

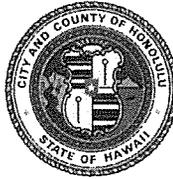
DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

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2013 JUN -5 AM 11:22

KIRK CALDWELL
MAYOR



MICHAEL D. FORMBY
DIRECTOR

MARK N. GARRITY, AICP
DEPUTY DIRECTOR

April 29, 2013

The Honorable Ann Kobayashi
Honolulu City Council
530 S. King Street, Room 202
Honolulu, Hawaii 96813

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CITY COUNCIL
HONOLULU, HAWAII

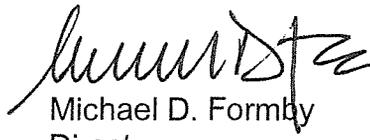
Dear Councilmember Kobayashi:

SUBJECT: Financial Benefits to the Taxpayers Associated
With OTS Operating TheBus and The Handi-Van

Per your request at the Budget Committee hearing on Bill 9, the Department of Transportation Services (DTS) respectfully submits the attached paper regarding the financial benefits to the City and County of Honolulu associated with OTS operating TheBus and The Handi-Van via a management agreement with DTS.

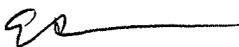
Please let me know if you have any questions regarding the above.

Very truly yours,


Michael D. Formby
Director

Attachment

APPROVED:



Ember Lee Shinn
Managing Director

DEPT. COM. 332

**Benefits to the City and Taxpayers Associated
With OTS Operating TheBus and TheHandi-Van**

A. History and Direct Financial Benefits

Currently, as prescribed by Ordinance, Oahu Transit Services, Inc. ("OTS"):

[s]hall have no purpose, except the management, operation, and maintenance of the city bus system and special transit service and the provision of transit-related services on behalf of and for the city.¹

In fulfilling this specific purpose, OTS operates as "an instrumentality of the city for appropriate purposes other than for labor and employment purposes."² The reference to purposes "other than for labor and employment" affirms that employees of OTS "shall not be deemed public employees under HRS Chapter 89."³

As an instrumentality of the City not procured competitively, but rather contracted via a management agreement with the Department of Transportation Services ("DTS"), OTS enjoys certain benefits flowing from this status. Key to OTS functioning as an instrumentality of the City is a recognition by federal authorities that DTS "retains sufficient authority under State and local law to comply with all applicable Federal statutes and regulations, and take remedial actions in instances of non-compliance."⁴ Further, the City is able to "certify its ability to carry out capital, planning, training, demonstration, and/or operating assistance projects by lease, contract or otherwise."⁵

Other agencies have recognized OTS as an instrumentality of the City as well:

1. The Federal Transit Administration (FTA);
2. The U.S. Internal Revenue Service (IRS);
3. The State Department of Taxation (DOTAX);
4. The State Department of Labor (DOL); and
5. The Pension Benefit Guarantee Corporation (PBGC).

This recognition allows the City and its taxpayers to enjoy certain financial benefits as follows:

State of Hawaii DOL and DOTAX: State Unemployment Tax Insurance (SUTA)

OTS is considered an instrumentality of the City by the State Department of Labor. As a result of litigation involving DOTAX, DOTAX entered into a Memorandum of Agreement, Settlement and Compromise with the City and with OTS. Per this agreement, OTS is exempt from unemployment tax. OTS is liable for payments in lieu of contributions the same as any other City Department. If OTS was not recognized as an instrumentality of the City, it would likely be subject to the lowest UIC payroll tax rate. For 2013, the maximum wage base per employee for UIC was \$39,600 and the tax rate varied

¹ Revised Ordinances of Honolulu 1990, Chapter 13, Sec. 13-8.2(a)(5).

² Id. at Sec. 13-8.3(a)(3).

³ Id. at Sec. 13-8.3(a)(2).

⁴ Letter from the UTMA dated June 4, 1991.

⁵ Id.

between 2.4% (best loss record) to 6.6% (worst loss record). Using the lowest rate applicable to a non-instrumentality (2.4%) on a wage base up to \$39,600, as a non-instrumentality of the City, OTS would be responsible for approximately \$1,660,000 in SUTA payments. During 2012, OTS paid out \$48,521.44, resulting in a net savings of approximately \$1,612,000 per year. Of significance, MTL, Inc. (OTS' predecessor) was not considered an instrumentality and paid UIC payroll taxes. The net savings to the City over twenty years is estimated at \$24.5 million.

Federal Unemployment Tax Insurance (FUTA)

OTS is also considered an instrumentality of the City by the IRS. As a result, it has been determined by letter agreement that OTS is not subject to FUTA contributions. If OTS were not an instrumentality of the City, it would be liable for about \$77,000 in FUTA contributions per year. The cumulative savings to the City and its taxpayers over twenty years is estimated at \$1.2 million.

Potential Higher Costs for Workers' Compensation Insurance

OTS is treated as instrumentality of City by the State DOL. As a result, OTS is allowed to self-insure its Workers' Compensation program without deposit of a bond or other guarantee of financial capacity under State law. In the absence of the instrumentality status, OTS would need to post a bond to comply with State law or purchase insurance. The cost of insurance as compared to OTS' current self-insurance/excess insurance plan is estimated to result in a savings of \$600,000 per year. The cumulative savings over twenty years is estimated at \$9.1 million.

DOT General Excise Tax (GET)

As an instrumentality of the City, OTS is not liable for GET payments on its management fee or on the total contract cost (services). Savings from the management fee are about \$18,000 per year.

B. OTS Costs in Relationship to Other Mainland Transit Systems

Historically, OTS costs are comparable to or lower than peer transit costs on the Mainland. In the most recent Short Range Transit Plan, the study consultant benchmarked Honolulu's transit performance with twelve (12) peer systems. The study found that Honolulu's operating expenses are fourteen percent (14%) lower than the average and the operating subsidy is twenty-six percent (26%) lower than average.

OTS obtained another benchmark comparison of peer west Coast transit operations. All of the representative West Coast cities operate bus systems and do not include the larger multi-modal systems, such as those found in San Francisco or Los Angeles (where costs are typically higher). Further, the benchmark comparison does not include rail. Transit systems included in the comparison were as follows:

1. Seattle (King County METRO)
2. Portland (TriMET)
3. Denver (Regional Transportation District)
4. Oakland (AC Transit)
5. Sacramento (Regional Transit District)

6. San Diego (MTS)
7. Orange County (OCTA)

The benchmark cities were derived from the Florida Transit Information System (FTIS). The research is out of the Lehman Center of Transportation Research (LCTR) at Florida International University. The result of this benchmark study, attached hereto, is that TheBus provides more passenger trips per capita, more passenger trips per revenue mile and more passenger trips per revenue hour than any of the West Coast peer cities at an operating expense per passenger mile that is less than its peers. See Attachment "A" hereto.

C. Operational Benefits to the City and Taxpayers

As an operational benefit to the City and its taxpayers, under the City Public Transit Ordinance, the City maintains a significant degree of shared control over the OTS operation that it might not enjoy under a competitively procured contract. In fact, the enduring relationship between DTS and OTS fostered by the management agreement facilitates a strong and productive working relationship over the short, mid and long term. Historically, OTS works with the City Administration and Council, for all intents and purposes, as if it were an operational division of DTS. OTS administrators regularly appear before Council, respond to inquiries from Council and meet with Councilmembers on TheBus and Handi-Van issues and concerns, including but not limited to the OTS budget which is included in the DTS budget. As an example of recent effective partnering, DTS tasked OTS to join DTS in the early stages of intermodal and multimodal rail planning. DTS is also working closely with OTS on alternative sources of revenue in anticipation of escalating labor, materials and supply costs over long-term operations. In other words, through this unique working relationship with OTS, DTS is able to bring OTS to the table as a partner in resolving the many issues associated with county-wide transit operations.

In addition to the above operational considerations, the Ordinance provides that directors of OTS are subject to the approval of DTS and a director can be removed by DTS when it is in the best interests of the City bus system or special transit service,⁶ a practice more akin to a City Commission versus the Board of a private corporation. The Ordinance also provides that OTS shall be:

[D]irectly responsible and accountable to the director for carrying out the policies established by the department for the management, operation, and maintenance of the city bus system and special transit service.⁷

The management agreement allows the City and OTS to strike terms in the best interest of the City and its taxpayers, terms which can be amended as new management agreements are negotiated. In

⁶ Supra at Section 13-8.2(b)(2) & (3).

⁷ Supra at Section 13-8.4(a)(1).

summary, the management agreement process permits DTS to interact and work with OTS on an enduring basis to deliver the best transit system to the City and its taxpayers.

D. Organizational Benefits to the City and Taxpayers

We presently have 25 established positions within the DTS Public Transit Division that are responsible for transit policy, planning and direction of the City and County of Honolulu's island-wide public transit system. Oahu's public transit system includes the fixed-route "TheBus" operation and its ADA counterpart, "The Handi-Van" paratransit operation. In addition to establishing, monitoring and enforcing all transit policy decisions, the DTS Public Transit Division also oversees:

1. Route establishment, adjustment and coverage;
2. Equipment requisition;
3. Procurement of buses and vans;
4. Design, construction and operation of transit centers;
5. Establishment, installation, relocation and maintenance of bus shelters and bus stops;
6. Operation of the paratransit eligibility center and oversight, including appellate authority over in-person functional assessments and determinations of eligibility;
7. Compliance with ADA requirements;
8. Federal National Transit Database (NTD) reporting and certification;
9. FTA grant applications, compliance and certifications;
10. Audit and review functions of TheBus and The Handi-Van operations;
11. Annual budgeting for TheBus and The Handi-Van (Operating and CIP);
12. Response to complaints, suggestions and recommendations.

The DTS Public Transit Division staff is essentially able to handle these high-level policy and oversight functions without getting into day-to-day transit operations precisely because it can rely upon OTS to manage and operate the transit system in close coordination with DTS. The close relationship between DTS and OTS, which has developed over time given the enduring nature of the management agreement, could not easily be replaced or reproduced by a new vendor taking over the operation under a competitive procurement. However, functioning as an instrumentality of the City in its operation of TheBus and The Handi-Van, OTS frees up DTS personnel to concentrate on their policy-level responsibilities. Absent this relationship with OTS, the DTS Public Transit Division staff would have to take a more active role in day-to-day operations.

In closing, there are both financial and operational benefits to the City and its taxpayers flowing from the current enduring relationship with OTS through their management agreement with DTS. This is not to say the City could not compete the existing transit contract, rather, it is an acknowledgement that the enduring relationship with OTS enables OTS to function as an instrumentality of the City and work closely with DTS in delivering a first-class bus and paratransit system to the transiting public.