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~~DISCUSSION~~ DRAFT
PROGRAMMATIC AGREEMENT

AMONG THE
U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION,
~~AND~~ THE
HAWAI~~'~~‘I STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING
THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
IN THE
CITY AND COUNTY OF HONOLULU, HAWAI~~'~~‘I

WHEREAS, the City and County of Honolulu (City) Department of Transportation Services (DTS) is proposing the Honolulu High-Capacity Transit Corridor Project (Project) on O´ahu and is seeking financial assistance from the U.S. Department of Transportation Federal Transit Administration (FTA) for the Project, which is therefore a Federal undertaking subject to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and its implementing regulation at 36 CFR 800; and

WHEREAS, the proposed Project is an elevated, electrically powered, fixed-guideway transit system in the east-west travel corridor between East Kapolei and the Ala Moana Center with an approximate length of twenty (20) miles and twenty-one (21) stations; and

WHEREAS, pursuant to 36 CFR 800, the FTA has consulted with State Historic Preservation Division (SHPD) for ~~Hawai'i~~ Hawai‘i and the following parties:

- U.S. Navy (U.S. Naval Base Pearl Harbor)
- Historic Hawai‘i Foundation
- National Park Service (NPS)
- National Trust for Historic Preservation
- University of Hawai~~'~~‘i Historic Preservation Certificate Program
- American Institute of Architects
- Hawai‘i Community Development Authority
- State Office of Hawaiian Affairs
- O‘ahu Island Burial Council
- Hui Malama I Na Kupuna O Hawai‘i Nei
- Royal Order of Kamehameha
- The Ahahui Ka‘ahumanu
- The Hale O Na Ali‘i O Hawai‘i

DRAFT

- The Daughters and Sons of the Hawaiian Warriors
- Association of Hawaiian Civic Clubs
- Ali'i Pauahi Hawiian Civic Club
- Ka Lei Maile Ali'i Hawaiian Civic Club
- King Kamehameha Hawaiian Civic Club
- Nanaikapono Hawaiian Civic Club
- Hawaiian Civic Club of Wahiawa
- Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic Club
- ~~Waikiki~~ Waikīkī Hawaiian Civic Club
- Princess Kaiulani Hawaiian Civic Club
- Waianae Hawaiian Civic Club
- Merchant Street Hawaiian Civic Club;
- Prince Kuhio Hawaiian Civic Club;
- Pearl Harbor Hawaiian Civic Club
- Hawaiian Civic Club of 'Ewa-Puuloa;
- Kalihi-Palama Hawaiian Civic Club
- Hawaiian Civic Club of Honolulu; and

WHEREAS, the public and consulting parties have been afforded opportunity to consult and comment on the Project; and

WHEREAS, the FTA, ACHP, and the SHPD are signatories to this Programmatic Agreement (PA); and

WHEREAS, the City and County of Honolulu, the U.S. Navy, and the NPS are invited signatories to this PA; and

WHEREAS, all consulting parties were invited to be concurring parties to this PA if they choose; and

WHEREAS, the FTA, in consultation with the Hawai'i SHPD, has defined the undertaking's Area of Potential Effects (APE) as described in Attachment A; and

WHEREAS, the FTA has included minimization and avoidance measures during project design, including but not limited to, narrow guideway design, route selection, station location selection, and contained station footprints, to avoid and minimize impacts on historic resources;

WHEREAS, all built components will follow the Project's *Design Pattern Guidebook*; and

WHEREAS, consulting parties and the public are able to comment on station design and

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transit-oriented development issues at neighborhood design workshops; and

WHEREAS, the FTA, in consultation with the Hawai'i SHPD, has determined that proposed Project would have an adverse effect on historic resources listed in the National Register of Historic Places (NRHP) or eligible for listing in the NRHP; and

WHEREAS, the FTA in consultation with the SHPD has determined that the following resources will receive adverse effect determinations: Hono'uli'uli Stream Bridge; Waikele Stream Bridge and Span over OR&L Spur; 1932 Waiawa Stream Bridge; Waimalu Stream Bridge; Kalauao Spring Bridge; Kalauao Stream Bridge; United States Naval Base, Pearl Harbor National Historic Landmark; CINCPAC Headquarters Building; Makalapa Navy Housing Historic District; Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society; Hawai'i Employers Council; Afuso House; Higa Fourplex; Teixeira House; Lava Rock Curbs; Six Quonset Huts; Kapalama Canal Bridge; True Kamani Trees; Institute for Human Services/Tamura Building; Wood Tenement Buildings; Oahu Rail & Land Co. Office and Document Storage Building; Oahu Rail & Land Co. Terminal Building; Nu'~~'~~uanu Stream Bridge; Chinatown Historic District; Merchant Street Historic District; DOT Harbors Division Offices; Pier 10/11 Building; Aloha Tower; Irwin Park; Walker Park; HECO Downtown Plant; Dillingham Transportation Building; and Mother Waldron Playground.

WHEREAS, this adverse effect determination results from both direct and indirect effects; and

WHEREAS, in accordance with 36 CFR 800.10, FTA has notified the Secretary of the Interior of its adverse effect determination to the United States Naval Base, Pearl Harbor National Historic Landmark and the CINCPAC Headquarters Building National Historic Landmark, and as a result, the NPS has been designated to participate formally in the consultation; and

WHEREAS, the Project will cross lands administered by the United States Navy and is subject to an approval of that crossing by the United States Navy~~, and FTA has therefore consulted with the U. S. Navy and has invited the U.S. Navy to be a signatory to this Programmatic Agreement (PA)~~; and

WHEREAS, the Project is subject to the Native American Graves Protection and Repatriation Act (NAGPRA) where it crosses lands administered by the United States Navy; and

WHEREAS, the FTA has determined that the Project may affect significant archaeological resources listed in or eligible for listing in the NRHP; and

WHEREAS, this PA was developed with appropriate public involvement pursuant to 36 CFR 800.2(d) and 800.6(a), and the public was provided opportunities to comment on

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the Project and its adverse effects; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FTA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the required documentation, and the ACHP has chosen to participate formally in the consultation; and

WHEREAS, the FTA and the SHPD have agreed that a phased approach to identification and evaluation of archaeological sites is appropriate, pursuant to 36 CFR 800.4(b)(2); and

WHEREAS, unless defined differently in this PA, all terms are used in accordance with 36 CFR 800.16;

WHEREAS, all actions described herein are subject to applicable State and Federal law;

NOW, THEREFORE, FTA, ACHP, and the Hawai'i State Historic Preservation Officer (SHPO) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties.

STIPULATIONS

The FTA will ensure that the terms of this PA are carried out and will require, as a condition of any approval of Federal funding for the undertaking, adherence to the stipulations set forth herein.

I. Roles and Responsibilities

A) The City shall coordinate activities described in the PA to fulfill the contents described in the stipulations below. The City will consult with the SHPD and other agency staff, as appropriate, in planning and implementing the stipulations of this PA.

~~A)~~B) ~~Review and Approval~~The City shall submit all plans and documents required by this PA to the SHPD and other agencies, as appropriate, ~~in advance~~for review. ~~The City will consult with the SHPD in planning and implementing the stipulations of this PA.~~ The SHPD shall specifically review the work completed as part of Stipulations IV.A, V.A, V.A, VI.C, VI.D, VII.A, and VIII.A. The SHPD and other agencies will have 30 days to review and comment on these submissions, unless state law allows for an extended period of time beyond 30 days.

II. Recordation and Documentation

A) The City shall consult with NPS staff to determine resources that should be documented for Historic American Building Survey (HABS) and Historic

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American Landscape Survey (HALS) recordation. All resources that received adverse effect determinations will be considered for HABS or HALS documentation. For resources that will be documented according to HABS and HALS standards, a professional photographer will complete large-format, black-and-white, archival photography. ~~for each historic resource that is listed in or eligible for listing in the NRHP that will be fully or partially demolished, or that will require an easement for the completion of the Project. Consultation with Historic American Building Survey (HABS) and Historic American Landscape Survey (HALS) staff will determine which resources will be selected for HABS or HALS documentation and at what level. Photographs shall be completed for the Lava Rock Curbs, Afuso House, Teixeira House, Higa Four-plex, True Kamani Trees, Kapalama Canal Bridge, O'ahu Railway & Land Company Terminal Building, O'ahu Railway & Land Company Office and Document Storage Building, and the Dillingham Transportation Building. Photographs shall be offered to HABS/HALS for those resources that are selected for documentation. If HABS/HALS declines to inventory any photographs, copies shall be archived at the SHPD office.~~ This documentation shall be completed prior to any pre-construction or construction activities to the resource in a manner that allows for HABS/HALS to review it prior to any physical changes to the above properties. Copies of any documentation generated under this stipulation will be offered to the SHPD in addition to original photographic prints.

B) The City shall engage a professional photographer to complete large-format, black-and-white, archival photography~~document adversely affected historic~~ for all resources that are not subject to HABS or HALS documentation under Stipulation II.A. ~~in accordance with the National Register Photographic Imaging Policy. Documentation shall be completed for: Hono'uli'uli Stream Bridge; Waikele Stream Bridge eastbound span and Bridge over OR&L spur; Waiawa Stream Bridge 1932 (westbound lanes); Waimalu Stream Bridge; Kalauao Spring Bridge; Kalauao Stream Bridge; Hawai'i Employers Council; Six Quonset Huts; Institute for Human Services/Tamura Building; Tong Fat Wood Tenement Buildings; Nu'uanu Stream Bridge; Chinatown Historic District; Merchant Street Historic District; DOT Harbors Division Offices; Pier 10/11 Building; Aloha Tower; Irwin Park; Walker Park; HECO Downtown Plant; and Mother Waldron Playground.~~ Photographic documentation will include, at a minimum, representative views of relevant historic structures associated with each historic property, and representative views of the surrounding setting of each historic property. These photographs will be offered to the repositories listed in Stipulation XII.G. Additionally, the City shall consult with the SHPD to determine an appropriate level of written documentation for each resource that is not documented under Stipulation II.A. The SHPD will review this documentation upon completion. The fulfillment of Stipulations II.A and II.B will ensure that all adversely affected resources are documented using large-format photography.

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C) Digital photographs completed by a professional photographer, in conjunction with the input of a supervising architectural historian, shall be completed to document select resources and viewsheds within the APE. These photographs shall be taken prior to construction commencement and shall be used for interpretive materials, publications, cultural landscape reports, and historic context studies. Photographs will focus on NRHP-eligible resources and unique landscape features. Approximately 150 views will be submitted. These photographs will remain in possession of the City with copies submitted to the SHPD.

D) Documentation shall also include the completion of a comprehensive video of the project corridor prior to construction commencement. Video documentation shall be completed by a professional videographer and will consist of unedited footage filmed from a moving vehicle. The project corridor shall be filmed via vehicle in each direction, from ~~Koko Head~~Ala Moana to 'Ewa, and 'Ewa to Ala Moana~~Koko Head~~. This film will remain in possession of the City with a copy submitted to the SHPD.

E) In order to allow public access to the historic information generated, the Project will post all determination of eligibility forms for both eligible and not eligible resources on the project website and will add the documentation included in Stipulations ~~III,~~ IV, V, ~~and~~ VII, and VIII to the website as it is approved by the appropriate review agency. The City will make this information available to any organization with the authority and ability to develop, maintain, and support a public research database.

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II. Retain/Replace Lava Rock Curbstones

A) All lava rock curbstones removed along the edges of pavement because of Project-related work shall be retained for reuse and reinstallation. Stones will be marked prior to removal, stored securely, and replaced at their approximate original mile-point locations. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.

~~III~~IV. Cultural Landscape Reports

A) The City shall complete two Cultural Landscape Reports (CLR) related to historic resources along the study corridor, including architect/engineer designed landscapes, such as the Dillingham Boulevard corridor; and agricultural landscapes such as plantations and/or taro/sugar cane fields and/or watercress farms. PA signatories and concurring parties will be invited to a kick-off meeting to discuss approach and methodology and the SHPD and NPS staff will review the draft document. All work shall follow the National Park Service guidance and standards, as appropriate, including National Register Bulletin 30, *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and National Register Bulletin 18, *How to Evaluate and Nominate Designed Landscapes,* as well as relevant information presented in

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Guidelines for the Treatment of Cultural Landscapes. Copies of this documentation shall be distributed to repositories listed in Stipulation XII.G.

~~I~~V. Historic Context Studies

A) The City shall complete three Historic Context Studies related to relevant historic themes within the APE. This type of study assists in documenting the history of the affected area and may be used by others in developing NRHP nominations for historic resources in the area. The Historic Context Studies to be completed include Modern and Recent Past Architecture in Honolulu/ O'ahu dating from 1939-1979; the History of Honolulu's Infrastructure (e.g., highways, bridges, pumping stations, power stations, etc.); and the History of Honolulu's Civic Architecture (e.g., fire halls, libraries, city halls, courthouses, parks, etc.). PA signatories and concurring parties will be invited to a kick-off meeting to discuss approach and methodology, and the SHPD will review the draft document. Generally, research will focus on resources within the APE but similar resources outside the APE may also be included to provide a more complete study of the topic. Historic Context Studies shall consist of a historical narrative supplemented by relevant photographs, maps, and other materials. Copies of this documentation shall be distributed to repositories listed in Stipulation XII.G. Professional photographs will be used to illustrate these documents.

VI. National Register of Historic Places/National Historic Landmark Nominations

A) The City shall complete a NRHP Multiple Property Submission (MPS), including all appropriate accompanying documentation such as photographs and mapping, for up to five resources related to Honolulu's Modern and Recent Past Architecture dating from 1939-1979 (with Criteria Consideration G applying as appropriate). These resources will be selected by the City in consultation with the SHPD from the pool of NRHP-eligible properties within the project's APE or vicinity. These properties will also be nominated to the Hawai'i Register. The MPS allows for an intensive level of documentation, while also permitting other historic resources within the Modern Architecture/Recent Past theme to be added to the NRHP in the future by other researchers.

B) Pending the U.S. Navy providing access to the site and relevant records, the City shall complete an update to the Pearl Harbor National Historic Landmark nomination. Emphasis shall focus on those resources closest to the APE and to those not previously mentioned in prior documentation. All work shall follow the guidelines set forth in *How to Prepare National Historic Landmark Nominations*. ~~As appropriate,~~ National Park Service and SHPD ~~staff~~ will review the draft document.

C) The City shall complete an update/amendment of the NRHP nomination of the Chinatown Historic District including all appropriate accompanying

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documentation such as photographs and mapping. Coordination with the SHPD will occur at the onset of work and at the mid-point of work, as well as upon completion of the draft document.

D) The City shall complete up to 12 NRHP nominations, with all appropriate accompanying documentation such as photographs and mapping, for properties that were determined NRHP-eligible but have not been formally listed and that are not among the resources included in the Multiple Property Submissions required by Stipulation V.A. These properties shall be determined in consultation with the SHPD and property owners to ensure that access will be permitted and that owners consent to the proposed listing. These properties will also be nominated to the Hawai'i Register.

E) All NRHP and Hawai'i Register nominations will follow the procedures set forth in Hawai'i Revised Statutes, Chapter 6E and Hawai'i Administrative Rules, Title 13, Subtitle 8, Chapter 198, as appropriate. Completion of the stipulated National Register of Historic Places nominations does not guarantee listing should the Keeper of the National Register of Historic Places determine that the properties are not eligible for listing.

VII. Traditional Cultural Properties

A) The City shall undertake a study to determine the presence of Traditional Cultural Properties (e.g., Chinatown, sites associated with pre-settlement Hawaiian practices) within the APE. The study will follow National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Any properties that meet the criteria for Traditional Cultural Properties will be nominated to the National Register of Historic Places. All signatories and concurring parties will participate in a kick-off meeting and the SHPD and NPS will review ~~the~~ draft documents.

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VIII. Interpretive Materials and Signage

A) The City shall complete an interpretive plan for the project area and install interpretive signage at appropriate locations. The interpretive plan will highlight historical themes (e.g., Native Hawaiian History, Native Hawaiian Culture, Immigrant History, Plantation Culture, Architecture, Government, Agriculture, Transportation, Military, etc.) and will interpret each one of these themes at an appropriate station location. Interpretive signage will be installed at or near relevant transit stations and on transit vehicles. Signatories and concurring parties will participate in a kick-off meeting and the SHPD will review the draft materials and approve the final version.

B) A color brochure describing the history of the area along the transit line shall be completed. The signatories and concurring parties may participate in a kick-off meeting at the onset of work and the SHPD will review the draft document. All materials shall also be produced in a digital format for electronic and/or online distribution. Upon completion, 1,000 physical copies of the product shall be provided.

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C) Materials for children, such as a coloring book or child-friendly game that would educate children about relevant local history, shall be prepared by professional historians and a professional illustrator. All materials shall also be produced in a digital format for electronic and/or online distribution. Upon completion, 1,000 physical copies of the product shall be provided upon completion and the materials will be available on the project website.

~~VIII. Review and Approval~~

~~A) The City shall submit all plans and documents required by this PA to the SHPD in advance. The City will consult with the SHPD in planning and implementing the stipulations of this PA. The SHPD shall specifically review the work completed as part of Stipulations III.A, IV.A, V.A, V.C, V.D, VI.A, and VII.A. The SHPD will have 30 days to review and comment on these submissions.~~

IX. Post-Review Discoveries for Built Historic Resources

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A) While post-review discoveries are not anticipated for built resources, the City agrees to cease all work in the vicinity of the discovery should another potential historic built resource be discovered or an unanticipated adverse effect on a historic built resource be found. The City will begin the consultation process with the signatories and resolve any adverse effects in accordance with Section 106 of the National Historic Preservation Act. The FTA will not allow work to resume in the vicinity of the discovery APE until the adverse effects have been resolved through an amendment of this PA or by other means consistent with 36 CFR 800. (See Stipulation XI for procedures that address archeological or burial discoveries.)

X. Programmatic Stipulations for Archaeological Sites

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The City shall carry the following archaeological stipulations before each construction phase. The four construction phases are Phase 1: East Kapolei to Pearl Highlands, Phase 2: Pearl Highlands to Aloha Stadium, Phase 3: Aloha Stadium to Middle Street, and Phase 4: Middle Street to Ala Moana Center.

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, excavations for utility installation, grading to provide parking, or other construction-related ground disturbance including preparation of construction staging areas. The APE includes the relocated location of any utilities that will be relocated by the Project.

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2. The City shall develop an Archaeological Inventory Survey Plan (AISP) within the APE for each construction phase and shall submit it to the SHPD. The AISP 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~~over all discoveries that occur during the Archaeological Inventory Survey, and a~~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 burials discovered during the Archaeological Inventory Survey shall be treated as previously identified burial sites.

B) Fieldwork: The City shall conduct archaeological fieldwork as presented in the AISP. 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 issuance of any contracts for final design and construction of that phase. Assuming that FTA grants approval to enter Final Design in 2010 and a Full Funding Grant Agreement in 2010, fieldwork for Phase 2 shall be completed in 2010 and for Phases 3 and 4 by the end of 2011. Fieldwork required by the AISP shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection by pedestrian inventory) within the APE, and
2. Within the area of greatest potential for resources, between Nu'uanu Stream and Ala Moana Center (the Koko Head terminus for the project), the archaeological fieldwork will evaluate all areas that will be disturbed by the Project. The evaluation will include a review of historical shoreline location, soil type, and where indicated by conditions the survey measures listed in the remainder of this sub-section (B).
3. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted, and
4. A subsurface testing regime for locations identified in the AISP, and
5. Archaeological methods specific and applicable to the findings will be used in analysis, and
6. A report summarizing the results of the field work and analysis that shall be submitted to the SHPD and shall be subject to approval by the SHPD.

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C) Treatment Plans: The City will develop a general approach for the burial treatment plan for each phase of construction ~~following the model of the Draft Burial Treatment Plan prepared by the City for Construction Phase I of the Project~~. Based on the results of the archaeological inventory survey fieldwork and in consultation with the SHPD, the City shall develop a specific t~~T~~reatment p~~P~~lan 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 and shall be subject to approval by the SHPD. Upon approval by the SHPD, the City shall implement the treatment plan. ~~.~~

D) 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. The monitoring report shall be subject to approval by the SHPD. 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 ~~appropriate~~ stated ~~under~~in HAR 13-300-33 ~~law~~. 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. ~~If the OIBC selects preservation in place as the appropriate option, representatives from the OIBC, SHPD, and~~

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~~City will meet within 10 days of this decision to determine a plan for this approach because it is not stipulated in current law.~~

The City confirms that guideway columns may be relocated a limited distance along the guideway at most column locations, 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 ~~and any identified descendants~~ to determine appropriate relocation, which may include ~~construction of a crypt on~~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. If archaeological monitoring encounters cultural deposits, consultation with the SHPD will occur and be documented regarding the need for data recovery work for these areas.~~

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

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

E) 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.

XI. Inadvertent Archaeology Finds

A) While post-review discoveries after completion of AISs are not anticipated, any archaeological sites/burials discovered during construction will be treated according to HRS 6E-43.6. In the event human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease until the requirements of the law have been met.

XII. GENERAL PROVISIONS

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A) Dispute Resolution: Should any party to this PA object to any action proposed pursuant to the PA, the FTA shall consult with the objecting party to resolve the objection. If the FTA determines that the objection cannot be resolved, the FTA shall forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP.

1. Within 30 days after receipt of all pertinent documentation, the ACHP is expected to provide the FTA with its advice on the resolution of the objection. FTA will then prepare a written response that considers any timely advice offered by the ACHP or by other signatories to the PA. FTA will provide all consulting parties with a copy of this written response and then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within 30 days of receiving appropriate documentation about the dispute, FTA may make its final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FTA shall prepare a written response that considers any timely comments by other signatories to the PA and provide them and the ACHP with a copy of that response.
3. The responsibility of the FTA and the City to carry out all actions that are required by this PA and are not affected by the dispute remains unchanged.

B) Amendments

1. Any signatory to this PA may request that any term or stipulation of this PA be amended, whereupon the signatories to the PA shall consult with each other in accordance with 36 CFR 800 to consider such amendment. Any amendment must be agreed to in writing by all signatories. The amendment will be effective on the date a copy with all signatures is sent to the ACHP. If an amendment cannot be agreed upon, the signatory proposing the amendment may invoke the dispute resolution process set forth in Stipulation XII.A.
2. In the event that any other Federal agency provides funding or other approval for the Project as it was planned at the time of the execution of this PA, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and so notifying the signatories to this PA. Any necessary amendments resulting will be coordinated pursuant to Stipulation XII.B.

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C) Termination: Any signatory may terminate this PA upon written notification of the other signatories. If the PA is terminated, all work affecting any historic resource shall cease until FTA either: (1) executes a new agreement pursuant to 36 CFR 800.6; or (2) requests, considers, and responds to comments of the ACHP under 36 CFR 800.7. FTA shall notify the signatories as to the course of action it will pursue.

This PA may be terminated by the execution of a subsequent agreement that explicitly terminates this PA or supersedes its terms.

D) Effective Date and Duration

1. Effective Date: This PA shall be effective upon signing of the PA and shall be considered in full force and effect until replaced by a future agreement, or until the stipulations of the PA have been fully implemented. Once the Project, including the stipulations of this PA, has been completed, this PA shall terminate by its own course without the necessity of further action by any of the signatories to this PA. Project implementation is anticipated to be complete by the end of 2018.

2. Duration: ~~Documentation tasks in~~ Stipulations II, ~~III,~~ IV, V, ~~and~~ VI, and VII shall be initiated within four years of the date of execution of this PA and shall be completed before any construction on any portion of the Project begins. Other documentation as stipulated in this PA will be completed within eight years. Ongoing archaeological monitoring related to construction will remain in place until construction of the Project as outlined in the associated Final Environmental Impact Statement, is completed. Should all parties deem a time extension of this PA appropriate, such extension will be treated as an Amendment under Stipulation XII.B.

E) Monitoring and Reporting

1. Any signatory to this PA may request, at any time, a review of the implementation of the terms of this PA.

2. Every six months following the execution of this PA, until it expires or is terminated, the City shall provide all signatories to this PA a summary report detailing the work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received during efforts to carry out the terms of the PA.

Execution of this PA by FTA and the SHPO, FTA's filing of the executed PA with the ACHP prior to FTA's approval of a construction grant for the Project, and implementation of its terms are evidence that FTA has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment.

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This PA and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this PA. No waiver, consent, modification, or change of terms of this PA shall bind either party unless in writing and signed by all signatories and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of FTA to enforce any provision of this PA shall not constitute a waiver by FTA of that or any other provision.

F) Qualifications of Personnel: All work required to meet Stipulations II, ~~III,~~ IV, V, VI, VII, and IX shall be conducted by cultural resources professionals (i.e., historians, architectural historians, and/or archeologists, as appropriate) who meet the Secretary of the Interior's Professional Qualification Standards.

G) Work products listed in Stipulations II.B, ~~III,~~ IV and ~~I~~V will be submitted to the following repositories so that the information generated is made available to the public: SHPD, State Publications Distribution Center (15 copies), University of Hawai'i, and the Municipal Reference Library (3 copies).

H) Post-Record of Decision Discoveries: Any unanticipated cultural resources discoveries not covered in other sections of this Programmatic Agreement that are revealed after the Record of Decision is issued will be subject to the Section 106 process.

I) FTA shall ensure that any inadvertent damage resulting from the Undertaking to properties listed in or eligible for listing in the National Register of Historic Places or those that are contributing resources of eligible or listed districts shall be repaired, to the extent possible, in accordance with the Secretary of the Interior's Standards for Rehabilitation.

J) *Force Majeure*—FTA will not be responsible or liable for any delay or failure in performance under this agreement nor damages to resources that are beyond its reasonable control, including but not limited to those attributed to natural catastrophes such as flood, fire, volcanic eruption, tsunami, earthquakes, drought, hurricanes, typhoons, tornados, pest infestation, disease, strikes, civil unrest, acts of terrorism, insurrection, riots, and/or war. Such damage is beyond the control of FTA to prevent or mitigate and will not constitute grounds under which this PA should be reopened. However, FTA will notify signatories of any such issues that would be relevant under this clause.

K) In the event that the City proposes an emergency undertaking as an essential and immediate response to a disaster or emergency that would affect a historic property outside of this agreement, it will notify ACHP, SHPD and Native

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Hawaiian organization that may attach significance to the resource and afford them an opportunity to comment within seven days of the notification.

~~K~~L) The City shall complete post-construction noise monitoring as stipulated in the Final Environmental Impact Statement within U.S. Naval Base, Pearl Harbor National Historic Landmark.

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SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

By:_____ _____
Leslie Rogers **Date**
Regional Administrator

HAWAI'I STATE HISTORIC PRESERVATION OFFICER

By:_____ _____
Laura Thielen **Date**
Chairperson of Department of Land and Natural Resources

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:_____ _____
Date

Invited Signatories:

DEPARTMENT OF NAVY

By:_____ _____
Commander **Date**
United States Navy

NATIONAL PARK SERVICE

By:_____ _____
Regional Administrator **Date**
National Park Service

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City and County of Honolulu

By:_____
NAME **Date**

Concurring Parties:

By:_____ _____
NAME **Date**

ATTACHMENT 1: APE for historic resources; APE for archaeological resources

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