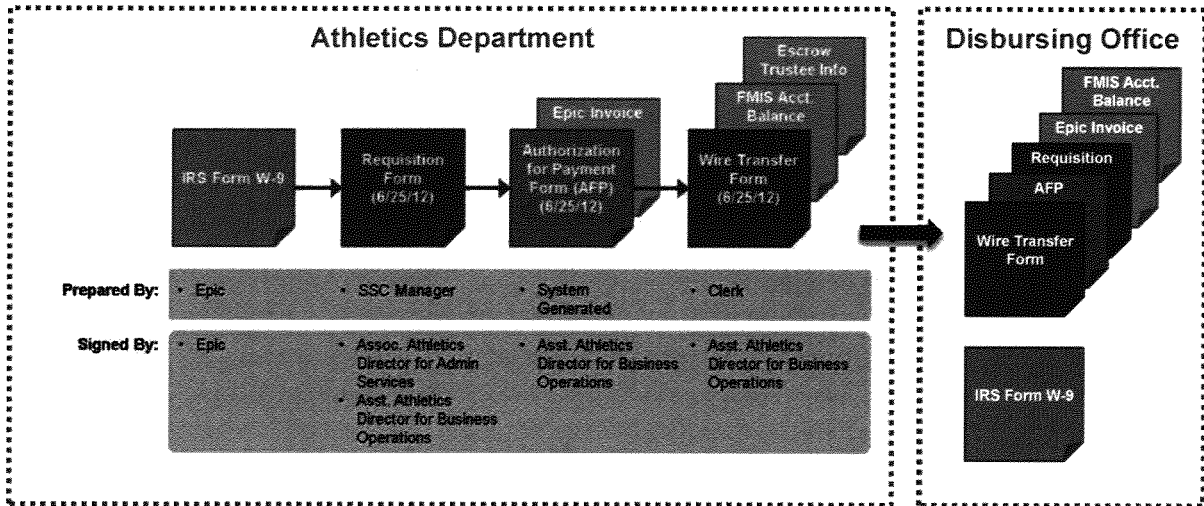
In order to process the payment, the Athletics Department gathered and/or prepared the following forms:

- *Department of the Treasury Internal Revenue Service, Form W-9, Request for Taxpayer Identification Number and Certification*
- *Requisition Form (FMIS-30)*
- *Authorization for Payment Form (FMIS-2e)*, supported by an Epic Invoice (the invoice was actually a “pro forma” invoice that was created by the Athletics Department as no original Epic invoice was provided)
- *Wire Transfer Form*, completed based upon information from the “Epic Talent Escrow Trustee Information” sheet and supported by a FMIS printout indicating the balance of the agency (custodial) account

Once completed and signed, these forms were submitted to the University Disbursing Office to process the wire transfer to Epic.

²⁴ Factfinders Report, Paragraph 136

Figure 6.0
Forms Used to Complete the Disbursement to Epic



Applicable Statutes, Rules, Policies, and Procedures

The policies and procedures applicable to the aforementioned transaction are presented in the table below.

Category	Name
UH Systemwide Administrative Procedures	Fiscal Management
	▪ A8.025: Organizational Responsibilities Within the Fiscal System
	▪ A8.026: Overview
	Disbursing
	▪ A8.801: Overview
▪ A8.808: Bank Wire Transfer	
▪ A8.861: Authorization for Payment Form	

Findings

[2.3.1] There are no University policies or procedures applicable to the use, establishment and disbursement of funds held in agency (custodial) accounts.

The University has an annual operating budget in excess of \$1.5 billion. As a result, it has numerous policies and procedures for the disbursement of funds for operating purposes. These procedures are designed to ensure that disbursements conform to the Hawaii Revised Statutes for the use of public funds. Public funds include appropriations made to the University by the Legislature and funds held in various University Revolving and Special Funds created pursuant to law for University operations. Public funds do not include funds held in agency (custodial)

accounts by the University. The University does not have policies and procedures that apply to the receipt and disbursement of funds it holds as an agent for others.

In this case, the Ticket Office sold tickets on behalf of BPE, collected and deposited the sales receipts in an agency (custodial) account separate from its own operating account, and disbursed funds from that agency (custodial) account to Epic at the request of BPE. These actions reinforce the Athletics Department role as acting as an “agent” for BPE. As an agent, it properly deposited the ticket proceeds into a separate agency (custodial) account, thus keeping the moneys separate from its own operating funds.

In the absence of policies and procedures related to disbursement of funds in agency (custodial) accounts, the Athletics Department referred to the procedures in place for the disbursement of public funds. Specifically, the UH Systemwide Administrative Procedure A8.861, *Authorization for Payment Form* (“AFP”), was used to authorize the \$200,000 payment to Epic. The AFP is used to process direct payments (including reimbursements) and refunds in excess of \$100.00²⁵. Additionally, UH Administrative Procedure A8.808, *Bank Wire Transfer*, was used to request the payment via wire transfer.

We were informed that the Athletics Department used the Requisition form and AFP in the past to authorize disbursements from agency (custodial) accounts. We also confirmed with the Disbursing Office that there are no separate procedures applicable to the disbursement of funds held in agency (custodial) accounts.

[2.3.2] There are no policies and procedures related to payments to escrow accounts

As mentioned above, the SSC Manager received a request from BPE to deposit \$200,000 to the “agent’s escrow” account via wire transfer. The SSC Manager provided the Assistant Athletics Director for Business Operations with an “Escrow Trustee Information” sheet on Epic’s letterhead (see **Appendix F**), which was then used by the Assistant Athletics Director for Business Operations to fill out the Wire Transfer Form²⁶ (see **Appendix G**).

Based on our review, we were unable to identify any policies or procedures that provide guidance on processing and reviewing payments to escrow accounts. Although deposits into escrow accounts may not occur frequently, these types of deposits generally require special handling and instructions.

While terms like “escrow” and “trustee” add to the perception that the transaction was ‘legitimate,’ the request to deposit monies into a purported escrow account was unusual for the University and should have, at a minimum, raised questions on special handling and processing. It is our understanding that the SSC Manager and the Assistant Athletics Director for Business Operations were the only individuals who were in possession or aware of this document. Without any guidelines or procedures to follow, it is difficult to conclude as to

²⁵ UH Administrative Procedure, A8.861 Authorization for Payment Form, Paragraph 3.a.

²⁶ Factfinders Report, Paragraph 158.d .

whether these individuals should have raised questions or concerns regarding the use of an escrow account for the \$200,000 transfer.

[2.3.3] *The University Disbursing Office had sufficient approvals and documentation to complete the wire transfer.*

The University Disbursing Office processes all payments made by the University. It does not initiate or approve the payments. Various campuses, departments and programs are responsible for the initiation and approval of disbursement of funds under their authority. The Disbursing Office is responsible to ensure that the necessary approvals for disbursement have been provided by the initiating campus, department or program. With respect to the \$200,000 payment to Epic, the Disbursing Office was responsible for: (1) creating a vendor code for Epic (the payee) and (2) processing the approved wire transfer.

Vendor Setup

In order to process and record a payment, the payee must be set-up as a “vendor” in the University’s accounting system. In order to set-up the payee as a “vendor,” the requesting campus, department, or program is required to provide the University Disbursing Office with the payee’s Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

Based upon our review of the available documents, the Disbursing Office received the necessary support to establish a vendor code for Epic (see **Appendix B**).

Wire Transfer

Figure 7.0 below represents the documents that the Disbursing Office requires to process a wire transfer and the status of receipt for each. Based upon our review of the available documents, the Disbursing Office received the appropriate approvals and documentation necessary to process the wire transfer.

Figure 7.0
Required Documents for a Wire Transfer

Required Documents	Disbursing Office Received?
<input checked="" type="checkbox"/> A completed and approved <i>Wire Transfer Form</i> ²⁷	Yes. See Appendix G
<input checked="" type="checkbox"/> A completed receiving report (if the payment is being made from a purchase order) or an approved AFP ²⁸	Yes. See Appendix D
<input type="checkbox"/> "Original (or certified as original) itemized invoices/receipts and other supporting documents are to be attached to the original AFP." ²⁹	No, the Disbursing Office was provided with a "pro forma" invoice rather than an <u>original</u> invoice. However, the Disbursing Office had no reason to believe that the invoice was a "pro forma" invoice instead of an original invoice (see discussion below).

According to the Accounts Payable Supervisor, the Disbursing Office was unaware that the Epic invoice was a "pro forma" invoice created by the Athletics Department³⁰. The practice of creating a pro forma invoice is sometimes used by departments to fulfill the requirements to support payment to a "vendor". While this practice appears to be unusual for the Athletics Department, pro forma invoices were previously submitted by other University departments³¹. To avoid any confusion, when a pro forma invoice is submitted, a memorandum typically accompanies the invoice to clarify that the activity related to the payment request is legitimate³². In this case, a memorandum was not submitted by the Athletics Department to identify the Epic invoice as a pro forma invoice. Without an accompanying memorandum, the Disbursing Office did not identify the Epic invoice as a pro forma invoice. We reviewed the Epic invoice, noting that the invoice appeared as if it were an original vendor invoice (see **Appendix E**). As such, it was reasonable for the Disbursing Office to conclude that the proper documents and approvals were obtained to proceed in processing the wire transfer to Epic.

[2.3.4] The payment should not have been initiated or approved by the Athletics Department without a written agreement with BPE, and it was known a key Agreement term (i.e., the cancellation insurance) was not complied with.

The payment to Epic should not have been *initiated* or *authorized* without a written agreement which clearly defined the responsibilities of the Athletics Department with respect to the funds it held on behalf of BPE. Such agreements, commonly referred to as "Agency Agreements," articulate how the funds held on behalf of others are to be accounted for, identify roles and

²⁷ UH Administrative Procedure, A8.808 Bank Wire Transfer, Paragraph 4.b.
²⁸ UH Administrative Procedure, A8.808 Bank Wire Transfer, Paragraph 4.c.
²⁹ UH Administrative Procedure, A8.861 Authorization for Payment Form, Paragraph 3.d.
³⁰ Factfinders Report, Attachment 34, Paragraph 22
³¹ Factfinders Report, Attachment 34, Paragraph 21
³² Factfinders Report, Attachment 34, Paragraph 19.c

responsibilities of both parties, include indemnification clauses, and typically include other provisions such as bonding requirements, liability and other insurance, etc.

The \$200,000 payment to Epic was made with the approval of BPE. That approval, however, should have been provided pursuant to the terms of a formal written agreement between BPE and the Athletics Department. The agreement would have provided the Athletics Department with the authority to disburse the funds subject to BPE’s approval. Such an agreement would serve to protect both parties in the event of unforeseen issues, disagreements, or challenges to the Athletics Department’s authority to disburse the \$200,000. It also should have provided indemnification clauses for potential costs and losses arising from cancellation of the event.

As previously stated, the University has no policies or procedures governing the handling of funds held as an agent on behalf of others. The need for such policies and procedures has become apparent and should be addressed immediately.

Additionally, a key term of the Agreement was not fulfilled by BPE. At the time that the Requisition and AFP were prepared to request payment to Epic, the insurance requirement described in **Section 2.1.6** was still not fulfilled by BPE. The Requisition was initiated by the SSC Manager³³ (see **Appendix C**) and, once approved, the system generated the AFP which was signed by the Assistant Athletics Director for Business Operations.

The following are the individuals identified on the completed Requisition and AFP, which were used to initiate the payment to Epic:

Form Field	Individual Listed
Requisitioner	SSC Manager
Purchasing Officer	Associate Athletics Director for Administrative Services
Fiscal Officer	Assistant Athletics Director for Business Operations

Initiation of the Requisition:

The SSC Manager was aware that the cancellation insurance was not obtained, however he proceeded to initiate the Requisition form. As the person responsible for overseeing and administering the Agreement, the SSC Manager should not have initiated the payment via the Requisition form knowing that the terms of the Agreement were not fulfilled.

Approval of the Requisition and AFP:

According to UH Systemwide Administrative Procedure A8.861, *Authorization for Payment Form*, an appropriate *approving authority* must sign and date the AFP to certify propriety/legality of the payment. The *Fiscal Officer* must sign and date the AFP to certify fund availability and compliance with procedures³⁴.

³³ Factfinders Report, Attachment 24, Paragraph 43

³⁴ UH Administrative Procedure, A8.861 Authorization for Payment Form, Paragraph 3.c.

Approving Authority – The Associate Athletics Director for Administrative Services signed the Requisition form as the Approving Authority. Once the Approving Authority and Fiscal Officer approved the Requisition, the AFP was automatically generated by the system. As the Approving Authority and also the individual who signed the Agreement on behalf of the Athletics Director, he should have known the terms of the Agreement and whether they were being complied with. As such, the Associate Athletics Director for Administrative Services should not have approved the Requisition form.

Fiscal Officer – The Assistant Athletics Director for Business Operations signed both the Requisition form and the AFP as the Fiscal Officer. All AFPs state that the Fiscal Officer “certify[ies] that sufficient funds are in the accounts specified and this payment is in accordance with applicable University policies and procedures.”³⁵ Based on our review of the available documents, the Assistant Athletics Director for Business Operations reviewed the agency (custodial) account balance and verified that adequate funds were available to cover the \$200,000 disbursement. As mentioned in **Section 2.3.1**, there were no policies with respect to disbursements from agency (custodial) accounts. Furthermore, the Assistant Athletics Director for Business Operations was not aware of the provision of the Agreement requiring that cancellation insurance be in place before tickets were sold, nor was she aware that the insurance had not been provided. Nevertheless, the job description for this position includes broad responsibilities for the financial and business activities of the Athletics Department.³⁶ As the Fiscal Officer that signed both the Requisition form and the AFP, she should have made inquiries regarding whether the terms of the Agreement had been complied with prior to her approval.

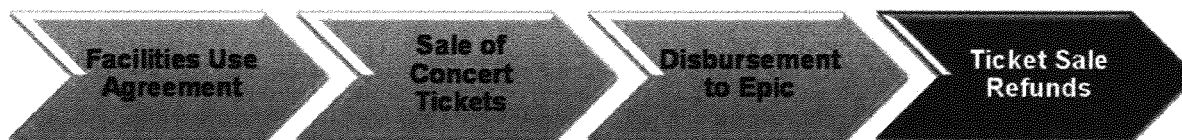
³⁵ Factfinders Report, Paragraph 161

³⁶ Position Description, Assistant Athletics Director for Business Operations (0080014)

Recommendations

1. The University should adopt policies that govern receipts and disbursements of moneys held as a custodian for non-University organizations. These policies should, at a minimum:
 - a. Require that the receipts and disbursements of moneys held as a custodian for others be done only pursuant to a written agreement or contract.
 - b. Emphasize the University's roles and responsibilities as a custodian;
 - c. Identify the circumstances that require the establishment and use of an agency (custodial) account;
 - d. Specify the approvals required to create an agency (custodial) account; and
 - e. Specify the approvals required to disburse funds from an agency (custodial) account.
2. The University should develop and implement procedures to ensure that:
 - a. The deposits into and disbursement of funds from agency (custodial) accounts for non-University organizations are made pursuant to applicable policies;
 - b. Terms of applicable agreements or contracts are met before funds are disbursed from the agency (custodial) account; and
 - c. Adequate guidelines are provided for disbursements into escrow and trust accounts, where applicable.
3. The University should develop or revise any applicable forms that are necessary to:
 - a. Create an agency (custodial) account;
 - b. Request a disbursement of non-public funds held in an agency (custodial) account; and
 - c. Process a payment to an escrow or trust account.
4. The University should re-evaluate the use of "pro forma" invoices. For example, the University may develop a standard form or memorandum to be completed by the department in the event that an original invoice is not available to support the request for payment. Such forms should be clearly marked as a replacement or facsimile.
5. The University should consider a "dotted line" reporting relationship between all Fiscal Officers and the University System Financial Management Office in order to consult and seek guidance on fiscal matters, when deemed necessary.
6. Ensure all policies and procedures and position descriptions are consistent and in alignment to avoid any conflicting language regarding roles and responsibilities.
7. Staff should be provided training on the policies and procedures once they are developed and implemented to ensure roles and responsibilities are clearly understood.

2.4 Ticket Sale Refunds



On July 10, 2012, the Athletics Director announced that the Concert was cancelled because it had been planned without the knowledge of Stevie Wonder³⁷. After the announcement, the Athletics Director instructed the Ticket Office to begin processing ticket refunds³⁸. Most of the tickets were purchased online through the use of a credit card³⁹. As of October 15, 2012, \$631,449 has been refunded and a total of \$972 is still outstanding⁴⁰.

Applicable Statutes, Rules, Policies, and Procedures

University policies and procedures that are relevant to ticket refunds are listed below.

Policy/Procedure Name	Category
<i>UH Athletics Department Manual (2010-11)</i>	Section 19 – Ticket Operations
<i>Ticket Office Desktop Procedures</i>	UH Athletics Ticket Office and Stadium Revenue Procedures ⁴¹
	UH Athletics Ticket Office Procedures (non-UH events) ⁴²

Findings and Observations

[2.4.1] *There are insufficient policies and procedures relating to ticket refunds.*

Through our review of the policies and procedures listed above, we noted that there is insufficient guidance with respect to event cancellations and ticket refunds. While existing procedures describe how ticket sales are voided and credit card ‘charge-backs’ are processed, they do not set forth any policies that specify the circumstances in which ticket refunds will be made by the University and the authorizations that are necessary.

Additionally, there are no policies or procedures governing the refund of ticket sales that are held in an agency (custodial) account on the behalf of others. Such policies and procedures would provide guidance on approvals necessary to process the refunds and how a shortfall in

³⁷ Factfinders Report, Paragraph 226
³⁸ Factfinders Report, Attachment 28, Item 53.
³⁹ KMH Interview with the Athletics Department Ticket Office Manager
⁴⁰ Provided by the Assistant Athletics Director for Business Operations
⁴¹ Provided by the Athletics Department Ticket Office Manager
⁴² Provided by the Athletics Department Ticket Office Manager

the agency (custodial) account would be resolved (e.g., by additional funds from the other party, refunds on first come, first served basis, or other).

[2.4.2] Ticket refunds were processed at no additional cost to the Athletic Department.

Most of the refunds were accomplished by simply reversing the transactions processed through the internet. In this case, the merchant (credit card) processing fees charged to the Athletics Department by the various credit card companies were also reversed. Refunds to those who purchased their tickets at the Ticket Office were processed during normal business hours and no incremental labor costs were incurred⁴³. Merchant card processing fees charged on individual ticket sales at the Ticket Office window were also reversed when the refunds were processed at the Ticket Office.

[2.4.3] Refunds required the University to transfer \$200,000 from the Athletics Department Revolving Fund to restore the amount disbursed from the agency (custodial) account.

To ensure sufficient funds were available to cover the \$631,449 in refunds⁴⁴, the University transferred \$200,000 from the Athletics Department Revolving Fund to the agency (custodial) account to make up for the shortfall created by the disbursement to Epic. This transfer of public funds to the agency (custodial) account was recorded as an expenditure of the Athletics Department. If restoration or recovery is considered probable, it may be appropriate to record this as a receivable from BPE.

Recommendations

1. The University should develop and implement policies and procedures related to processing ticket sale refunds. The policies and procedures should address the following:
 - a. Authority over event cancellations and approval of ticket refunds;
 - b. Communication protocols on event cancellations and ticket refunds;
 - c. The circumstances in which refunds are acceptable or allowed;
 - d. Refunds of various ticket processing fees; and
 - e. How refunds will be processed.
2. Staff should be provided training on the policies and procedures once they are developed and implemented to ensure roles and responsibilities are clearly understood.
3. Since the University Athletics Department provided the funds necessary to cover the refund of ticket sales, it should consider and evaluate whether the total direct costs incurred as identified in **Figure 4.0** should be recorded as a receivable from BPE.
4. The ticket refund policy should be made available on the University Ticket Office website.

⁴³ KMH Interview with the Athletics Department Ticket Office Manager, October 1, 2012.

⁴⁴ Based upon information provided by the Assistant Athletics Director for Business Operations

3. SUGGESTED NEXT STEPS FOR THE ADVISORY TASK GROUP

Phase I for the ATG was to assess and evaluate the operational and financial processes that resulted in the failed Stevie Wonder concert and make recommendations relating to the findings resulting from the transactions surrounding the Stevie Wonder Concert issue. In connection with the work performed in Phase I, discussions were also held with University management to gain a better understanding of what affirmative actions and initiatives are being considered to address improvements in internal controls and related financial and operation process areas.

Based on these discussions, we understand that certain policies have been revisited, and as it relates to UH Executive Policy E8.106, which provided the Athletics Director the ability to negotiate commitments for amounts exceeding \$25,000 and exempted such commitments from review and approval of OPRPM, this policy was suspended effective July 12, 2012. We further understand that University management is implementing other policy revisions and process improvements in the contracting, disbursing and financial transaction processing areas.

Designing and implementing an effective and efficient system of internal controls with strong financial and operational processes can be challenging in a large, diverse organization. Building strong internal controls helps organizations achieve important objectives and sustain and improve performance. Yet, new and rapidly changing business and operating models, greater use and dependency on technology, increase regulatory scrutiny and other challenges, requires any control system to be flexible in adapting to myriad of changes in financial, operating and regulatory environments. Effective systems of internal control also demand more than adherence to policies and procedures; it requires significant judgment by the board and management.

In September 2012, the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) released its update to the Internal Control – Integrated Framework Revised Exposure Draft. The COSO Internal Control Framework (“Framework”) essentially has been and will continue to be the “leading practice” or “gold standard” and recognized as the leading framework for designing and evaluating internal controls.

There are several benefits that the Framework provides to boards, management and external stakeholders. Application of the Framework provides, but is not limited to:

- A means to apply internal control concepts to any type of entity (including university systems) regardless of industry or legal structure
- A principles-based approach (17 principles in total, see **Appendix H**) that provides flexibility and allows for judgment in designing and implementing internal controls
- Greater confidence in the board oversight and the achievement of organizational objectives
- Greater confidence in the organization’s ability to identify, analyze, and respond to risk and changes in the business and operating environments

Next Steps

Work with respect to Phase I indicates the need for improvements in several areas of University operations and in building more robust internal control processes. To that end, we suggest that the ATG consider the following for its next steps:

- We suggest overseeing a thorough review of existing delegations of authority throughout the University. Several instances were noted during the course of Phase I which indicate that there are inconsistent interpretations of existing delegations of authority, and better clarity is needed in terms of defined roles and responsibilities at all levels within the University.
- Additionally, the ATG should consider overseeing and guiding the University Administration to:
 - Compile an inventory of its policies and procedures, including those at the lowest operating levels of the University;
 - Assess the adequacy of those policies and procedures using existing authoritative guidance such as COSO;
 - Utilize a policy framework to ensure policies are organized in a logical, consistent manner; and
 - Develop a plan for developing or improving policies and procedures throughout the University including timelines for completion.
- Given the critical importance of designing and implementing effective internal controls and the charter of the ATG, we suggest the University conduct an initial assessment to establish where they stand with respect to the 17 principles provided in the updated COSO Framework. This assessment could identify significant gaps University-wide and highlight areas for immediate focus to ensure internal controls and related financial and operational processes are designed and implemented effectively. Other assessment and evaluation tools should be considered including those suggested by the National Association of College and University Business Officers (“NACUBO”), the Western Association of Schools and Colleges (“WASC”), and others.
- The ATG should also consider monitoring that necessary training and development plans on new or revised delegations, policies, and procedures are conducted throughout the University.

4. APPENDICES

The following represents a list of the appendices included within this report:

Appendix Ref.	Name of Document	Source
Appendix A	Facilities Use Agreement	Factfinders Report, Attachment 38, Exhibit B
Appendix B	Form W-9, Request for Taxpayer Identification Number and Certification	Assistant Athletics Director for Business Operations
Appendix C	Requisition form	Factfinders Report, Attachment 26, Exhibit Z
Appendix D	Authorization for Payment form	Factfinders Report, Attachment 114
Appendix E	Epic Talent Invoice	Factfinders Report, Attachment 117
Appendix F	Epic Talent Escrow Trustee Information	Factfinders Report, Attachment 116
Appendix G	Wire Transfer Form	Factfinders Report, Attachment 113
Appendix H	Internal Control – Integrated Framework Revised Exposure Draft	Committee of Sponsoring Organizations of the Treadway Commission
Appendix I	Individuals interviewed and contacted by KMH	N/A

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AGREEMENT BETWEEN
UNIVERSITY OF HAWAII AT MANOA AND BPE PRODUCTIONS, INC.,
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 BPE PRODUCTIONS, INC. ("BPE"), for the use of the Stan Sheriff Center to hold the Stevie Wonder Benefit Concert pursuant to the terms and conditions herein.

The UNIVERSITY specifically and expressly acknowledges and thanks BPE for its intent and agreement to promote the Stevie Wonder Benefit Concert as a fund-raising benefit for the UNIVERSITY's athletic department.

W I T N E S S E I H

1. Description of Premises. UNIVERSITY, for and in consideration of the covenants and agreements to be performed by BPE 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 BPE for the purpose of the Stevie Wonder 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 (or Ewa) Hospitality Area
- Diamond Head (or South) Hospitality Area

BPE shall not have access to the following designated areas:

- Manager's and staff offices

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- 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, BPE's 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 BPE, 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 BPE's use.

Should any construction or remodeling be performed at SSC during the time of the Event, UNIVERSITY will notify BPE of the areas to be affected. UNIVERSITY represents and warrants that any such construction and remodeling shall not interfere with BPE's use of the SSC.

BPE 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 BPE. BPE 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. BPE 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 BPE's 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 BPE, 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 BPE's expense. BPE, furthermore, shall defend and indemnify UNIVERSITY from any claim for damages or loss incurred in connection with said removal or disposition. BPE 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 BPE, its contractors, or agents.

UNIVERSITY will identify public parking areas that can be used by attendees of the Event, and provide BPE with parking passes for lower campus use by its personnel for the Event. BPE 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. BPE's 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.

BPE shall submit a detailed schedule of its planned use of the SSC to UNIVERSITY for its approval no later than August 1, 2012. BPE shall have

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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. BPE 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 BPE 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 BPE's 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, Ahahui Koa Anuenu, on or about June 18, 2012.

B. Revenues from Pre-Sale Tickets in the amount of \$225,000.00 will be utilized by BPE to reserve and secure the talents and services of Stevie Wonder, 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 BPE 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 BPE promote the Event, and encourage ticket sales.

6. Reimbursable and Other Expenses. BPE 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 BPE's 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. BPE 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 BPE, with UNIVERSITY to have the final say.

C. BPE 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 BPE with a statement certifying the total amount of all reimbursable expenses and any other fees and charges payable by BPE. Within ten (10) days of receipt of said statement, BPE shall make its payment for expenses and fees to the UNIVERSITY and its payment of the rent fee.

8. Disclaimer. BPE 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 BPE, 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, BPE 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 (BPE). In accordance with the UNIVERSITY's policies pertaining to the Use of University-Owned Facilities:

A. BPE 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. BPE, 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

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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 BPE's 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 BPE, 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 BPE in producing a successful Event, BPE agrees to assume all risks associated with booking, promoting and producing the Event. Specifically, BPE 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 Stevie Wonder at the Event, for any reason whatsoever. BPE represents to UNIVERSITY that it can and will secure insurance to cover this possibility, and identify UNIVERSITY, the University of Hawai'i and the

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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.

11. Responsibility (UNIVERSITY). As an agency of the State of Hawai'i, 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. BPE shall observe all laws, ordinances, policies and procedures of the United States of America, the State of Hawai'i, the UNIVERSITY and the County of Honolulu. BPE 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. BPE further agrees to be responsible for securing any license and permits that may be required.

13. Condition of Premises. BPE agrees to accept the SSC in the condition as is at the entry time of the Event.

14. Patented and/or Copyrighted Materials. BPE 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 the State of Hawai'i 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

BPE in connection with the Event. BPE 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 BPE, 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 BPE 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 BPE 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.Hawai'i.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 "University's Caterer") under contract with the UNIVERSITY on the date of the Event. BPE, its contractors, and agents shall contract with University's Caterer for all such services relating to the use of the SSC. All rebates, if any, received from University's Caterer from these concessions shall be the sole property of the UNIVERSITY, and BPE, 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 University's Caterer and UNIVERSITY.

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B. Neither BPE, 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 BPE or its contractors or agents is prohibited without written authorization from UNIVERSITY.

21. Damage to Premises. BPE 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 BPE breaches this condition, UNIVERSITY is expressly authorized by BPE to restore the premises or other appurtenances, and to make such repairs as may be necessitated by any such injury or damage, and BPE 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 BPE 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 BPE. Repairs by BPE 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 BPE from UNIVERSITY's Athletic Director or designee. No other approvals shall be valid.

23. Contractors and Agents. BPE agrees that its contractors and agents shall abide by all terms and conditions of this Agreement with respect to their activities at the SSC. BPE 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.

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24. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

25. Applicable Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i, and any disputes shall be resolved by a state court of competent jurisdiction in Honolulu, Hawai'i.

26. Waiver. No failure to exercise, and no delay in exercising on the part of either party, any privilege, power or right hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right or power hereunder.

27. Notices. Any notice or communication made pursuant to, under or by virtue of this Agreement must be in writing (whether or not so stated) and sent either by personal delivery or sent by registered or certified mail, return receipt requested, nationally recognized overnight courier service, by facsimile transmission or by email. Notices must be sent to a party at the address noted below:

To UNIVERSITY: Director of Athletics
 University of Hawai'i at Manoa
 Office of Intercollegiate Athletics
 1337 Lower Campus Road
 Honolulu, HI 96822

To BPE: Bob Peyton
 Bob Peyton Entertainment Productions Inc.
 P.O. Box 62047
 Honolulu, HI 96822

28. Individual Authority. The individuals executing this document represent that they have full authority to bind their respective party to the terms of this Agreement.

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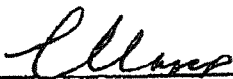
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29. Counterparts. This Agreement may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original, but all counterparts shall constitute one and the same document, and in making proof of this Agreement, it shall not be necessary to prove or account for more than one such counterpart.

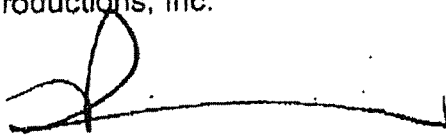
30. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all proposals and/or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. This Agreement may be supplemented and/or amended, 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

BPE Productions, Inc.

By: 
Robert V. Peyton
President

Form **W-9**
 (Rev. December 2011)
 Department of the Treasury
 Internal Revenue Service

**Request for Taxpayer
 Identification Number and Certification**

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) Epic Talent™ LLC	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) 1111 Brickell Avenue, Suite 1100	Requester's name and address (optional)
City, state, and ZIP code Miami, FL 33133		
List account number(s) here (optional) 220968530		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number									
			-						
Employer identification number									
2	2	-	0	9	6	8	5	3	0

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶ 	Date ▶ 24th of June, 2012
------------------	----------------------------------------------------------------------------------------------------------------	----------------------------------

MIS-30 UNIVERSITY OF HAWAII LAST CHANGE DATE 06-25-2012 AT 11:26:22 AM No. R834500

REQUISITION

FEDERAL FUNDS APPLY: YES NO

DELIVER TO (INCLUDE DEPARTMENT NAME) University of Hawaii Athletic Department 1337 Lower Campus Rd Honolulu, HI 96822 USA	REQUISITIONER Richard C Sheriff <i>[Signature]</i>	PHONE NO. 808-956-6955
	PURCHASING OFFICER Carl Clapp	PHONE NO. 808-956-6523
DELIVER ON/BEFORE		VENDOR TERMS
DELIVER PREPAID VIA Best Way		
QUOTE DATE/REFERENCE		
OTHER VENDORS CONTACTED AND THEIR QUOTATIONS		
VENDOR EPIC TALENT 1111 Brickell Avenue Suite 1100 Miami, FL 33131		

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	AMOUNT
1	each	Deposit for Stevie Wonder Benefit Concert for UH Athletics in the Stan Sheriff Center August 18th, 2012	3400	200,000.00	200,000.00
				TOTAL	200,000.00
095600/2530 200,000				R834500	

EQUIP LOCATION: (BLDG & ROOM) _____ OR INCORPORATE W/ DECAL OR P.O. N _____ EQUIP OWNED BY: FEDERAL AGENCY: UH

I CERTIFY THAT THIS PURCHASE SUPPORTS THE UNIVERSITY PROGRAM INDICATED IN THE ACCOUNT CODE BLOCK. I CERTIFY THAT SUFFICIENT FUNDS ARE AVAILABLE IN THIS ACCOUNT FOR THIS PURCHASE AND THAT THIS PURCHASE IS IN ACCORDANCE WITH APPLICABLE UNIVERSITY POLICIES AND PROCEDURES.

APPROVING AUTHORITY *[Signature]* TYPED NAME _____ TITLE *6/25/12*
 FISCAL OFFICER *[Signature]* TIFFANY KURADKA DATE *6/25/12* FO CODE 00067

FOR ASSISTANCE IN COMPLETING THIS FORM, PLEASE REFER TO UNIVERSITY OF HAWAII ADMINISTRATIVE PROCEDURES MANUAL, VOLUME 8A, BUSINESS AND FINANCE, AB 200, ATTACHMENTS 250.1 AND 250.2, REQUISITIONS.

Comments:

EXHIBIT Z

AUTHORIZATION FOR PAYMENT

FEDERAL FUNDS APPLY YES NO

DECLVER TO (INCL DEPARTMENT NAME)
 University of Hawaii
 Athletic Department
 1337 Lower Campus Rd
 Honolulu, HI 96822

REQUISITIONER
 Richard C Sheriff
 PHONE NO
 808-956-6955

PURCHASING OFFICER
 Carl Clapp
 PHONE NO
 808-956-6523

DELIVER ON/BEFORE _____ VENDOR TERMS _____

DELIVER PREPAID VIA
 Best Way

QUOTE DATE/REFERENCE _____ DOC CROSS REF
 R834500

UH ID NUMBER _____

VENDOR V0001288790
 EPIC TALENT
 1111 Brickell Avenue
 Suite 1100
 Miami, FL 33131

For Central Office Use Only

EFT Blank ZIP Others

ITEM NO.	QUANTITY	UNIT	DESCRIPTION	SUB CODE	UNIT PRICE	EXTENSION
1	1	each	deposit for Stevie Wonder Benefit Concert for UH Athletics in the Stan Sheriff Center August 18th, 2012	3400	200,000.00	200,000.00

RECEIVED
 JUN 25 2012
 DISBURSING OFFICE

ACCOUNT NO.	AMOUNT	ACCOUNTING	AMOUNT	TOTAL	EXTENSION
MA-095608-2530	200,000.00				200,000.00
				MA-A258234-00067	
				FY 2012	

EQUIP LOCATION, BLDG & ROOM _____ OR INCORPORATE W/DECAL OR P.O. NO _____ EQUIP OWNED BY
 FEDERAL AGENCY UH

I CERTIFY THAT SUFFICIENT FUNDS ARE AVAILABLE IN THE ACCOUNTS SPECIFIED AND THAT THIS PAYMENT IS IN ACCORDANCE WITH APPLICABLE UNIVERSITY POLICIES AND PROCEDURES.

 FISCAL OFFICER TIFFANY KURAOKA DATE 6/21/12 00067
 FD CODE

FOR ASSISTANCE IN COMPLETING THIS FORM PLEASE REFER TO UNIVERSITY OF HAWAII ADMINISTRATIVE PROCEDURES MANUAL, VOLUME IIB, BUSINESS AND FINANCE AS 861

Comments:

INVOICE



Epic Talent
 1111 Brickell Avenue
 Suite 1100
 Miami, FL 33131

BILL TO:

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

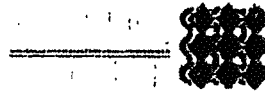
Invoice Date 06/25/12
 Invoice # A258234A

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

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

ENTERED
 JUN 2012
 DISBURSING
 ATK

Subtotal 200,000.00
 Tax
TOTAL 200,000.00



25 June 2012

**EPIC TALENT™
ESCROW TRUSTEE INFORMATION**

Name.: Epic Talent™
Address.: 1111 Brickell Avenue
Suite 1100
Miami, FL 33131
Phone.: T. 305-913-8590
C. 305-767-1603
F. 305-913-4101
F. 786-347-3524

Email address. Sean @ epic-talent.com

Bank Name: Bank of America

Bank Address.: 390 N. Orange Ave, Orlando FL 32801
Bank Officer.: Alecia Dupont,
Title.: Vice President
Phone.: 407-418-6004
Fax 407-418-6016


Account Name.: Epic Talent™ LLC
SWIFT CODE.: Bank of America Swift codes are
BOFAUS3N FOR US DOLLARS and
BOFAUS6S FOR FOREIGN CURRENCY

ACCOUNT No.: 8980 5137 0328
ABA No.: 063000047 Paper
063100277 Electronic
026009593 Wires


1111 Brickell Avenue Miami FL 33131 Suite 1100
Ph. : 305-913-8590 F. 305-913-4101

Wire Transfer # W180118 dtd 26 JUN 12

AB.808
Attachment 1UNIVERSITY OF HAWAII
Wire Transfer Form

Date:	<u>6 / 25 / 12</u>	
UH Document No.:	<u>A258234</u>	
Amount of Transfer (US Dollars):	<u>\$ 200,000.00</u>	
Foreign Currency Transfer*:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, Foreign Exchange (F/X) Code:	<u> </u>	
Requesting Department Information:		
Department/Program:	<u>Athletics Department</u>	
Contact Person Name:	<u>Tiffany Kuraoka</u>	
Contact Person Phone No./email address:	<u>956-6505/tkuraoka@hawaii.edu</u>	
Vendor/Payee Information:		
Name:	<u>Epic Talent, LLC</u>	
Address:	<u>1111 Brickell Avenue, Suite 1100</u>	
	<u>Miami, FL 33131</u>	
Bank Account Number:	<u>898051370328</u>	
Invoice Number:	<u>A258234A</u>	
Vendor/Payee Bank Information:		
Bank Name:	<u>Bank of America</u>	
Address:	<u>390 N. Orange Avenue</u>	
	<u>Orlando, FL 32801</u>	
ABA Routing Number (US Wires):	<u>026009593</u>	
SWIFT Code (Foreign Wires):	<u> </u>	
Special Note to Vendor/Payee or Vendor/Payee Bank (optional):		
	<u>6 / 25 / 12</u>	<u>Tiffany Kuraoka</u>
Fiscal Officer Signature	Date	Name (Print or Type)
<u>067</u>	<u>956-6505</u>	
F. O. Code	Phone Number	
DISBURSING OFFICE USE ONLY		
Wire Transfer Number:	<u>W180118</u>	
General Instructions: Submit this document to the Disbursing Office with an approved Purchase Order or Authorization for Payment Form. *If foreign currency wire transfer amount is greater than \$25,000.00, contact the Disbursing Office for further instructions.		

COSO Integrated Internal Control Framework – 17 Guiding Principles

Below is a summary of each of the five components of internal control and the principles relating to each component.

<p>Control Environment</p> <p>The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. The board of directors and senior management establish the tone at the top regarding the importance of internal control and expected standards of conduct.</p>	<ol style="list-style-type: none"> 1. The organization demonstrates a commitment to integrity and ethical values. 2. The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control. 3. Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives. 4. The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives. 5. The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.
<p>Risk Assessment</p> <p>Risk assessment involves a dynamic and iterative process for identifying and analyzing risks to achieving the entity's objectives, forming a basis for determining how risks should be managed. Management considers possible changes in the external environment and within its own business model that may impede its ability to achieve its objectives.</p>	<ol style="list-style-type: none"> 6. The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives. 7. The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed. 8. The organization considers the potential for fraud in assessing risks to the achievement of objectives. 9. The organization identifies and assesses changes that could significantly impact the system of internal control.
<p>Control Activities</p> <p>Control activities are the actions established by policies and procedures to help ensure that management directives to mitigate risks to the achievement of objectives are carried out. Control activities are performed at all levels of the entity and at various stages within business processes, and over the technology environment.</p>	<ol style="list-style-type: none"> 10. The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels. 11. The organization selects and develops general control activities over technology to support the achievement of objectives. 12. The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

COSO Integrated Internal Control Framework – 17 Guiding Principles

<p>Information and Communication Information is necessary for the entity to carry out internal control responsibilities in support of achievement of its objectives. Communication occurs both internally and externally and provides the organization with the information needed to carry out day-to-day internal control activities. Communication enables personnel to understand internal control responsibilities and their importance to the achievement of objectives.</p>	<p>13. The organization obtains or generates and uses relevant, quality information to support the functioning of other components of internal control.</p> <p>14. The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of other components of internal control.</p> <p>15. The organization communicates with external parties regarding matters affecting the functioning of other components of internal control.</p>
<p>Monitoring Activities Ongoing evaluations, separate evaluations, or some combination of the two are used to ascertain whether each of the five components of internal control, including controls to effect the principles within each component, are present and functioning. Findings are evaluated and deficiencies are communicated in a timely manner, with serious matters reported to senior management and to the board.</p>	<p>16. The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning.</p> <p>17. The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.</p>

Persons interviewed and contacted by KMH

Name & title	Others Attending	KMH Personnel	Date interviewed or contacted
M.R.C. Greenwood, University President	David Lonborg, Chief of Staff Larry Rodriguez, ATG chair	Peter Hanashiro and Ross Murakami	October 17, 2012
Virginia Hinshaw, former Chancellor, UH Manoa	n/a – contacted by email	Dallas Weyand	November 1, 2012 and November 5, 2012
Howard Todo, VP Finance and CFO	Duff Zwald, OPRPM Karlee Hishashima, OPRPM Larry Rodriguez, ATG Chair	Peter Hanashiro and Ross Murakami	October 17, 2012
Donna Vuchinich, UH Foundation President	Bill King, UH Foundation CFO	Peter Hanashiro and Dallas Weyand	October 29, 2012
Duff Zwald, Director, OPRPM	n/a – teleconference	Dallas Weyand	September 26, 2012
Carl Clapp, UH Assoc. Athletics Dir. For Administrative Services	Sherry Ching, UH Internal Audit Teri Chang, UH Assistant Athletics Dir. For Facilities Tiffany Kuraoka, Assistant Athletics Dir. For Business Operations Rich Sheriff, SSC Manager	Dallas Weyand and Casey Ratica	September 26, 2012
Teri Chang, UH Assistant Athletics Dir. For Facilities	Sherry Ching, UH Internal Audit Carl Clapp, UH Assoc. Athletics Dir. For Admin. Services Tiffany Kuraoka, Assistant Athletics Dir. For Business Operations Rich Sheriff, SSC Manager	Dallas Weyand and Casey Ratica	September 26, 2012
Tiffany Kuraoka, Assistant Athletics Dir. For Business Operations	Sherry Ching, UH Internal Audit Carl Clapp, UH Assoc. Athletics Dir. For Administrative Services Teri Chang, UH Assistant Athletics Dir. For Facilities Rich Sheriff, SSC Manager	Dallas Weyand and Casey Ratica	September 26, 2012
Rich Sheriff, SSC Manager	Sherry Ching, UH Internal Audit Carl Clapp, UH Assoc. Athletics Dir. For Administrative Services Teri Chang, UH Assistant Athletics Dir. For Facilities Tiffany Kuraoka, Assistant Athletics Dir. For Business Operations	Dallas Weyand and Casey Ratica	September 26, 2012
Walter Watanabe, UH Athletics Ticket Office Manager	Carl Clapp, UH Assoc. Athletics Dir. For Administrative Services Glenn Shizumura & Sherri Ching, UH Internal Audit	Dallas Weyand and Casey Ratica	September 26, and October 1, 2012
Darlyn Lendio, VP for Legal Affairs and General Counsel	Ryan Akamine, Associate General Counsel	Dallas Weyand and Casey Ratica	September 26, 2012
Ryan Akamine, Associate General Counsel	Darlyn Lendio, VP for Legal Affairs and General Counsel	Dallas Weyand and Casey Ratica	September 26, 2012