



HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

FINANCE
COMMITTEE MEMBERS

**Joint Meeting of
Finance Committee and Project Oversight Committee
Ali'i Place, Suite 150
1099 Alakea Street, Honolulu, Hawaii
(entrance on Richards Street)
Thursday, October 15, 2015 9:00**

Ivan M. Lui-Kwan, Esq.
CHAIR

George I. Atta
Michael D. Formby
Ford N. Fuchigami
Donald G. Horner
Terrence M. Lee

Agenda

PROJECT OVERSIGHT
COMMITTEE MEMBERS

Colleen Hanabusa
CHAIR

Damien T.K. Kim
VICE CHAIR

Michael D. Formby
William "Buzz" Hong
Donald G. Horner
Ivan M. Lui-Kwan, Esq.

- I. Call to Order by Chair
- II. Public Testimony on all Agenda Items
- III. Approval of the September 24, 2015 Minutes of the Joint Meeting of the Finance Committee and Project Oversight Committee
- IV. Update on Budget and Schedule Pursuant to Resolution 2015-86
- V. Discussion on the Issuance and Sale of Commercial Paper
- VI. Executive Session
Pursuant to Hawaii Revised Statutes Section 92-4 and Section 92-5(a)(4), the Committee may enter into Executive Session to consult with its attorneys on questions and issues on matters pertaining to the Committee's powers, duties, privileges, immunities and liabilities regarding the matter in item VIII.
- VII. Change Order Approval – Core Systems Contract Nine Month Delay Claim Resolution
- VIII. Adjournment

Note: Persons wishing to testify on items listed on the agenda are requested to register by completing a speaker registration form at the meeting or online on the HART section of the www.honolulustransit.org website. Each speaker is limited to a **two-minute** presentation. Persons who have not registered to speak in advance should raise their hands at the time designated for public testimony and they will be given an opportunity to speak following oral testimonies of the registered speakers.

Any physically challenged person requiring special assistance should call (808) 768-6258 for details at least three days prior to the meeting date.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



KIRK CALDWELL
MAYOR

NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUROKAWA
DEPUTY DIRECTOR

October 8, 2015

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

RECEIVED
CITY CLERK
C & C OF HONOLULU
2015 OCT -8 AM 11:53

Dear Chair Martin and Councilmembers:

**SUBJECT: Amending Ordinance No. 01-28
Commercial Paper Program (TECP)**

For the last several months, the Department of Budget and Fiscal Services (BFS) has been working with its underwriters to establish a new tax-exempt commercial paper (TECP) program for the City. The purpose of the TECP program is to replace the City's existing program which is expiring and to increase the amounts available to help meet Honolulu Authority for Rapid Transportation's (HART) short term cash requirements. As part of the documents needed for bond issuance, the City must issue an Offering Memorandum in which Corporation Counsel confirms that no pending litigation affects "the right of the City to levy taxes or to issue evidence of indebtedness."

As you know, the lawsuit against the City recently filed in Circuit Court on September 17, 2015, by Plaintiff Abigail Kawananaoka, seeks to invalidate various ordinances enacted by certain Councilmembers. The Plaintiff's challenge includes a challenge to Ordinance 12-17, which authorized the City to issue TECP for the rail transit project, and also increased the total overall amount that can be issued for all purposes.

As a result, the Corporation Counsel is presently unable to state that no pending litigation affects the right of the City to issue evidence of indebtedness. Moreover, the City's bond counsel would be unable to issue an unqualified bond counsel opinion necessary for issuance of the TECP.

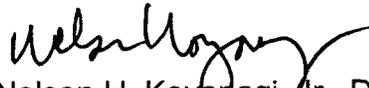
The Honorable Ernest Y. Martin
Chair and Presiding Officer
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Based on the most current information available, HART estimates that debt financing is needed to pay current contract invoices in January 2016. Should financing not be available to pay for currently contracted costs, approximately \$3 million a month could be incurred in late payment and interest costs to HART.

Therefore, we request that the City Council consider and adopt a new ordinance to repeal Ordinance 12-17 and to re-authorize issuance of the TECP for the rail transit project, thereby enabling the Corporation Counsel and the City's bond counsel to issue the necessary legal opinions for the City to proceed with issuance of the TECP to finance the HART project without interruption to its cash flow needs. We understand that such action will require expedited consideration and action by the City Council, and we appreciate your assistance. Please see the attached proposed bill.

If you have any questions, please call me at 768-3901.

Sincerely,



Nelson H. Koyanagi, Jr., Director
Budget and Fiscal Services

Attachment

cc: Don Horner, Chair, HART Board of Directors
Ivan Lui-Kwan, Chair HART Finance Committee
Dan Grabauskas, HART Executive Director/CEO
Donna Y.L. Leong, Corporation Counsel

APPROVED:



Roy K. Amemiya, Jr.
Managing Director



A BILL FOR AN ORDINANCE

AMENDING ORDINANCE NO. 01-28.

BE IT ORDAINED BY THE PEOPLE OF THE CITY AND COUNTY OF HONOLULU:

SECTION 1. Purpose. The purpose of this ordinance is to amend the authorization for the City and County of Honolulu (the "City and County") to issue general obligation commercial paper in order to clarify and facilitate the use of such debt.

SECTION 2. Findings and Determinations.

Pursuant to Section 237-8.6 of the Hawaii Revised Statutes ("HRS"), counties are permitted to establish a 0.5% surcharge (to be collected and distributed by the State) (the "County Surcharge") on the existing 4.0% State general excise tax (the "State Excise Tax") in order to fund transportation projects. On August 15, 2005, the Council of the City and County of Honolulu (the "Council") adopted Ordinance 05-027 establishing the County Surcharge, the receipts of which must be spent on either: (a) operating or capital costs of a locally preferred alternative for a mass transit project, or (b) expenses in complying with the Americans with Disabilities Act of 1990 with respect to (a). In addition, on December 16, 2009, the Council adopted Resolution 09-252, CD1, to initiate amendments to the Revised Charter of the City and County of Honolulu 1973, as amended ("Charter"), to create the Honolulu Authority for Rapid Transportation ("HART"), a public transit authority responsible for the planning, construction, operation, maintenance and expansion of the Honolulu High Capacity Transit Corridor Project (the "HHCTCP").

On July 14, 2010, the Council adopted Ordinance 10-15 amending Ordinance 01-28 to expand the purposes for which proceeds from the City's general obligation commercial paper may be applied to include public improvements to the City and County's wastewater system and the water system managed by the Board of Water Supply of the City and County (the "Board of Water Supply"). Both the City and County and the Board of Water Supply are bound by their revenue bond covenants with respect to the issuance of wastewater system revenue bonds and water system revenue bonds, respectively, that mandate that they each (a) fix, charge and collect rates and other charges that produce revenues sufficient to pay debt service and related obligations; (b) satisfy coverage requirements prior to issuing any additional bonds secured by their respective revenue streams; and (c) maintain reserves for debt service. In addition, both the City and County (with respect to its wastewater system) and the Board of Water Supply have proven credit histories with respect to the timely payments of debt service and both have demonstrated the self-sustainability of their respective systems.

BFSTEC10/8/15



A BILL FOR AN ORDINANCE

The Council believes that it is necessary to establish certain conditions through a Memorandum of Understanding in connection with the issuance of general obligation commercial paper by the City in connection with the HHCTCP to assure that HART reimburses the City and County for any payments of principal and interest and any costs incurred by the City and County relating to the issuance of general obligation commercial paper and other forms of general obligation indebtedness for public improvements, including equipment, relating to the HHCTCP.

Therefore, the Council hereby finds and determines: (1) the Council has heretofore adopted Ordinance 01-28, as amended by Ordinance 04-36 and Ordinance 10-15, authorizing the issuance and sale and specifying certain terms of general obligation commercial paper of the City and County, and authorizing and providing for certain related matters; and (2) it is advisable, expedient and in the best interests of the City and County to increase the amount of such commercial paper to be issued and expand the purposes for which proceeds of such commercial paper may be applied to include public improvements relating to the Honolulu High Capacity Transit Corridor Project managed by the HART.

On June 6, 2012, the Council adopted Ordinance 12-17 amending Ordinance 01-28. The Council hereby finds and determines that it is advisable, expedient and in the best interests of the City and County that the amendments to Ordinance 01-28 adopted under Ordinance 12-17, Sections 1 through 9, be repealed and replaced in their entirety with the following amendments to Ordinance 01-28.

SECTION 3. Ordinance 12-17 is repealed.

SECTION 4. Ordinance 01-28 is amended by amending Section 2 to read as follows:

"SECTION 2. Authorization of Commercial Paper. Pursuant to Chapter 47, Hawaii Revised Statutes, as amended, and the Revised Charter of the City and County, there are hereby authorized for issuance and sale from time to time general obligation notes (the "Commercial Paper" and each a "Commercial Paper note") of the City and County, including renewals and extensions thereof, in an aggregate principal amount at any one time outstanding not to exceed [Three Hundred Fifty Million Dollars (\$350,000,000)] Four Hundred Fifty Million Dollars (\$450,000,000), for the purpose of (a) refunding all or a part of any General Obligation Bonds and any Commercial Paper and any reimbursement obligations to the provider of any credit or liquidity facility as the Director of Budget and Fiscal Services shall determine to be in the best interest of the City and County; (b) paying the cost of any public improvements, including equipment, (1) for which an appropriation is made in a capital budget ordinance, including public improvements relating to the wastewater system of the City and County, [or] (2) public



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improvements relating to the water system managed by the Board of Water Supply, or (3) if not included in (1) above, public improvements, including equipment, relating to the HHCTCP, and for which General Obligation Bonds or Revenue Bonds are authorized to be issued, in advance of the issuance of such General Obligation Bonds or Revenue Bonds, or, in the case of equipment, instead of the issuance of General Obligation Bonds or Revenue Bonds; and (c) paying all costs incurred in the issuance of such Commercial Paper and the refunding of any General Obligation Bonds. The proceeds of the Commercial Paper shall be applied as provided in Section 8 hereof."

SECTION 5. Ordinance 01-28 is amended by amending Section 8 to read as follows:

"SECTION 8. Application of Proceeds. The proceeds of the Commercial Paper are hereby irrevocably appropriated for the purposes set forth herein, and such proceeds, together with any other funds of the City and County which are legally available therefor, shall be deposited as determined by the Director of Budget and Fiscal Services and applied as directed by the Director of Budget and Fiscal Services:

(1) to the payment of costs of public improvements, including equipment, (a) authorized pursuant to any capital budget ordinance of the City and County, including public improvements relating to the wastewater system of the City and County, to the extent the appropriation for such costs has not lapsed or been satisfied, [or] (b) public improvements relating to the water system managed by the Board of Water, for which the Board of Water Supply has submitted a request by resolution of the Board of Directors of the Board of Water Supply to the Council of the City and County to issue general obligation commercial paper for such improvements, or (c) if not included in (a) above, public improvements, including equipment, relating to HHCTCP;

(2) to pay the principal of, premium (if any) and interest on any General Obligation Bonds or Commercial Paper or obligations to the provider of any credit or liquidity facility to be refunded; and

(3) to pay costs of issuance of the Commercial Paper and any related refunding, including without limitation, the initial fees of any issuing and paying agents or registrars, the fees of any dealers, financial consultants and bond counsel, rating agency fees, escrow agent fees, fees for verification of refunding escrow calculations, fees and expenses for any liquidity or credit enhancement, the cost of preparation of any documentation relating to the Commercial Paper, including any offering document and definitive Commercial Paper, and any cost of publications required by law.

Pending the time the proceeds of the Commercial Paper are required to pay any General Obligation Bonds to be refunded as provided in (2) above, the proceeds of



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such Commercial Paper, together with any other funds of the City and County which are legally available therefor, may be held by the Director of Budget and Fiscal Services in trust for such purposes or may be held by a financial institution selected by the Director of Budget and Fiscal Services to serve as escrow agent under an escrow agreement, such agreement to be in such form and containing such terms and provisions as the Director of Budget and Fiscal Services deems appropriate, and, in either case, invested as permitted by law. The Director of Budget and Fiscal Services is hereby authorized and directed to serve as such escrow agent or to select a qualified financial institution to serve in such capacity, and to determine the form and terms of any such escrow agreement and any fee agreement to be entered into with such financial institution. The Director of Budget and Fiscal Services is hereby further authorized and directed to determine the date or dates upon which the General Obligation Bonds or portions thereof are to be redeemed and to give or cause to be given any appropriate notices of such redemption."

SECTION 6. Ordinance 01-28 is amended by adding a new Section 14 to read as follows:

"SECTION 14. HHCTCP Commercial Paper. Notwithstanding anything to the contrary contained herein, each issue of Commercial Paper by the City and County, the proceeds of which will be applied to fund the payment of costs of public improvements, including equipment, relating to the HHCTCP (the "HHCTCP Commercial Paper"), shall be subject to the following conditions precedent:

(1) the Council shall have adopted an ordinance or resolution, whichever is required, approved by affirmative vote of at least two-thirds of the members of the Council (a) authorizing the issuance, sale and use of proceeds of General Obligation Bonds for the payment of the costs of public improvements, including equipment, relating to the HHCTCP, as well as the payment, refunding or refinancing of the HHCTCP Commercial Paper, and (b) determining the maximum principal amount of such General Obligation Bonds to be issued for such issue;

(2) HART shall submit a request in writing to the Council in the form of a resolution adopted by the Board of Directors of HART setting forth the details of such request and issue of HHCTCP Commercial Paper; and

(3) the City and HART shall have entered into a memorandum of understanding as set forth in the provisions of Section 15.

SECTION 7. Ordinance 01-28 is amended by adding a new Section 15 to read as follows:



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"SECTION 15. Memorandum of Understanding Relating to HART. The City and County and HART have entered into a memorandum of understanding, which has been approved by the Council by resolution, that sets forth the obligations of HART to the City and County concerning the HHCTCP Commercial Paper and other forms of general obligation indebtedness. The memorandum of understanding requires that the City and County be reimbursed by HART for any payments of principal and interest and any other costs incurred by the City and County relating to the issuance of HHCTCP Commercial Paper and other forms of general obligation indebtedness. "

SECTION 8. Repeal of Conflicts. All ordinances and resolutions, and any portions of ordinances and resolutions, heretofore enacted or adopted by the Council which are in conflict or inconsistent with any provision of this ordinance shall be and are hereby repealed to the extent of such conflict or inconsistency. Except amended hereby and by Ordinance 04-36 and Ordinance 10-15, Ordinance 01-28 shall remain in full force and effect.

SECTION 9. In sections 4, 5, 6 and 7 of this ordinance, ordinance material to be deleted is bracketed and new ordinance material is underscored. In these sections, the titles of the sections are underscored because the titles were underscored in Ordinance 01-28.



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SECTION 10. Effective Date. This ordinance shall take effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu



Honolulu Rail Transit Project AHJV Nine Month Delay Claim

Justin Garrod
Deputy Director of Core Systems

Proposed Action

- **Authorizes the Chief Executive Officer to execute Change Order 00018 with Ansaldo Honolulu Joint Venture for the settlement of the Core Systems Contractor's nine (9) month delay claim and includes the full reconciliation of its Best and Final schedule (pre-Notice to Proceed [NTP]) and post-NTP baseline progress schedule in the amount of \$8,700,000.**

Core Systems Fiscal Information

Allocated Contingency

\$67,432,099

Previously Executed Change Orders / Credits	- \$21,280,893
Net Contingency Transfer(s) to/from Unallocated Contingency	+ \$8,317,350
Available Contingency	\$54,468,556
Cost of this Action	- \$8,700,000
Remaining Contingency after Execution of this Action	\$45,768,556

Nine-month Delay Claim

Key Feature Summary

- **HART issued Notice of Award to Ansaldo Honolulu Joint Venture (AHJV) on March 11, 2011**
- **Notice to Proceed (NTP) expected and as identified in the contract documents, no later than April, 11 2011**
- **NTP issued on January 13, 2012**
- **Total days delay in issuance of NTP, 277 days**

Nine-month Delay Claim Justification

- **The delay in issuance of NTP was due to bid protests filed by the unsuccessful Core Systems Offerors, for which a stay on the award of the contract was in effect until the DCCA Hearings Officer's decisions regarding the protests were issued.**
- **The delay was an event beyond the control of the Core Systems Contractor and HART.**

Nine-month Delay Claim

Independent Cost Estimate (ICE)

- **HART ICE determined escalation costs based on a comparison of the delay in schedule activities between the Baseline Project Schedule (BPS) – Rev. G and the Best and Final Offer BPS**
 - **Activity mid-point dates from the two schedules are analyzed to determine the specific delay impact for each activity.**
 - **Escalation costs are then calculated on the prorated annual escalation rate based on the specific delay impact calculated for the activity.**
 - **The escalations rate utilized are shown on the next slide.**

- **ICE Low and High Range for Negotiations: \$7,274,707 and \$9,406,486**

Nine-month Delay Claim Escalation Index Evaluation

Cost Factor	ICE	PMOC Spot Report 2010 – 2019 *
Labor	2.88% (Low) 4.67% (High)	4.67%
Materials	3.30%	3.30%

*Escalation values from Table 5-7, Recommended Escalation Factors, FTA PMOC CLIN 0005: Spot Report, Dated July 2009. A review of both labor and material index performance from NTP to today indicate that the labor and material rates identified in the 2009 report are still valid.

** 2.88% Labor Escalation Rate was the rate utilized in AHJV bid proposal and found in their Escrow bid documents.

Nine-month Delay Claim

Contractor Proposed Cost (CPC) Estimate (\$ million)

➤ Financial Impact Cost:	\$ 2.03
➤ Delay Escalation Cost:	\$12.14
➤ Financial Review Cost:	\$ 0.03
➤ Expert Review Cost:	\$ 0.04
➤ Preparation Cost:	\$ 0.19
➤ G.E.T.:	\$ 0.68
➤ Interest:	\$ 1.32
➤ OH&P	<u>\$ 0.04</u>
➤ TOTAL:	\$16.48

Nine-month Delay Claim

➤ **Negotiations focused on:**

- 1. Definition of acceptable elements that had merit for compensation. Items like financial impact, expert review, preparation costs and interest were not allowed.**
- 2. Determination of time impact by activity. This was significant as HART's determination of impact was different from AHJV.**
- 3. Apply escalation factor to determine acceptable negotiation range.**

Nine-month Delay Claim

Summary of Negotiations

➤ CPC (Contractor Proposed Costs)	\$16,478,561
➤ HART ICE Low	\$ 7,274,707
➤ HART ICE High	\$ 9,406,486

Settled Amount **\$ 8,700,000**

This Contract Change Order is for the settlement of the Core Systems Contract's nine (9) month delay claim and includes full reconciliation of its Best and Final schedule (pre-Notice to Proceed) and baseline progress schedule (post-NTP).

Mahalo!