III. Identification and Protection of Archaeological Sites and Burials

The City shall implement the following archaeological stipulations before each of the four construction phases.

A) Initial Planning

1. The APE for archaeological resources is defined as all areas of direct ground disturbance. This APE for archaeology includes any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, utility installation, grading to provide parking, or other construction-related ground disturbance including preparation of construction staging areas. The APE includes the new location of any utilities that will be relocated by the Project.

2. The City shall develop an Archaeological Inventory Survey (AIS) Plan within the APE for each construction phase and shall submit it to the SHPD. The AIS Plan shall follow the requirements of Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 276. The AISP shall be subject to approval by the SHPD.

3. The O‘ahu Island Burial Council (OIBC) will have jurisdiction to determine preservation or relocation of previously identified Native Hawaiian burial sites. All applicable state laws stipulated in the Hawai‘i Revised Statutes, Chapter 6E and Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 300 shall apply. Any iwi kupuna (burials) discovered during the AIS shall be treated as previously identified burial sites.

B) Coordination with OIBC and cultural descendents:

1. Within 60 days of execution of this PA, the City shall consult with the OIBC and any lineal/cultural descendents that are identified in discussion with OIBC, about the scope of investigation for the AIS Plan for construction phase 4. In the portion of the Project with greatest potential for resources, between Nu‘uanu Stream and Ala Moana Center (the Koko Head terminus for the project), the AIS Plan will evaluate all areas that will be disturbed by the Project. The AIS Plan will include a review of historical shoreline location, soil type, and, where indicated by conditions, the survey measures listed in Stipulation III.C for each column location and major features of each station and traction power substation location based on Preliminary Engineering design data. The AIS Plan is intended to be submitted to the SHPD within four (4) months of execution of this PA and the investigation will begin upon receipt of an approved AIS Plan from the SHPD.

2. The City will continue to meet regularly with the OIBC, either as a taskforce, or as the council of the whole, for the duration of the construction period of the Project.
3. The City, in coordination with the OIBC, shall complete a draft approach for consultation regarding any iwi kupuna discovered during the AIS. It shall be provided to the OIBC for review within six (6) months of the execution of this PA. The approach shall address at minimum a process for communication of any discoveries, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendents, and workflow of actions prior to and upon discovery of iwi kupuna during AIS. The workflow shall consider both avoidance evaluation to allow for preservation in place and reinternment options. Avoidance shall include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, and modification of span length. In the event that no other option is identified, changes to Project alignment would be evaluated to avoid the disturbance of iwi kupuna determined to be NRHP eligible resources.

C) Fieldwork: The City shall conduct archaeological fieldwork as presented in the AIS Plan. For each construction phase, the archaeological fieldwork shall be completed in advance of the completion of final design so that the presence of any sensitive archaeological sites/burials discovered during fieldwork can be addressed during final design. Fieldwork for Construction Phase 1 shall be completed prior to beginning construction of that phase. Assuming that the Project maintains the schedule currently established, fieldwork for Phases 2 and 4 shall be completed in 2010 and for Phase 3 by the end of 2011. Fieldwork required by the AIS Plan shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection by pedestrian inventory) within the APE,
2. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted,
3. A subsurface testing regime for locations identified in the AISP,
4. Archaeological methods specific and applicable to the findings will be used in analysis, and
5. A report summarizing the results of the field work and analysis that shall be submitted to the SHPD for approval.

D) Treatment Plans: The City, in coordination with the OIBC, will develop a general approach for the burial treatment plan for each phase of construction. Based on the results of the AIS fieldwork and in consultation with the SHPD, the City shall develop a specific treatment plan according to the applicable state laws, including Hawai‘i Revised Statutes, Chapter 6E and Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 300, for each construction
phase. Treatment plans shall be submitted to the SHPD for approval. Upon approval by the SHPD, the City shall implement the treatment plan.

E) Mitigation Plans: Subsequent to the archaeological fieldwork and implementation of the treatment plan, the City, in consultation with the SHPD, shall develop mitigation plans as appropriate. The mitigation plans may include the following:

1. Archaeological Monitoring Plan
   The City shall develop an archaeological resources monitoring plan specifying the locations within the construction area that require a monitor and describing the level of monitoring necessary. The monitoring plan will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (*Federal Register*, Vol. 48, No. 190, page 44738-9).

   The City shall develop a follow-up monitoring report for the Project and shall submit it to the SHPD for approval. The monitoring report, if it contains the location and description of human burial remains discovered during the course of the Project, shall remain confidential. Precise locational data may be provided in a separate confidential index. The monitoring report for the construction phase of the Project shall be submitted by the City to the SHPD no later than 90 days after the completion of construction of that phase.

2. Burial Treatment
   The City shall prepare burial treatment documents (that may include Burial Treatment Plans, a Burial Site Component of a Data Recovery Plan, and a Burial Site Component of a Preservation Plan) and shall submit the documents to the SHPD for review and approval. The document shall also be submitted to the OIBC, which will determine whether preservation in place or reburial will occur, as stated in HAR 13-300-33. Any human remains found on lands owned or administered by the Federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

   The City confirms that guideway columns may be relocated a limited distance along the guideway at most column locations, straddle-bent supports may be used, or special sections developed to modify span length allowing for preservation in-place to be viable in those locations. If the OIBC determines that a burial(s) is to be relocated, the City will consult with the OIBC to determine appropriate reinterment, which may include relocation to Project property in the vicinity of the discovery.

3. Data Recovery Programs (Applicable to Construction Phases 1, 2, and 3)
   a. Data Recovery Programs (including Data Recovery Plans and Data
Recovery Reports) will be prepared as appropriate in consultation with the SHPD. Data Recovery Programs shall be submitted for review and approval by the SHPD.

b. Whenever possible, technological means will be used to avoid potential human remains and archaeological resources to minimize disturbance.

c. Completion of data recovery work must be verified by the SHPD prior to initiation of construction within the area of these sites.

d. Data recovery plans specify the disposition of recovered objects and shall be submitted by the City to the SHPD for review and approval.

F) Curation. The City will curate recovered materials in accordance with Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 278. The City shall consult with public and private institutions to pursue an opportunity to provide public access to the recovered materials. Interpretive materials as described in Stipulation VII of this agreement at one or more stations may incorporate archaeological materials recovered during development of the Project.