DISCUSSION DRAFT
MEMORANDUM OF AGREEMENT

AMONG ~~BETWEEN~~ THE
~~U.S. DEPARTMENT OF TRANSPORTATION~~ FEDERAL TRANSIT ADMINISTRATION ~~(FTA),~~
~~AND~~ THE
HAWAI'I STATE HISTORIC PRESERVATION DIVISION ~~(SHPD),~~
AND THE CITY AND COUNTY OF HONOLULU
~~FOR MITIGATION OF THE~~ REGARDING
THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
IN THE
CITY OF HONOLULU, HONOLULU COUNTY, HAWAI'I

WHEREAS, ~~the U.S. Department of Transportation Federal Transit Administration (FTA) and~~ the City and County of Honolulu (City) Department of Transportation Services (DTS) ~~are~~ is proposing the Honolulu High-Capacity Transit Corridor Project (Project)~~, a federal undertaking, which is a fixed guideway, high capacity transit service~~ on O'ahu and is seeking financial assistance from the Federal Transit Administration 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~~, including effects on historic resources~~; and

WHEREAS, the proposed Project ~~study area~~ is an elevated, electrically powered, fixed-guideway transit system in the east-west travel corridor between East Kapolei and the Ala Moana Center~~, which has~~ with an approximate length of twenty (20) miles and xx stations;~~width of four (4) miles;~~ and

~~WHEREAS, the FTA is the Lead Federal Agency responsible for all aspects of compliance of the National Historic Preservation Act of 1966 (as amended) (16 USC 470(f)) and its implementing regulations at 36 CFR 800; and,~~

WHEREAS, pursuant to 36 CFR 800, the FTA has consulted with the Hawaii State Historic Preservation Division (SHPD) whose Administrator is the State Historic Preservation Officer (SHPO) for Hawai'i ~~pursuant to 36 CFR 800, and the Advisory Council on Historic Preservation (ACHP),~~ and the following ~~consulted~~ parties~~, under this Section 106 process, which was incorporated under the environmental review process conducted under the Federal National Environmental Policy Act and State of Hawaii Chapter 343, Hawaii Revised Statutes~~:

- U.S. Navy ~~Department of Defense~~ (U.S. Naval Base Pearl Harbor)~~e Pearl Harbor)~~
- Historic Hawai'i Foundation
- National Park Service
- National Trust for Historic Preservation

- University of Hawai'i ~~Historic Preservation Certificate Program~~
- American Institute of Architects
- Hawai'i Community Development Authority ~~(for Kaka'ako and Kalaeloa)~~
- State Office of Hawaiian Affairs
- O'ahu Island Burial Council
- Hui Malama I Na Kupuna O Hawai'i Nei (Group Caring for the Ancestors of Hawai'i)
- Royal Order of Kamehameha
- The Ahahui Ka'ahumanu (civic club formed ~~in 1864~~ to celebrate the life of Queen Ka'ahumanu)
- The Hale O Na Ali'i O Hawai'i
- The Daughters and Sons of the Hawaiian Warriors
- Association of Hawaiian Civic Clubs
- 15 Individual Hawaiian Civic Clubs; and

WHEREAS, the FTA, in consultation with the Hawai'i State Historic Preservation Division (SHPD), has defined the undertaking's Area of Potential Effects as described in Attachment XX; and

WHEREAS, the FTA, in consultation with the Hawai'i State Historic Preservation Division (SHPD), has determined that proposed Project would have adverse effects on twenty-two historic resources listed in the National Register of Historic Places (NRHP) or eligible for listing in the NRHP, including:

- Hono'uli'uli Stream Bridge, Farrington Highway at Hono'uli'uli Stream
- Waikele Stream Bridge eastbound span and Bridge over OR&L spur, Farrington Highway at Waikele Stream
- Waiawa Stream Bridge 1932 (westbound lanes), Farrington Highway westbound at Waiawa Stream
- Waimalu Stream Bridge, Kamehameha Highway at Waimalu Stream
- Kalauao Spring Bridge, Kamehameha Highway at Kalauao Spring
- Kalauao Stream Bridge, Kamehameha Highway at Kalauao Stream
- Makalapa Navy Housing Historic District, Kamehameha Highway between Radford Drive and Halawa Drive
- Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society, Facility 1514, Kamehameha Highway at Radford Drive
- Hawai'i Employers Council, 2682 Waiwai Loop
- Lava Rock Curbs, Dillingham Boulevard between Laumaka Street and Ka'aahi Street, and Halekauwila Street between Richards Street and South Street
- Afuso House, 1933 Dillingham Boulevard
- Higa Four-plex, 1945 Dillingham Boulevard
- Teixeira House, 1927 Dillingham Boulevard
- True Kamani Trees, Dillingham Boulevard from Kapalama Canal to Ka'aahi Street

- Kapalama Canal Bridge, Dillingham Boulevard at Kapalama Canal
- Institute for Human Services/Tamura Building, 536 Ka'aahi Street
- O'ahu Railway & Land Company Terminal Building, 355 North King Street
- O'ahu Railway & Land Company Office and Document Storage Building, 355 North King Street
- Nu'uanu Stream Bridge, North Nimitz Highway at Nu'uanu Stream
- Chinatown Historic District, approximately bounded by Nu'uanu Stream, Beretania Street, Nu'uanu Avenue, and Honolulu Harbor (NR-listed 1973)
- Dillingham Transportation Building, 735 Bishop Street (NR-listed, 1979)
- Mother Waldron Playground, Halekauwila Street at Pohukaina Street; and

~~WHEREAS, the FTA has consulted with the Administrator of the SHPD pursuant to Section 106 of the National Historic Preservation Act, codified under 36 CFR 800, and pursuant to HRS §6E and §13-275, to determine measures to avoid, satisfactorily reduce, and mitigate the adverse effect of the proposed Project on historic resources; and~~

~~WHEREAS, the consulting parties agree that it is in the public interest to expend funds for the appropriate mitigation for the adverse effects to historic resources; and~~

WHEREAS, the Project will cross lands administered by the United States Navy and is subject to ~~the Native American Grave Protection and Repatriation Act (NAGPRA)~~ an approval of that crossing by the United States Navy, and FTA has therefore consulted with the United States Navy ~~has therefore been consulted~~ and has invited the U.S. Navy to be a signatory to this Memorandum of Agreement (MOA); and

WHEREAS, the Project is subject to the Native American Grave 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 ~~have an e~~affect ~~on potentially~~ significant archaeological resources listed in or eligible for listing in the NRHP ~~and the Hawaiian Register of Historic Places~~; and

WHEREAS, this MOA 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 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 not to participate formally in the consultation; and

~~WHEREAS, the Project involves the following construction phases: East Kapolei to Pearl Highlands, Pearl Highlands to Aloha Stadium, Aloha Stadium to Kapalama, and Kapalama to Ala Moana Center; and~~

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

~~WHEREAS, the FTA, in consultation with the SHPD, shall ensure that the proposed Project will be implemented in a timely manner with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470); and~~

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

NOW, THEREFORE, FTA SHPD, and the City agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties. ~~it is agreed by and between the parties hereto as follows:~~

~~FTA OBLIGATIONS~~/STIPULATIONS

Formatted: Centered

The FTA will ensure that the terms of this MOA 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. ~~shall require the City to complete the following measures to mitigate adverse effects to the twenty-two adversely affected historic resources:~~

I. Recordation and Documentation

A) The City shall research, photograph, and record the history of ~~adversely affected~~ each historic resource~~s~~ that will be ~~are proposed to be fully acquired and~~ fully or partially demolished, ~~partially acquired and/or demolished~~, or that will require an easement~~s~~ for the completion of the ~~p~~Project. ~~, or that may be demolished in whole or in part following coordination with property owners~~ This documentation of each historic resource shall be in accordance with the standards set forth by the Historic American Building Survey (HABS) and the Historic American Landscape Survey (HALS), divisions of the National Park Service. Documentation 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. Resource histories, site plans, and large-format, black-and-white archival photography shall be completed. Copies of this documentation shall be offered to HABS/HALS and distributed to the State Historic Preservation Division and other recognized Hawai'i repositories,

including libraries, historical organizations, universities, and government agencies. If HABS/HALS declines to inventory this documentation, copies shall be archived at the SHPD office. This documentation shall be completed ~~commence~~ prior to any pre-construction or construction activities in a manner that allows for HABS/HALS and SHPD to review it prior to any physical changes to the above properties.

B) The City shall engage a professional photographer to document adversely affected historic resources that are not subject to to documentation under Stipulation I.A ~~acquisition and/or demolition and~~ 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; Makalapa Navy Housing Historic District; Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society, Facility 1514; Hawai'i Employers Council; Institute for Human Services/Tamura Building; Nu'uanu Stream Bridge; Chinatown Historic District; 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. Copies of this documentation shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies.

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 Area of Potential Effects. 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.

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 east to west, and from west to east.

E) All historic research required to meet the S~~s~~tipulations I.A through I.C ~~as described in this section~~ shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

II. Retain/Replace Lava Rock Curbstones

A) ~~As mitigation for adverse effects to the Lava Rock Curbs, a~~All lava rock curbstones removed along the edges of pavement of Dillingham Boulevard and Halekauwila Street shall be retained for reuse and reinstallation at their approximate original locations. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.

III. Cultural Landscape Reports

A) The City ~~FTA~~ shall complete three Cultural Landscape Reports (CLR) related to historic resources along the study corridor, including architect/engineer designed landscapes, such as the Dillingham Boulevard corridor; military landscapes; and agricultural landscapes such as plantations and/or taro/sugar cane fields and/or watercress farms. Copies of this documentation shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies. All historic research shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

IV. Historic Context Studies

A) The City shall complete three Historic Context Studies related to relevant historic ~~resources,~~ themes~~, or geographic areas~~ within the Area of Potential Effects (APE). ~~Project area.~~ This~~e ese~~ type~~s~~ of study ~~ies~~ assists in documenting the history of the affected ~~impacted~~ area and ~~could~~ may be used by others in developing NRHP ~~National Register of Historic Places N~~nominations for ~~other~~ historic resources in the area. ~~Topics~~ The Historic Context Studies to be completed include Modern Architecture in Honolulu/O'ahu; the History of Honolulu's Infrastructure (i.e., highways, bridges, pumping stations, power stations, etc.); and the History of Honolulu's Civic Architecture (i.e., fire halls, libraries, city halls, courthouses, parks, etc.). 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. ~~and/or project vicinity.~~ All historic research shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards. 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 select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies. Professional photographs will be used to illustrate these documents.

V. National Register of Historic Places Nominations

A) The City shall complete a NRHP ~~National Register of Historic Places~~ Multiple Property Submission (MPS), including ~~and~~ all appropriate accompanying documentation such as photographs and mapping, for five resources related to Honolulu's Modern Architecture. These resources will be selected by the City in consultation with the SHPD ~~FTA~~ from the pool of ~~relevant~~ NRHP-eligible properties~~, focusing on resources~~ within the project's APE or vicinity. The MPS allows for an intensive level of documentation, while also permitting other historic resources within the Modern Architecture theme to be added to the National Register of Historic Places in the future by other researchers.

B) The City shall complete an update to the Pearl Harbor National Historic Landmark nomination. Emphasis shall focus on those resources in closest proximity to the ~~project~~ APE and to those not previously mentioned in prior documentation.

C) The City shall complete an update/amendment ~~to~~ of the NRHP nomination of the Chinatown Historic District ~~National Register of Historic Places nomination and~~ including all appropriate accompanying documentation such as photographs and mapping~~, as mitigation for project impacts.~~

D) The City shall complete NRHP ~~National Register of Historic Places~~ nominations, with all appropriate ~~and all~~ accompanying documentation such as photographs and mapping, for ten additional properties that were determined NRHP-eligible ~~during the course of the project that~~ but have not been formally listed, and that are not among ~~part of~~ the resources included in the ~~proposed m~~Multiple ~~p~~Property Submissions ~~nominations~~ required by Stipulation V.A. ~~mentioned in Part A of this section.~~ These properties shall include the O'ahu Railway & Land Company Terminal Building and associated buildings, Forty-Niner Saimin, Aiea Cemetery (Honolulu Plantation Cemetery), Ten Courtyard Houses, the Tong Fat Building and associated buildings, West Oahu Christian Church (former American Security Bank), Sumida Watercress Farm, Hawaii Employers Council, Pier 10/11, and the Hawaiian Life Building.

E) All historic research required to meet the ~~s~~Stipulations V.A through V.D ~~as described in this section~~ shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

VI. Interpretive Plan 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 ~~would~~ highlight historical themes (i.e., Architecture, Government, Agriculture, Transportation, Military, etc.) and will interpret each one of these themes at an appropriate station location~~s~~. Interpretive signage will be installed at or near relevant transit stations and on transit vehicles, as well as at other locations

along the routes and in the project area. A tri-fold, color brochure ~~to be presented to transit riders~~ describing the history of the area along the transit line shall also be completed. An interactive coloring book and child-friendly game book that would educate children about relevant local history shall ~~would~~ be prepared by professional historians and a professional illustrator. All brochures and books ~~information would~~ shall also be produced in a digital format for electronic and/or online distribution. Copies shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, and schools. All historic research undertaken to produce interpretive materials shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

VII. Review and Approval

A) The City shall submit all ~~proposed mitigation~~ plans and documents required by this MOA to the SHPD in advance. The City will consult with the SHPD in planning and implementing the stipulations of this MOA. ~~proposed mitigation measures.~~ The SHPD shall ~~provide~~ specifically reviews ~~for~~ the work completed as part of Stipulations III.A, IV.A, V.A, V.C, and V.D. ~~, as described above.~~ The SHPD will have 30 days to review and comment on these submissions. ~~proposed mitigation measures. The SHPD will be allowed a single review of each document to facilitate the production of all materials. Copies of reports, nominations, and studies will be delivered to the SHPD.~~

VIII. Post-Review Discoveries

A) While post-review discoveries are not anticipated, the City agrees to cease all work in the vicinity of the discovery ~~Area of Potential Effects (APE)~~ should another potential historic resource be discovered or an unanticipated adverse effect on a historic resource (such as a crack in a historic building wall during construction) ~~a previously unplanned parcel impact) on historic resources~~ 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 ~~and HRS §6E and §13-275~~. 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 MOA or by other means consistent with 36 CFPR part 800. ~~consultation process is complete.~~

IX. Programmatic Stipulations ~~Agreement~~ for Archaeological Sites

The City shall ~~ensure that the following measures are~~ carry ~~ied out~~ the following archaeological stipulations before each construction phase. ~~:~~

Formatted: Right: 0"

A) Initial Planning

1. The APE for archaeological resources is ~~site identification shall be~~ 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.
2. The City shall develop ~~Development of~~ an Archaeological Inventory Survey Plan (AISP) within the APE for each construction phase and ~~that~~ shall ~~be~~ submit~~ted~~ it to ~~and approved by~~ the SHPD. The AISP shall be subject to approval by the SHPD.

~~3.~~

B) Fieldwork: The City shall ~~C~~conduct archaeological fieldwork as presented in the AISP. Fieldwork required by the AISP ~~phase~~ shall include, but not be limited to, the following:

1. Pedestrian ?? inventory -- of what? Why inventory pedestrians, or is the inventory produced by walking around? -- within the APE, and
2. A sample survey of subsurface conditions with ~~of~~ ground-penetrating radar (GPR), ~~with~~ and subsurface inspection as warranted, and
3. A subsurface testing regime for locations identified in the ASIP, and
4. Analysis, including C^{14} dating~~,~~ and palynology, and
5. A report summarizing the results of the field work and analysis that shall be submitted to SHPD and shall be subject to approval ~~ed~~ by the SHPD.

~~6.~~C) Treatment Plans: Based on the results of the archaeological inventory survey field work and in consultation with the SHPD, the City shall develop a Treatment Plan for each construction phase. The treatment plan will combine the results of the archaeological fieldwork with existing archaeological and cultural resource data to ~~further~~ test further an appropriate sample of the Project's subsurface impacts (e.g., columns and utilities). Treatment plans shall be submitted to the SHPD and shall be subject to ~~and~~ approval ~~ed~~ by the SHPD. Upon approval by SHPD, the City shall implement the treatment plan.

D~~C~~) Mitigation Plans

Subsequent to the archaeological ~~inventory survey~~ fieldwork and implementation of the treatment plan, ~~and~~ the City, in consultation with the SHPD, shall develop mitigation plans as appropriate. The mitigation plans may include:

1. Archaeological Monitoring Plan

The City shall ~~D~~develop an archaeological resources monitoring plan

Comment [MM1]: Does this make sense? I appreciate that TCPs could be both historic and cultural resources, but this sentence seems to sort of conflate the two.
I deleted because this will be done prior to MOA.

Formatted: Indent: Left: 2.1"

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

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

Formatted: Indent: Left: 0.6"

2. Burial Treatment

The City shall prepare ~~B~~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 SHPD ~~ will be prepared~~ for review and approval. The document shall also be submitted to ~~ by the SHPD and~~ the OIBC <what's this?>as appropriate under law. Any human remains found on lands owned or administered by the ~~f~~Federal government or the Department of Hawaiian Homelands ~~properties~~ will be addressed in accordance with ~~as appropriate under~~ NAGPRA in coordination with the ~~applicable~~ affected land management agency.

3. Data Recovery Programs

a. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports~~) prepared for review and approval by the SHPD)~~ will be prepared as appropriate in consultation with the SHPD. Data Recovery Programs shall be submitted for review and approval by the SHPD

b. 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.

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 plan~~(s)~~ specify the disposition of recovered objects and shall be submitted by the City to the SHPD for review and approval.

~~D. Amendments to this agreement for Archaeological Sites~~

Comment [MM2]: Everything in this part (D) and Part E originated from the PA. Should we delete it all, save item 2 (which we could move below) and let the next part of the MOA govern the whole thing?

~~1. Any party to the MOA as described in this section may request that any item or stipulation of this MOA be amended; whereupon the parties to the MOA shall consult with each other in accordance with 36 CFR Part 800 to consider such amendment.~~

~~2. Should any party to this MOA object to the plans prepared pursuant to the MOA as described in this section within 30 days from receipt, 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 to the Advisory Council on Historic Preservation (Council). Within 30 days after receipt of all pertinent documentation, the Council will either:~~

~~a. Provide the FTA with recommendations, which the FTA will take into account in reaching a formal decision regarding the dispute; or~~

~~b. Notify the FTA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FTA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.~~

~~3. Any recommendation or comment provided by the Council to address such objections will be understood to pertain to the subject of the dispute. The FTA's responsibility to carry out all actions under this MOA as described in this section that are not the subject of the dispute will remain unchanged.~~

~~E. Termination of the MOA~~

~~1. If necessary and appropriate, the SHPD may request, at any time, a review of the MOA stipulations as described in this section. This MOA shall be effective upon signing of the MOA and considered in full force and effect until replaced by future agreement, or until the Project is fully implemented.~~

~~2. Interim archaeological monitoring reports for phases implemented shall be submitted by City DTS to SHPD no later than 90 days from the completion of each phase of the Project. Once the Project has been completed and the monitoring plan submitted and approved, this MOA as described in this section shall terminate by its own course without the necessity of further action by any of the other signatories to this MOA.~~

X. GENERAL PROVISIONS

A) Dispute Resolution

Formatted: Indent: Left: 0.25"

Should any party to this MOA object to any action proposed pursuant to the MOA, 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.

a. 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 takes into account any timely advice offered by the ACHP or by other signatories to the MOA. FTA will provide all consulting parties with a copy of this written response and then proceed according to its final decision.

b. 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 takes into account any timely comments by other signatories to the MOA and provide them and the ACHP with a copy of that response.

c. The responsibility of the FTA and the City to carry out all actions that are required by this MOA and are not affected by the dispute remains unchanged. ~~Should FTA or the SHPD object to any action proposed pursuant to this MOA, FTA and the SHPD shall consult to resolve the objection. If FTA determines that the objection cannot be resolved, FTA shall notify the Director of the SHPD (Director) and request a recommendation in the matter. Any Director recommendations provided in response to such a request will be taken into account by the FTA, with reference only to the subject of the dispute. The responsibility of FTA to carry out all actions under this MOA that are not the subjects of the dispute will remain unchanged.~~

B) Amendment~~s~~:

Formatted: Indent: Left: 0.25", Hanging: 0.25"

1. Any party to this MOA may request that any term or stipulation of this MOA be amended, whereupon the parties to the MOA shall consult with each other in accordance with 36 CFR Part 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 one of the signatories believes that the terms of the MOA cannot be carried out, or that an amendment to the terms must be made, that signatory will immediately consult with the other signatories to develop amendments.~~ If an amendment cannot be agreed upon, the signatory prposing the amendment may invoke the dispute resolution process set forth in Stipulation X.A. ~~Part A of this section will be followed.~~

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 MOA, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of

this MOA and so notifying the signatories to this MOA. Any necessary amendments resulting will be coordinated pursuant to Stipulation X.B.

C) Termination:

Any signatory may terminate this MOA upon written notification of the other signatories. If the MOA 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, takes into account, 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.

~~Any signatory to this MOA may terminate the MOA by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA would require compliance with 36 CFR Part 800.~~ This MOA may be terminated by the execution of a subsequent agreement that explicitly terminates this MOA or supersedes its terms.

D) Effective Date and Duration:

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

2. Duration: This MOA will be null and void if its terms are not carried out within eight (8) ~~four (4)~~ years from the date of its execution. Documentation tasks in Stipulations I, III, IV, and V ~~that need to be completed prior to construction commencement (all stipulations listed under Section I above)~~ shall be initiated within 4 years of the date of execution of this MOA and shall be completed before any construction on any portion of the ~~p~~Project begins. Should all parties deem a time ~~n~~ extension ~~to~~f this MOA appropriate, ~~necessary,~~ such extension will be treated as an Aamendment under Stipulation X.B.~~Part B of this section.~~

E) **Monitoring and Reporting**

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

2. Every six months following the execution of this MOA, until it expires or is terminated, the City shall provide all signatories to this MOA 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 MOA.

Formatted: Indent: Left: 0.25", Hanging: 0.25"

Formatted: Indent: Left: 0", First line: 0.25"

Formatted: Indent: First line: 0"

Formatted: Font: Not Bold

Formatted: Indent: First line: 0", Line spacing: Exactly 14.85 pt, No widow/orphan control, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Formatted: Indent: Left: 0.25", Hanging: 0.25"

Formatted: Font: Bold

Formatted: Indent: Left: 0", First line: 0.5"

Formatted: Line spacing: single, Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 0.6" + Tab after: 0.85" + Indent at: 0.85", Widow/Orphan control, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Formatted: Bullets and Numbering

~~Can we add a severability clause to this also in case something changes in the PA, it does not open the rest of the MOA.~~

Execution of this Memorandum of Agreement by FTA, ~~and~~ SHPD and the City, FTA's filing of the executed MOA 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 met its responsibility under Section 106 of the National Historic Preservation Act and HRS §6E and §13-275 and~~ has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment.

This MOA ~~agreement~~ 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 MOA. ~~agreement.~~ No waiver, consent, modification or change of terms of this MOA ~~agreement~~ shall bind either party unless in writing and signed by all ~~both~~ signatories ~~parties~~ 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 MOA ~~agreement~~ shall not constitute a waiver by FTA of that or any other provision.

Comment [MM3]: Will there be any?

~~IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.~~

SIGNATORIES:

~~U.S. DEPARTMENT OF TRANSPORTATION~~ FEDERAL TRANSIT ADMINISTRATION ~~(FTA)~~

By:_____ _____
~~Director~~**Regional Administrator** **Date**

HAWAI'I STATE HISTORIC PRESERVATION DIVISION ~~(SHPD)~~

By:_____ _____
Administrator **Date**

By:_____
City & County of Honolulu **Date**

Invited Signatoriesy:

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

Concurring Signatories:

~~**By:**_____ _____~~
~~**City & County of Honolulu DTS** **Date**~~

By:_____ _____
NAME **Date**

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