



RESOLUTION

AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF BUDGET AND FISCAL SERVICES OF THE CITY AND COUNTY OF HONOLULU OR THE DIRECTOR'S DESIGNEE TO AMEND AND RESTATE A MEMORANDUM OF UNDERSTANDING WITH THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ("HART") REGARDING THE GENERAL OBLIGATION BONDS.

WHEREAS, pursuant to the Revised Charter of the City and County of Honolulu 1973, as amended, Section 17-109, the Honolulu City Council ("Council"), at the request of HART, may authorize the City and County of Honolulu ("City") to issue bonds, which can currently take the form of general obligation bonds, general obligation commercial paper notes, general obligation bond anticipation notes and other forms of general obligation indebtedness for the Honolulu High Capacity Transit Corridor Project, now known as the Honolulu Rail Transit Project ("HRTTP"); and

WHEREAS, the Council enacted Ordinance 15-46, which amended the authorization for the City to issue general obligation commercial paper to increase the amount of such commercial paper to be issued and to expand the purposes for which proceeds of such commercial paper may be applied to include public improvements, including equipment, relating to the HRTTP; and

WHEREAS, Ordinance 15-46 amended Ordinance 01-28 to require that each issuance of commercial paper by the City, the proceeds of which will be applied to fund the payment of costs of public improvements, including equipment, relating to the HRTTP (the "HRTTP 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 HRTTP, as well as the payment, refunding or refinancing of the HRTTP 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 HRTTP Commercial Paper; and
- (3) the City and HART shall enter into a memorandum of understanding subject to the provisions of Ordinance 01-28, Section 15; and



RESOLUTION

WHEREAS, Section 15 of Ordinance 01-28, as amended by Ordinance 04-36, Ordinance 10-15 and Ordinance 15-46, requires that prior to the initial issuance of H RTP Commercial Paper, the City shall submit to the Council a memorandum of understanding (1) setting forth the obligations of HART to the City concerning the H RTP Commercial Paper and other forms of general obligation indebtedness and (2) requiring that the City be reimbursed by HART for any payments of principal and interest and any other costs incurred by the City relating to the issuance of H RTP Commercial Paper and other forms of general obligation indebtedness;

WHEREAS, on May 7, 2015, the City and HART executed the memorandum of understanding;

WHEREAS, the City and HART mutually recognize the need to amend and restate the existing memorandum of understanding in order to reflect the current understanding between the City and HART; and

WHEREAS, a copy of the proposed Amendment No. 1 and Restatement of the Memorandum of Understanding between the City and HART is attached hereto as "Exhibit A" and incorporated herein by this reference; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

- (1) Pursuant to Ordinance 15-46 and Ordinance 01-28, as amended, the Council hereby consents to and approves of the Amendment No. 1 and Restatement of the Memorandum of Understanding between the City and HART, in the form attached hereto as Exhibit A;
- (2) The Director of the Department of Budget and Fiscal Services or the Director's designee is authorized to execute the Amendment No. 1 and Restatement of the Memorandum of Understanding with HART in the form attached hereto as Exhibit A; and
- (3) The Director of the Department of Budget and Fiscal Services or the Director's designee is authorized to execute any incidental or related agreements, amendments and documents in furtherance of the above agreement so long as such agreements, amendments and documents do not incur additional obligations on the part of the City; and



RESOLUTION

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Director of the Department of Budget and Fiscal Services, whose mailing address is 530 South King Street, Room 208, Honolulu, Hawaii 96813; and the Executive Director and Chief Executive Officer of HART, whose mailing address is 1099 Alakea Street, Suite 1700, Alii Place, Honolulu, Hawaii 96813.

INTRODUCED BY:

Ron Menor (BR)

DATE OF INTRODUCTION:

June 22, 2017
Honolulu, Hawaii

Councilmembers

**AMENDMENT NO. 1 AND RESTATEMENT
OF THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY AND COUNTY OF HONOLULU AND
THE HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION REGARDING THE GENERAL
OBLIGATION BONDS**

This AMENDMENT NO. 1 AND RESTATEMENT OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION REGARDING THE GENERAL OBLIGATION BONDS ("Restatement MOU") is entered into and effective this _____ day of _____, 2017, by and between the City and County of Honolulu (the "City") whose mailing address is 530 South King Street, Room 208, Honolulu, Hawaii 96813, and the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu ("HART"), whose mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813. The City and HART are collectively referred to as the "Parties."

WHEREAS, pursuant to amendments to the Revised Charter of the City and County of Honolulu 1973, as amended (the "Charter" or "RCH"), including Article XVII, HART was established, effective July 1, 2011, as a public transit authority responsible for the development, operation, maintenance and expansion of the Honolulu High Capacity Transit Corridor Project, now known as the Honolulu Rail Transit Project ("HRTP"); and

WHEREAS, by Act 247 (2005), Session Laws of Hawaii Regular Session of 2005, codified at Hawaii Revised Statutes ("HRS") Section 46-16.8, a county surcharge on the state general excise and use tax was authorized to fund public transportation systems; and

WHEREAS, by Ordinance 05-27, codified at Revised Ordinances of Honolulu 1990 ("ROH") section 6-60.1, there was established a one-half percent general excise and use tax surcharge (the "county surcharge") for funding the operating and capital costs of the HRTP; and

WHEREAS, in the Charter amendments that created HART, there was established a special transit fund (the "Transit Fund") pursuant to Article XVII, Section 17-114 of the Charter, into which shall be transferred the county surcharge on state tax and all revenues generated by the fixed guideway system; and

WHEREAS, pursuant to the Charter amendments that created HART, the Honolulu City Council ("Council") when requested by HART may authorize the City to issue bonds, which can currently take the form of general obligation bonds, general obligation commercial paper notes, general obligation bond anticipation notes and other forms of general obligation indebtedness for the HRTP; and

WHEREAS, on December 5, 2012, the Council adopted Resolution 12-322 authorizing the City to enter into a Full Funding Grant Agreement with the federal government for the HRTP, providing grant funding in the amount of \$1.55 billion; and

WHEREAS, the Full Funding Grant Agreement, entered into on December 19, 2012 between the City and the Federal Transit Administration, references project capital cash flow schedules requiring debt financing; and

WHEREAS, such debt financing is to be used only for the completion of the HRTP; and

WHEREAS, the City and HART share the mutual objective of financing the HRTP in the most cost-efficient and effective manner by working together to ensure timely cash availability at the lowest possible cost to the taxpayers; and

WHEREAS, the Council adopted Resolution 15-313 which approved the Memorandum of Understanding Between the City and County of Honolulu and the Honolulu Authority for Rapid Transportation Regarding the General Obligation Bonds, effective as of May 7, 2015 ("MOU") between the City and HART; and

WHEREAS, Section 3 of Act 240 (2015), Sessions Laws of Hawaii Regular Session of 2015 ("Act 240") among other things, amended HRS Section 46-16.8 to provide for a five-year extension of the county surcharge beyond December 31, 2022 to December 31, 2027; and

WHEREAS, the Council enacted Ordinance 16-1 to (1) amend Ordinance 05-27 and (2) effectuate the extension of the county surcharge for the City permitted under Section 3 of Act 240, while complying with the mandate that Ordinance 05-27 be repealed on December 31, 2022; and

WHEREAS, the Charter was amended by Charter Amendment no. 4 to amend HART's responsibilities to the planning, design, development and construction of the HRTP and by placing operations and maintenance responsibilities for the HRTP solely in the Department of Transportation Services ("DTS") and the legal rights and obligations relating to HRTP operations and maintenance are to be transferred from HART to DTS effective July 1, 2017; and

WHEREAS, based on Ordinance 16-1 and the extension of the county surcharge for the City permitted under Section 3 of Act 240, the City and HART desire to amend various sections of the MOU, and to restate the MOU as set forth herein in order to reflect these changes; and

WHEREAS, the City and HART desire to amend the MOU to reflect the placement of operations and maintenance responsibilities for the HRTP solely in DTS and the transfer of legal rights and obligations relating to HRTP operations and maintenance from HART to DTS effective July 1, 2017; and

WHEREAS, Section 6.02 of the MOU provides that the terms of the MOU may be modified by mutual written agreement of the Parties with prior approval of the Council; and

WHEREAS, the City and HART, Parties to the MOU, are able and willing to execute this Restatement MOU; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein, and of any general obligation bonds, general obligation bond anticipation notes, general obligation commercial paper notes, or any other form of general obligation indebtedness or obligation that constitutes a first charge on the General Fund of the City in accordance with the Constitution and other laws of the State of Hawaii issued by or entered with the City in whole or in part to finance the acquisition, construction, replacement, rehabilitation, approved extension or completion of the HRTTP or related facilities or purposes (collectively, "Project Bonds"), HART and the City agree that the MOU is, as of the date first written above, hereby amended and restated in its entirety to read as follows:

ARTICLE I.

COVENANTS OF HART

Section 1.01 HART shall, at all times, (a) manage and control moneys made available to HART in the Transit Fund (and other funds under the control of HART) so that there will be sufficient moneys available to punctually pay or cause to be paid all amounts payable under this MOU and the Project Bonds and other related documents and (b) duly observe and perform all of the conditions, covenants and requirements set forth in this MOU and the Project Bonds and other related documents.

Section 1.02 So long as any Project Bonds are outstanding, HART shall not suffer or permit any change, restriction, impairment, modification or alteration to the receipt, collection, deposit, transfer or payment of HART revenues (as defined in Section 3.01 hereof) either hereunder or in any other manner in any material respect, without the written concurrence of the City,

Section 1.03 HART hereby grants to the City a first priority security interest in all amounts held or required to be deposited in the Transit Fund or other applicable accounts or funds, all HART revenues (as defined in Section 3.01 hereof), and all amounts of money held by HART derived from HART revenues including investment income thereon, in order to secure obligations of HART to the City under this MOU.

Section 1.04 HART shall (a) obtain the consent of the City prior to entering into or issuing any other forms of indebtedness (including, but not limited to, bonds, notes, leases, federal or state loans and bank lines of credit and letters of credit) either (i) relating to the HRTTP, or (ii) secured by HART revenues (as defined in Section 3.01 hereof); and (b) prior to the issuance or execution thereof, provide to the City any agreement and other documents relating thereto.

Section 1.05 HART shall promptly notify the City Director of Budget and Fiscal Services and the Council of

- (a) the existence and status of any litigation, or the passage of any federal, state or local ordinance, law or rule not of general applicability to all persons, either of which could reasonably be expected to have a material adverse effect on (i) the financial condition or operations of HART, including, but not limited to, HART revenues (as defined in Section 3.01 hereof), (ii) the Project Bonds or (iii) the enforceability or validity of any of this MOU or any related documents;
- (b) any change in any material fact or circumstance represented or warranted in this MOU or in any other related documents; and
- (c) any communications, reports or financial statements delivered or received by it from any taxing authority or rating agency with respect to the transactions contemplated hereby (together with a copy of such communication, report, or statement).

Section 1.06 HART shall ensure that all data, certificates, reports, opinions of counsel, documents and other information furnished to the City and the Council, whether pursuant to this MOU, or in connection with or pursuant to an amendment or modification of, or waiver under, this MOU, shall, at the time the same are so furnished, (a) be complete and correct in all material respects to the extent necessary to give the City and the Council true and accurate knowledge of the subject matter thereof; and (b) not contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading, and the furnishing of the same to the City and the Council shall constitute a representation and warranty by HART to that effect. Each financial statement furnished to the City and the Council, whether pursuant to this MOU, or in connection with or pursuant to an amendment or modification of, or waiver under, this MOU, shall, at the time the same is so furnished, fairly present the financial condition and results of operations of HART.

ARTICLE II.

ISSUANCE AND SALE OF PROJECT BONDS

Section 2.01 The City shall be responsible for the issuance and sale of Project Bonds pursuant to HRS Chapter 47, County Bonds, to meet the project capital cash flow requirements of HART requested through its resolution and cash flow projections submitted to Council. Issuance will be a distinct series and not commingled with other City projects.

Section 2.02 The HART request to meet the project capital cash flow requirements described in Section 2.01 may be modified by mutual agreement between the City and HART during the term of the MOU as needed based on updated project cash flow needs and financial market conditions.

Section 2.03 Pursuant to HRS Section 47-4 and RCH Section 17-109, HART will submit a request to the Council in the form of a resolution adopted by the Board of Directors of HART, requesting the issuance and sale of Project Bonds.

Section 2.04 HART shall provide any information requested by the City in connection with obtaining or maintaining ratings on such Project Bonds, selling those bonds or complying with any

continuing disclosure undertaking the City is required to make in connection with the sale of the Project Bonds.

Section 2.05 HART consents to the inclusion by the City of any or all of this MOU or reference to it in any of its documents comprising a contract with the holders of those Project Bonds or in its offering or disclosure documents relating to those bonds, and, whether or not so included, for this MOU to be enforceable against HART by the City or by or on behalf of the bondholders of Project Bonds.

Section 2.06 HART shall be a party to or otherwise bound by and responsible for compliance with any tax covenants, certificates or agreements entered into by the City in connection with the issuance of such Project Bonds, related to establishing and preserving the (A) exemption of interest on those bonds from federal income taxation; or (B) treatment of those bonds as tax credit or tax subsidy bonds.

Section 2.07 HART shall keep adequate records and books of account, in which complete entries will be made (including, but not limited to any applicable records of HART that relate to Project Bonds, expenditure of Project Bond proceeds and use of facilities financed with Project Bond proceeds) reflecting all financial transactions of HART, and at any reasonable time and from time to time, permit and otherwise provide access to the City or any agents or representatives thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, HART and to discuss the affairs, finances and accounts of HART with any of the HART's officers, trustees and independent auditors (and by this provision, allow HART's auditors to discuss with the City or its agents or representatives, the affairs, finances and accounts of HART).

Section 2.08 HART shall provide to the City Director of Budget and Fiscal Services and the Council, monthly cash flow schedules detailing and updating the financial requirements for the H RTP.

Section 2.09 The City shall provide HART with cost estimates of all financing costs prior to issuance of debt instruments including the cost of bond counsel, underwriters, consultants, agents, advisors or other counsel (collectively, "finance team members" and each individually a "finance team member") for any work undertaken in connection with this MOU and the issuance of Project Bonds from proceeds of the next issue of general obligation bonds.

Section 2.10 Upon securing debt financing, the City shall provide HART with all actual financing costs to be charged to HART.

ARTICLE III.

**PROVISIONS AS TO PAYMENT OF PRINCIPAL, INTEREST AND
OTHER PROJECT BOND ASSOCIATED COSTS**

Section 3.01 HART hereby consents to the transfer by the City of, moneys derived from the county surcharge on state tax (the "county surcharge"), lease revenues, state or federal grant moneys (to the extent not restricted by the grantor to other purposes), and any other moneys that are deposited into the Transit Fund or other fund under the control of HART, including any investment income thereon, (collectively "HART revenues")

- (a) in the amounts of, and on or before the times as set forth in Section 3.02 hereof, any principal or interest or redemption premium that are from time to time due and payable on those Project Bonds, and
- (b) in the amounts of, and at the time any costs are incurred by the City in connection with issuance of those Project Bonds, that are not paid from proceeds of those bonds, as well as any ongoing costs relating thereto, including but not limited to, costs relating to post-issuance compliance; tax compliance; rebate; continuing disclosure; bank, rating agencies, credit enhancement, paying agent, and remarketing fees; and costs in connection with any audits.

Section 3.02 HART agrees to the transfer by the City, on or before the 25th day in each month, from the Transit Fund to an account within the city treasury dedicated for the payment of Project Bonds (the "Project Bond Debt Service Account" in the General Obligation Bond and Interest Redemption Fund) a sum equal to (a) one-sixth (1/6) of the amount of interest becoming due and payable under all fixed rate Project Bonds on the next succeeding interest payment date, plus (b) one-twelfth (1/12) of the amount of principal becoming due and payable under all fixed rate Project Bonds on the next succeeding principal payment date, plus (c) 1/12 of the estimated annual principal and interest amounts to be paid on the estimated outstanding variable rate bonds for the year, as determined by HART and agreed to by the City, except that no such transfer need be made if there are then moneys in the Project Bond Debt Service Account equal to the amount of interest becoming due and payable under all Project Bonds on the next succeeding interest payment date plus the amount of principal becoming due and payable under all Project Bonds on the next succeeding principal payment date.

- (a) When the 25th day of a month falls on a Saturday, Sunday or legal holiday, the transfer shall be due the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 3.03 In the event that, at any time, amounts are not conveyed or transferred to the City as provided in Section 3.02 hereof:

- (a) The City shall immediately deduct from the Transit Fund (or other funds under the control of HART) the sum of the missed transfer; the amount of the next scheduled transfer; and any costs referenced in Section 3.01(b) remaining unpaid.

(b) If the amount in the Transit Fund (and other funds under the control of HART) shall be less than the sum of the deductions referenced in Section 3.03(a), the City shall apply the amount in the Transit Fund in the following order of priority: (1) any costs referenced in Section 3.01(b) remaining unpaid; (2) the sum of the missed transfer; and (3) the amount of the next scheduled transfer.

(c) The Project Bond Reserve Account as referenced in Section 3.06 hereof may be used to satisfy any deficiency resulting from the sum of the missed transfer and the amount of the next scheduled deposit or transfer.

Section 3.04 HART shall compensate bond counsel, underwriters, consultants, agents, advisors or other counsel (collectively, "finance team members" and each individually a "finance team member") for any work undertaken in connection with this MOU and the issuance of Project Bonds from proceeds of the next issue of general obligation bonds, whether or not such general obligation bonds are Project Bonds; provided, however, that:

(a) If the next such series of general obligation bonds are Project Bonds, then such finance team members shall be compensated from proceeds of such Project Bonds, and HART shall be allocated a higher proportionate share of debt service of such Project Bonds to compensate for the work performed by such finance team members that is directly allocable to the HRTP, and

(b) If the next such issue of general obligation bonds are not Project Bonds, any work performed by such finance team members shall be compensated from proceeds of such issue of general obligation bonds and either: (A) HART shall reimburse the City for the fees paid by the City to such finance team members from any legally available moneys of HART; or (B) HART shall be allocated a higher proportionate share of debt service of the next issue of Project Bonds to compensate for the work performed by the finance team members that should have been allocated to the prior bond issue had it been for work performed for Project Bonds that is directly allocable to the HRTP.

Section 3.05 HART shall pay its share of any rebatable arbitrage (as determined by the City) due with respect to any Project Bonds. The City shall provide HART with the documentation supporting the allocation of the rebatable arbitrage for its review and concurrence prior to any payment by HART.

Section 3.06 HART consents to the establishment by the City of a Project Bond reserve account in the city treasury (the "Project Bond Reserve Account" in the General Obligation Bond and Interest Redemption Fund).

(a) From HART revenues as referenced in Section 3.01 hereof, HART shall convey or transfer to the Project Bond Reserve Account an amount such that the balance in the Project Bond Reserve Account shall be equal to the lesser of 50% of the maximum annual debt service on all outstanding Project Bonds (for variable rate bonds assuming the hypothetical variable rates used in the HART cash flow model), or 10% of the total outstanding par amount.

(b) The Project Bond Reserve Account shall be applied solely to pay debt service on Project Bonds in the event that sufficient amounts in the Transit Fund (or other funds under the control of HART) are not available therefore.

(c) If the amount in the Project Bond Reserve Account shall be less than the required balance as referenced in Section 3.06(a) above, the City shall deduct amounts from the Transit Fund (and other funds under the control of HART) upon the receipt of any HART revenues to satisfy the deficiency.

ARTICLE IV.

EVENTS AND REMEDIES

Section 4.01 Events. If one or more of the following events shall have occurred, then the City may institute any of the remedies described in Section 4.02. HART shall immediately notify the City Director of Budget and Fiscal Services and the Council of any event or events that have occurred.

(a) Month-end cash balance in the Transit Fund falls below \$25 million for three (3) consecutive months.

(b) The State of Hawaii Council on Revenues forecasts of General Excise Tax revenue for the forthcoming year declines by twenty (20) percent or more.

(c) County surcharge revenue is less than project to date projected revenue by twenty (20) percent or more for two (2) consecutive calendar quarter(s) or more.

(d) Receipt of federal grant reimbursement monies in the Transit Fund is delayed by three (3) month(s) or more.

(e) HARTP Project actual or projected contingency amounts enter into the buffer zone. The buffer zone is the area which is 5% to 10% above the minimum contingency as established in HART's Risk and Contingency Management Plan (RCMP).

(f) The ending project cash balance per the quarterly Debt and Financial Plan provided in Section 5.05(a) is less than the average ending project cash balance in the prior two quarterly Debt and Financial Plans.

(g) HART fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this MOU other than as referred to in Section 3.02 hereof for a period of thirty (30) days.

(h) Any representation, warranty or statement made by or on behalf of HART herein or in any related document or in any certificate delivered pursuant hereto or thereto shall prove

to be untrue in any material respect on the date made or deemed made; or the documents, certificates or statements of HART furnished to the City by or on behalf of HART in connection with the transactions contemplated hereby, when taken as a whole, are materially inaccurate in light of the circumstances under which they were made and as of the date on which they were made.

Section 4.02 Remedies. If one or more events in Section 4.01 shall have occurred, HART and the City shall meet to discuss the event(s) to gain a full understanding of the causes and to establish action items to address the issues. HART shall immediately notify the Council of any courses of action, action items or remedies agreed to by HART and the City. If HART and the City cannot agree on a course of action or acceptable action items cannot be identified then the City may institute any of the remedies described below.

- (a) HART shall engage and pay for the cost of an independent consultant approved by the City having special skill, knowledge and experience in (a) analyzing the operations of transportation systems substantially similar to the H RTP, (b) forecasting surcharges and taxes similar to the county surcharge, (c) preparing feasibility reports respecting the financing of such transportation systems and (d) advising on the operation of such transportation systems to audit and make recommendations on the operations and financial viability of HART.
- (b) If a Project Bond Reserve Account has not been established, such an account shall immediately be established by the City and HART shall immediately convey and transfer an amount such that the sum in the Project Bond Reserve Account shall be equal to the required balance as referenced in Section 5.06(a) hereof.
- (c) The City, after consultation with the HART Board, shall appoint certain parties to monitor the financial administration and operations of HART. HART shall reimburse the City for any costs incurred.

ARTICLE V.

FINANCIAL AND OTHER BOOKS, RECORDS AND REPORTS

Section 5.01 The City shall keep adequate records and books of account, in which complete entries will be made reflecting all transactions related to the issuance and sale of Project Bonds by the City per ARTICLE II of this MOU, including but not limited to the principal amounts of each issuance; issuance cost; capitalized cost; annual amortization amounts; annual principal and interest payments; accrued interest amounts; long-term and current portions of each issuance; and estimated rebatable arbitrage amounts.

- (a) Such information shall be conveyed to HART as soon as available and in any event within ninety (90) days after the end of each fiscal year of the City for inclusion in HART's annual financial statements.

Section 5.02 HART shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of HART; and at any reasonable time and from time to time, permit the City or any agents or representatives thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, HART and to discuss the affairs, finances and accounts of HART with any of HART's officers, trustees and independent auditors (and by this provision, HART authorizes said auditors to discuss with the City or its agents or representatives, the affairs, finances and accounts of HART).

Section 5.03 HART shall provide to the City Director of Budget and Fiscal Services and the Council a monthly accounting of the receipts, deposits, application and expenditure of the moneys referenced in Section 3.01 hereof.

Section 5.04 HART shall furnish to the City from time to time at HART's expense, all further instruments and documents, duly executed and delivered by HART, and take all further action that may be reasonably necessary, or that the City may reasonably request, in order to

- (a) protect any security interest or other right or interest assigned, or purported to be assigned, to the City under or in connection with this MOU or any related documents; or
- (b) enable the City to exercise or enforce its rights or remedies under or in connection with this MOU, or any related documents.

Section 5.05 HART shall provide the following reports to the City Director of Budget and Fiscal Services and the Council:

- (a) An updated Debt and Financial Plan with the actual revenues and expenditures to date to be provided quarterly within fifteen (15) calendar days after the end of the quarter.
- (b) As soon as available and in any event within one hundred-thirty (130) days after the end of each fiscal year of HART, the audited financial statements of HART, including a statement of net position, a statement of revenues, expenses and changes in net position, and a statement of cash flow of HART setting forth in comparative form to the budget for such fiscal year and the corresponding figures for the preceding fiscal year, all in reasonable detail and prepared in accordance with generally accepted accounting principles for state and local governments consistently applied;
- (c) Such additional information regarding the financial position or business of HART as the City may from time to time reasonably request; and
- (d) As soon as available, but in any event within fifteen (15) days of adoption by HART, a copy of the annual budget of HART.

ARTICLE VI.

**TERM AND MODIFICATION OF
MEMORANDUM OF UNDERSTANDING**

Section 6.01 The term of this MOU expires with the later of the repayment of all HRTTP debt financing obligations and other obligations HART has to the City under this MOU or the expiration date of the county surcharge.

Section 6.02 The terms of the MOU may be modified by mutual written agreement of HART and the City with prior approval of the Council.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 and Restatement of the Memorandum of Understanding on the date first above written.

City and County of Honolulu

By _____
NELSON H. KOYANAGI, JR.
Director, Budget and Fiscal Services

Honolulu Authority for Rapid Transportation

By _____
KRISHNIAH N. MURTHY
Interim Executive Director and CEO

APPROVED AS TO FORM AND LEGALITY:

By _____
Deputy Corporation Counsel

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 17-172, CD1

Introduced: 06/22/17 By: RON MENOR – BY REQUEST Committee: BUDGET

Title: RESOLUTION AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF BUDGET AND FISCAL SERVICES OF THE CITY AND COUNTY OF HONOLULU OR THE DIRECTOR'S DESIGNEE TO AMEND AND RESTATE A MEMORANDUM OF UNDERSTANDING WITH THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ("HART") REGARDING THE GENERAL OBLIGATION BONDS.

Voting Legend: * = Aye w/Reservations

06/28/17	BUDGET	CR-265 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
07/12/17	COUNCIL	CR-265 AND RESOLUTION 17-172, CD1 WERE ADOPTED. 6 AYES: ANDERSON, ELEFANTE, MANAHAN, MENOR, OZAWA, PINE. 3 NOES: FUKUNAGA, KOBAYASHI, MARTIN.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN J. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER