



March 11, 2019

VIA EMAIL ([sione.thompson@spcsc.hawaii.gov](mailto:sione.thompson@spcsc.hawaii.gov))

Sione Thompson, Executive Director  
Hawaii State Public Charter School Commission  
SPCSC Commissioners  
1111 Bishop Street, Suite 516  
Honolulu, HI 96813

**RE: Governing Board Information for Hawaii State Public Charter School Commission**

Dear Mr. Thompson and Commissioners,

At the February 28 SPCSC special meeting in Kailua-Kona, the two major topics of discussion were Kona Pacific Public Charter School's updates to the 2018 Corrective Action Plan, followed by an informative and beneficial discussion about some specific financial transactions between the school the non-profit Friends of Kona Pacific Public Charter School, and the lease agreement between the two entities.

In preparation for the upcoming March 14 commission meeting in Honolulu, we would like to provide for the commissioners and commission staff a new update to the corrective action plan, and have attached that update document We would also like to share information about steps that have already been taken, and actions that are in process, to address the disentangling of certain aspects of the relationship between the school and the nonprofit.

That relationship is spelled out in a January 2017 Memorandum of Agreement (attached) that was drafted with the assistance of the Hawaii State Ethics Commission and approved by the Hawaii State Attorney General's office. While the MOA establishes the most salient aspects of the relationship, the commissioners at the 2-28-19 meeting pointed out several specific issues that would benefit from establishing a greater degree of separation of the two entities, in order to avoid even the appearance of any impropriety.

To that end, we have also attached a document that lists the issues discussed at the meeting, as well as some additional matters that we have identified, and explains the steps that have been taken or are in process.

Mahalo,  
Governing Board of Kona Pacific Public Charter School



## KPPCS and Friends of KPPCS: Financial Relationship Issues

Description of Issue	Remediation Plan and Timeline
<p>The school maintains several areas that are exclusively utilized for school purposes. These areas are not included in the current lease rent agreement with the nonprofit.</p>	<p>The school will order a commercial market rent appraisal in order to determine fair market value for all of the areas on the property that the school utilizes, and this appraisal will serve as the basis for the annual lease rent adjustment that will take place in <b>late April 2019</b>. The governing board will vote on the budget expenditure for this purpose on 3-12-19.</p>
<p>The school has not maintained a regular lease rent payment schedule. This practice has included occasional early partial payments.</p>	<p>Upon review of recent payments the school has determined this is not best practice and has notified the lessor that no payments will be made in advance of the due date and no partial payments will be made, only the full sum on the due date as agreed upon in the lease. <b>COMPLETE.</b></p>
<p>The school currently pays its lease rent to the nonprofit on a quarterly basis, at the request of the school. Some commissioners questioned whether this is best practice.</p>	<p>To prepare for the upcoming lease rent negotiations that will take place in <b>late April 2019</b>, the school's finance manager will conduct a cash flow analysis to determine whether monthly or quarterly lease rent payments are preferable in order to create the best financial stability for the school. The nonprofit's board finds either payment schedule acceptable and will await the school's decision.</p>
<p>Historically, one individual bookkeeper has carried out the financial record keeping for both the school and the nonprofit. This shared practice is common among charter schools. Commissioners raised concern about this practice due to the fact that the non-profit is also the schools lessor.</p>	<p>The nonprofit has already hired its own bookkeeper and training is taking place this month. <b>COMPLETE.</b></p>
<p>The school and a staff member of the supporting nonprofit had access to the school's bank VISA and Lowe's credit cards for the purchase of property maintenance supplies. Purchases are reviewed and approved by the school's bookkeeper and if necessary the non-profit is invoiced.</p>	<p>The nonprofit's access to the VISA and Lowes credit cards has been removed. <b>COMPLETE.</b></p>

<p>The nonprofit has a total of five rental units on its 38-acre property some of which, but not all, are rented to school employees. Because available rentals in West Hawaii are very scarce, the on-site rentals help with teacher retention and continuity in the educational program. Some commissioners expressed concern about this arrangement.</p>	<p>This issue was reviewed by the school's legal counsel, who saw no legal or ethical problems with this practice. The school has no power regarding the nonprofit's determination of rental cost or selection of renters. No school employee is providing in-kind services in exchange for rent and each renter has a legal lease. The units are not rented exclusively to school employees as evidenced by past and current non-employee tenants. <b>COMPLETE.</b></p>
<p>The nonprofit operates an AmeriCorps program designed to provide the school with up to five volunteers to assist with infrastructure development in the school garden such as new rock-walled garden beds, a vermiculture system, a shade house for plant starts, and other improvements. Some commissioners expressed concern that school employees may be doing AmeriCorps volunteer work during their paid staff time.</p>	<p>Throughout the history of the nonprofit's AmeriCorps program, almost all of the AmeriCorps volunteers providing services at the school have been school parents. In the event that a school employee may engage in AmeriCorps volunteer work, those volunteer hours are always outside of their regular paid hours. <b>Non-issue; COMPLETE.</b></p>

**MEMORANDUM OF AGREEMENT  
BETWEEN  
KONA PACIFIC PUBLIC CHARTER SCHOOL  
AND  
FRIENDS OF KONA PACIFIC PUBLIC CHARTER SCHOOL**

**I. INTRODUCTION**

THIS MEMORANDUM OF AGREEMENT (“MOA”), is entered into on 19 January, 2017, between KONA PACIFIC PUBLIC CHARTER SCHOOL (“KPPCS”) a public charter school established under Hawaii law, with offices in Kealahou, HI, and FRIENDS OF KONA PACIFIC PUBLIC CHARTER SCHOOL (“FRIENDS”), a 501C3 not-for-profit corporation with its principal place of business in Kealahou, HI.

**II. PREAMBLES**

WHEREAS, KPPCS is a Hawaii public charter school established with the goal of operating a K-12 educational organization with a mission to “educate the whole child in order to cultivate in young people the skills, knowledge and values they need to reach their highest potential” and a vision of “a world in which each person fulfills their unique potential in service to their community,” duly authorized as a Hawaii charter school on July 2, 2008 by the State of Hawaii Charter School Review Panel;

WHEREAS, FRIENDS is a non-profit organization, qualified under Section 501(c)(3) of the United States Internal Revenue Code and organized for the purposes of supporting the continuing development and operations of KPPCS and developing sustainable natural resource management systems and community based food production and educational opportunities at its 40-acre learning center in Kealahou; and duly registered in Hawaii, USA on May 13, 2008;

WHEREAS, FRIENDS has been determined by the federal Internal Revenue Service to be an organization that was organized and is operated exclusively for public benefit, charitable purposes;

WHEREAS, this Agreement has as its objective clarifying the collaboration and participation of both organizations for the development of facilities, projects and programs that benefit KPPCS and the community served by the school;

WHEREAS, the missions of KPPCS and FRIENDS are complementary;

WHEREAS, the Hawaii State Ethics Commission in its Advisory Opinion No. 2015-2 has stated that there are non-profit organizations established for the purpose of supporting a charter school and that the supporting non-profit may assist in fundraising for the school, may enter into business arrangements on behalf of the school, and may seek grants that benefit the school. Additionally a charter school and its supporting nonprofit organization may conduct business transactions with each other; for example, the charter school may contract with the non-profit organization for services or property;

WHEREAS, the Hawaii State Ethics Commission in that same advisory opinion states that if members of charter school governing boards or charter school employees are also paid employees of the

WHEREAS, KPPCS has no board members or employees who are also paid employees of FRIENDS, and KPPCS and FRIENDS have conflict of interest policies in place to prevent any possible violations of the State Ethics Code;

WHEREAS 1) No KPPCS governing board members or employees may also serve as paid employees of FRIENDS; 2) No board member of either organization may simultaneously serve as a voting member of the board of the other organization; 3) No spouse or child of a FRIENDS board member or employee may serve as a voting member of the KPPCS governing board and 4) No spouse or child of a KPPCS governing board member or employee may serve as a voting member of the FRIENDS board;

WHEREAS, there are 256 Department of Education (DOE) schools in Hawaii, and 34 charter schools. The DOE provides facilities for all of the DOE schools, but does not provide facilities, or specific funding for those facilities, to charter schools, with the exception of 8 "conversion" charter schools, which are housed in the same facilities in which the schools were located prior to their conversion to charter schools. The remaining 27 charter schools, including KPPCS, must develop alternative strategies for insuring that their school has adequate and safe facilities for their students;

WHEREAS, by Hawaii law charter school boards act as local school boards, and have autonomy in setting policies and procedures regarding how they secure their facilities. KPPCS' process in determining the nature of the partnership with FRIENDS included research on the approaches taken by other charter schools in Hawaii and throughout the USA, legal consultations and financial analyses;

WHEREAS, the strategic development of the facilities partnership between KPPCS and FRIENDS has been carefully and prudently undertaken by members of the KPPCS and FRIENDS boards and encompasses a number of best practices in charter school facilities development;

WHEREAS, there are county, state, federal and private funding opportunities that can support non-facilities project or program needs at KPPCS but are restricted to 501(c)(3) applicants;

WHEREAS, the existing relationship between KPPCS and FRIENDS also provides numerous other benefits to KPPCS, including affordable housing for school faculty and staff and a 40-acre property for education and recreational use by the school's students for developmentally appropriate activities that range from walks in the forest to games on the playing field;

THEREFORE, KPPCS and FRIENDS wish to continue working together and in compliance with the following clauses:

### **III. GOAL**

The goal of this agreement is to define the partnership of KPPCS and FRIENDS, which has proven to be a successful relationship that provides support and serves to meet school needs in three major areas:

- Facilities
- Fund development activities
- Activities on the 40-acre property
- Strategic planning

### **IV. AREAS OF COLLABORATION AND RESPONSIBILITIES**

A. The areas of collaboration and partnership responsibilities of KPPCS and FRIENDS include those described in the following table. The areas of collaboration and partnership responsibilities may be amended by mutual agreement of the parties.

Kona Pacific Public Charter School	Friends of KPPCS
<b>FACILITIES</b>	
Pays lease rent to FRIENDS for facilities, provides daily upkeep of school facilities.	Owns facilities, makes payments on facilities loans, provides major facilities maintenance and improvements, pays property taxes, maintains property and liability insurance
School governing board determines school facilities needs and relays those needs to Friends	Reviews whether FRIENDS' 501(c)(3) nonprofit status can be used to pursue funding to meet those needs
Researches and identifies specific funding opportunities that may enable the school's facilities needs to be met	Reviews the opportunities presented by KPPCS, makes final determination regarding the use of FRIENDS' 501(c)(3) status to pursue that specific opportunity
Prepares funding applications or campaigns to meet school facilities needs	Reviews and signs off on funding application or campaign
If funding is achieved, determines whether FRIENDS' support is needed to implement the facilities project	If implementation support is requested, assess how that support might be provided
Ensures that all grant requirements are met	
<b>FUND DEVELOPMENT</b>	
School governing board and administration determines and prioritizes school programmatic and educational project needs and relays those to the school's development staff	
School's development staff researches and identifies funding opportunities to address these programmatic and project needs.	Reviews any funding opportunities presented by KPPCS that are only available to 501(c)(3) nonprofit organizations, makes final determination regarding the use of FRIENDS' 501c3 status to pursue that specific opportunity
School's development staff prepares funding applications or campaigns to meet school facilities needs	If the grant is prepared to be submitted as a 501(c)(3) nonprofit funding application, FRIENDS reviews and signs off on funding application
School determines which school staff will be responsible for implementing successful grant programs or projects.	If implementation support is requested by the school, FRIENDS will assess how that support might be provided
<b>ACTIVITIES ON THE 40-ACRE PROPERTY</b>	
School suggests applicants for housing in the four residences on the property, which are prioritized for use by school faculty and staff.	FRIENDS reviews applications, selects tenants for the residences, and enters into rental agreements with the tenants.
School staff and student may utilize the entire 40-acre property, with the exception of the immediate areas around the tenant residences, for school activities per the lease between KPPCS and FRIENDS; however building or land alternations may not be made without prior approval from FRIENDS.	Maintains 40-acre property, reviews requests for alterations of buildings and/or land.
<b>STRATEGIC PLANNING</b>	

KPPCS AND FRIENDS periodically engage in joint strategic planning, and specific shared goals and objectives are periodically developed and implemented to support the school. These include implementation of the master land use and agricultural plan, regular communication regarding each others' activities, participation in each other's board meetings, and joint functions that build the spirit of community.

- B. In furtherance of these areas of collaboration and as set forth above:
1. KPPCS and FRIENDS may conduct business transactions with each other;
  2. KPPCS staff may, as part of their regular duties, perform work that supports obtaining or implementing grants or other funding opportunities that have been obtained through FRIENDS' 501(c)(3), so long as the funding is for the benefit of KPPCS;
  3. FRIENDS may assist in fundraising for the school and may seek grants that benefit the school;
  4. FRIENDS may enter into business arrangements on behalf of the school with the prior approval of the school,
  5. FRIENDS and KPPCS may contract with each other for services or property.

**V. PRINCIPAL CONTACTS**

The Principal Contacts for each one of the organizations is:

KONA PACIFIC PUBLIC CHARTER SCHOOL

Phil Fisher  
Governing Board President  
Post Office Box 115  
Kealahou, HI 96750-0115  
(808) 498-0982

FRIENDS OF KONA PACIFIC PUBLIC CHARTER SCHOOL

Michael Kramer  
Treasurer  
Post Office Box 115  
Kealahou, HI 96750-0115  
(808) 443-1456

Such Principal Contacts may be changed in writing from time to time by KPPCS and Friends, respectively.

**VI. ADDITIONAL TERMS**

This MOA shall take effect upon signing by both parties and shall remain in effect unless terminated. Neither party may assign or transfer all or any portion of this MOA without the prior written consent of the other party.

Any party may terminate this MOA at any time and for any reason by giving thirty (30) days prior written notice to the other party.

The provisions of this MOA may only be amended or waived by mutual written agreement by both parties.

The Campus Lease Agreement between KPPCS and Friends is an agreement separate and independent from this MOA, and nothing in this MOA shall be construed to modify the Campus Lease Agreement.

The parties acknowledge and agree that this MOA does not create any financial or funding obligation on the part of either party, and that such obligations shall arise only upon joint execution of a subsequent agreement or workplan (which shall include a budget) that specifically delineates the terms and nature of such obligations and that references this MOA. Such subsequent agreements or workplans and budgets will be subject to funding being specifically available for the purposes outlined therein, and all such funds shall be expended in accordance with the agreed upon budget and the line items contained therein.

Notwithstanding anything contained in this agreement, KPPCS and Friends agree that they are not entering into a legal partnership, joint venture or other such business arrangement. Neither party to this agreement will refer to or treat the arrangements under this Agreement as a legal partnership or take any action inconsistent with such intention.

This MOA in no way restricts either of the parties from participating in any activities with other public or private agencies, organizations or individuals.

This MOA is strictly for internal management purposes for each of the parties. It is not legally enforceable by any outside party and shall not be construed to create any legal obligation to an outside party on the part of either KPPCS or Friends .

This MOA shall not be construed to provide a private right or cause of action for or by any person or entity. All agreements herein are subject to, and will be carried out in compliance with, all Federal and State applicable laws, regulations and other legal requirements.

The individuals signing this MOU on behalf of their respective entities represent and warrant (without personal liability therefor) that upon the signature of each, this MOU shall have been duly executed by the entity each represents.

FOR  
KONA PACIFIC PUBLIC CHARTER SCHOOL

FOR  
FRIENDS OF KONA PACIFIC PUBLIC CHARTER  
SCHOOL



Phil Fisher  
Phil Fisher  
President, KPPCS Governing Board

Date: 1/19/2017

Michael Kramer  
Michael Kramer  
Treasurer

Date: 1/19/17

Approved by Gregg Ushiroda  
Deputy Attorney General

on Jan 11, 2017  
Date

by Gregg.M.Ushiroda@hawaii.gov  
e.g. fax/phone/email

[Signature] 1-19-17  
Witness Date

[Signature] 1-19-17  
Witness Date

[Signature] 1/19/17  
Witness Date

[Signature] 1-19-17  
Witness Date