

AUDITOR'S REPORT

FRIENDS OF HARRIS COUNTY PUBLIC LIBRARY



December 6, 2019

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HARRIS COUNTY AUDITOR

December 6, 2019

Mrs. Susan Greer, President
Harris County Friends of the Library
5749 S Loop East
Houston, Texas 77033

Edward Melton, Director
Harris County Public Library
5749 S Loop East
Houston, Texas 77033

RE: Harris County Auditor's Office Concession Agreement Compliance Review

The Harris County (County) Audit Services Department performed procedures relative to the Friends of the Library's (Branch Partners) Concession Agreement Compliance Review. The objective of the engagement was to evaluate Branch Partner's compliance with certain sections of the concession agreement (Agreement) between Harris County Public Library (HCPL) and respective Branch Partner. Our procedures included the following:

- Determined whether Branch Partner's use of the funds received from sales complied with Section I of the Agreement.
- Determined whether the accuracy and completeness of gross receipts for the 4 most recent semi-annual payments to the County (July 2017, January 2018, July 2018 and January 2019) existed and complied with Section II of the Agreement.
- Determine whether payments were made in a timely manner pursuant to Section III of the Agreement.

The enclosed Auditor's Report presents the issues identified during our procedures, recommendations developed in conjunction with the HCPL staff and Branch Partners leadership members, and any actions you will take to implement the recommendations. The results of the engagement and any discussion held with County officials are confidential and are not to be released without prior written consent of Harris County. If you receive a request for the contents of this engagement, notify the County Auditor's Office – Systems and Procedures director.

Mrs. Susan Greer, President
Harris County Friends of the Library

Edward Melton, Director
Harris County Public Library

We appreciate the time and attention provided by the HCPL staff, and the library volunteers, during this engagement.

Sincerely,



Mike Post
County Auditor

cc: District Judges
County Judge Lina Hidalgo
Commissioners:
R. Jack Cagle
Rodney Ellis
Adrian Garcia
Steve Radack
Kim Ogg
Vince Ryan
William J. Jackson

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OVERVIEW

Harris County Friends of the Library (HCFOL) is a 501(c)(3) nonprofit organization made up of 26 independent Branch Partners who support and promote library programs and activities through fundraising, grants and donations. Through its Branch Partners, HCFOL supports literacy, programming, collection development, and organizational growth in the most heavily populated county in Texas. HCFOL and its Branch Partners provide supplemental support for some of the most popular local library activities, such as the Summer Reading Program, Book Buddies, and the Tournament of Books. Additionally, HCFOL supports County Library employees by offering scholarships to those seeking degrees in library science.

SUMMARY OF AUDIT RESULTS

Based on the procedures performed, the 3 Branch Partners examined are utilizing the funds received from concession sales in a manner that complies with Section I of the Agreement. However, the 3 Branch Partners examined are not in compliance with Sections II and III of the Agreement. The recommendations and opportunities for improvement are noted below:

1. Agreement Definition is Ambiguous and Does Not Address Online Sales

Two of 3 (66%) Branch Partners examined had online sales that were not included in the calculation of gross receipts. The Agreement is ambiguous in regards to whether online sales should be included as gross receipts when calculating concession fees. HCPL should consult with the County Attorney's Office to update the current Agreement to specify whether sales from online retailers should be included in gross receipts calculations.

2. Concession Fees Not Being Remitted Timely

Five of 12 (42%) concession payments examined did not occur within the 10 day time period allotted for payment within Section III of the Agreement. Branch Partners should set internal reminders to ensure they make concession payments in accordance with Section III of the Agreement. Since the Branch Partners are not complying with Section III requirements to pay interest on late payments, HCPL management should consult with the County Attorney to determine if the Section III requirement of paying interest on late payments should be enforced or modified.

3. Lack of Procedures Regarding Branch Partners Dissolutions

The Agreement does not address specific processes and responsibilities that should occur when a Branch Partner dissolves. HCPL should work with the County Attorney's Office to amend the Agreement to include specific processes, responsibilities, and procedures that should occur when a Branch Partner is dissolved.

4. Branch Partners Operating Without Agreements

Eight Branch Partners do not have a concession Agreement with the County. Branch Partners currently not subject to an agreement should be required to sign and comply with an agreement. HCPL should work with the County Attorney and consideration should be given to combining all Branch Partners into one single overarching agreement so each Branch Partner can operate under the same bylaws.

These opportunities for improvement are discussed in more detail in the following Issues and Recommendations section of this report.

ISSUES AND RECOMMENDATIONS

1. Agreement Definition is Ambiguous and Does Not Address Online Sales

Background

Branch Partners are nonprofit 501(c)(3) groups who desire to assist the County in providing library services for the general public. In order to enhance library services, 18 of the 26 Branch Partners entered into a concession agreement with Harris County that allows a certain area of the HCPL facility to be used exclusively by the organizations. Branch Partners utilize these areas for concession sales such as used book store operations, online book stores support and operations, and other non-book sales such as spring flower and plants sales, book bags, memory sticks, and bake sales. The Agreement was submitted to Commissioner's Court in February of 2014 and one year renewals have occurred since 2015.

Section II of the Agreement calls for Branch Partners to remit to the County Treasurer a 2 percent fee from all "gross receipts." Gross receipts are defined as all money received by Branch Partners and the market value of all property and services received by Branch Partners upon all sales of personal property of every kind and nature at the library, including, but not limited to, books, paperbacks, book bags, plants, and photocopies. The Agreement does specifically exclude membership fees, bona fide gifts, and donations from gross receipts.

Issue

The Agreement is ambiguous in regards to whether or not online sales should be included as "Gross Receipts" when calculating concession fees.

Two of 3 (66%) Branch Partners (Friends of the Library Kingwood and Friends of the Evelyn M Meador Library) examined had Amazon.com book sales revenue totaling \$42,378 that was not included in the 2% calculation of gross receipts paid to the County.

As a result, we could not determine whether the Branch Partner made the correct payment to the County. When factoring in Amazon.com sales, Friends of the Library Kingwood and Friends of the Evelyn M Meador Library would have submitted an additional \$848 to the County.

Recommendation

HCPL management should consult with the County Attorney's Office to update the current Agreement to specify whether sales from online retailers should be included in gross receipts calculations.

Management Action Plan

HCPL will consult with the County Attorney's Office to determine if the calculation of gross receipts should include online sales, which are processed at the library location. If it is determined that online sales should be included with funds raised through direct sales at the library location, we will amend the agreement accordingly.

ISSUES AND RECOMMENDATIONS

**Agreement Definition is Ambiguous and Does Not Address Online Sales
(Continued)**

Responsible Party

Edward Melton, Director, Harris County Public Library

Agreed Upon Completion Date

Beginning of 2021 fiscal year, subject to change based on County Attorney's review

ISSUES AND RECOMMENDATIONS

2. Concession Fees Not Being Remitted Timely

Background

Section III of the Agreement between the Branch Partners and the County states Branch Partners will make “payments semi-annually and will pay said amount to the County, without demand, on or before the 10th day of each July and January while the Agreement is in effect,” the payment for the period January 1 through June 30th is due to the County Treasurer’s Office on or before July 10th, and the payment for the period July 1st through December 31st is due to the County Treasurer’s Office on or before January 10th.

Section III of the Agreement also stipulates that “all late payments bear interest at the maximum legal rate of interest.”

Issues

The 3 Branch Partners examined are not making concession fee payments to the County Treasurer’s Office in a timely manner pursuant to the Agreement.

Five of the 12 (42%) concession payments examined were not made in a timely manner within 10 days pursuant to Section III of the Agreement. All 3 Branch Partners examined had at least one payment that was not made in a timely manner. One of the 3 (33%) Branch Partners examined submitted payments to County Treasurer’s Office on an annual basis instead of the semi-annual basis required by Section III of the Agreement.

In addition, the Branch Partners did not include interest associated with late payments.

Recommendations

The Branch Partners should comply with Section III of the Agreement by submitting payments to the County Treasurer’s Office within 10 days of July 1st and January 1st of each year. To accomplish this, the Branch Partners should consider setting automated reminders that allow for timely processing of payments and consider implementing a monitoring control.

HCPL management should consult with County Attorney’s Office to determine if the Section III requirement of paying interest on late payments should be enforced or modified.

Management Action Plan

HCPL will consult with the County Attorney’s Office to evaluate the requirement for assessing concession fees and imposing late payment penalties.

ISSUES AND RECOMMENDATIONS

Concession Fees Not Being Remitted Timely (Continued)

Responsible Party

Edward Melton, Director, Harris County Public Library

Agreed Upon Completion Date

Beginning of 2021 fiscal year, subject to change based on County Attorney's review

ISSUES AND RECOMMENDATIONS

3. Lack of Procedures Regarding Friends of the Library Dissolutions

Background

Section XII of the Agreement states that upon “the dissolution of Friends (Branch Partners), whether voluntary or involuntary, all funds and other assets held by Friends (Branch Partners) under this contract become County’s property and Friends (Branch Partners) will deliver same immediately to the County Auditor.”

The HCPL has taken on the unexpected role of treasurer when Branch Partners dissolve. As such, they have taken custody of the dissolving group’s financial assets and assumed the additional responsibilities of recording, monitoring, and authorizing Branch Partner’s collections, disbursements, and financial reporting.

Issue

The Agreement does not address the specific processes and responsibilities that should occur when any of the 26 Branch Partners dissolves. As such, the HCPL is assuming control and responsibility over dissolved Branch Partner’s assets.

In addition, the Agreement does not address which assets are excluded from County takeover in the event of voluntary or involuntary dissolution (i.e. Endowments, Donated Certificates of Deposit, Restricted Assets, etc.).

Recommendations

HCPL management should work with the County’s Attorney Office to amend the Agreement to include specific processes, responsibilities, and procedures that should occur when a Branch Partner dissolves. This should include, at a minimum, an outline of responsibilities Harris County Friends of the Library will assume; including but not limited to, control of all dissolving Branch Partner assets.

Management Action Plan

The Library will work with the County Attorney’s Office to determine a procedure for securing the assets of a dissolving Friends Group. Once a procedure is determined and the concession agreement is revised, the Library will work with all branch Friends Groups to assure that new language is included in their bylaws outlining both “purpose” and dissolution clauses as required under new IRS guidelines for nonprofits.

Responsible Party

Edward Melton, Director, Harris County Public Library

Agreed Upon Completion Date

End of year 2019, subject to change based on County Attorney’s review

ISSUES AND RECOMMENDATIONS

4. Branch Partners Operating Without Agreements

Background

The County currently has an Agreement with 18 of the 26 Branch Partners.

Issue

Eight Branch Partners do not have a concession agreements with the County.

As a result, the County does not have authority to conduct audits for these eight Branch Partners which could expose the County to potential reputation risk as Branch Partners utilize the County Library naming recognition to encourage donations.

Recommendations

1. Branch Partners currently not subject to an agreement should be required to sign and comply with an agreement.
2. Consideration should be given to combining all Branch Partners into one single overarching agreement so each Branch Partners operate under the same bylaws to avoid confusion.
3. The agreement should include verbiage requiring the Branch Partners to comply with all applicable federal, state, county, and city laws, ordinances, rules, and regulations. This includes appropriate use of Federal Tax Identification Numbers and reporting requirements. Additionally, the agreement should outline the procedures that need to occur if the Branch Partner has not established or loses their 501(c)(3) nonprofit status.

Management Action Plan

The Library will work with County Attorney's Office to reword the existing concession agreements. New proposed language will lease the naming rights of the library branch to the Friends Group rather than the book store space. This will enable the County to establish agreements with all branch Friends Groups.

Responsible Party

Edward Melton, Director, Harris County Public Library

Agreed Upon Completion Date

Beginning of 2021 fiscal year, subject to change based on County Attorney's review