

DRAFT PROGRAMMATIC AGREEMENT

**AMONG THE
U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT
ADMINISTRATION,
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, the City Council has authorized DTS to enter into this Programmatic Agreement through Resolution _____; and

WHEREAS, pursuant to 36 CFR 800, the FTA has consulted with the Hawai'i State Historic Preservation Division (SHPD), which is the State Historic Preservation Office, 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
- 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
- The Daughters and Sons of the Hawaiian Warriors
- Association of Hawaiian Civic Clubs
- Ali‘i Pauahi Hawaiian 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
- 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, 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 NHL, and the CINCPAC Headquarters Building NHL, and as a result, the NPS has been designated to participate formally in the consultation; and

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

[WE HAVE NOT YET BEEN PROVIDED WITH ATTACHMENT A. IT NEEDS TO INCLUDE A VERY CLEAR AND DETAILED MAP]

WHEREAS, the FTA, in consultation with the Hawai‘i SHPD, has determined that proposed Project would have an adverse effect on historic properties 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 historic properties will be adversely affected by the Project: 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 (NHL); CINCPAC Headquarters Building NHL; 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.

[INCLUDE AN EXHIBIT THAT PROVIDES MORE DETAILED IDENTIFICATION FOR EACH OF THESE HISTORIC PROPERTIES, INCLUDING SITE NAME, ADDRESS, BOUNDARY MAP, TAX MAP KEY (TMK) NUMBER/LEGAL DESCRIPTION.]

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

WHEREAS, the FTA, in consultation with the SHPD, has determined that the Project may adversely affect archaeological sites listed in or eligible for listing in the NRHP, but effects cannot be fully assessed prior to the approval of FTA financial assistance; 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, the timing of activities listed in this PA are estimated based on groundbreaking for the first construction phase in 2009, substantial construction of the first construction phase and FTA granting approval to enter Final Design in 2010, and FTA signing a Full-Funding Grant Agreement during 2011. The Project is anticipated to be completed in four construction phases: Phase I: 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. Phase 1 will be built as a design build project with design work beginning in 2009. Phase 2 is anticipated to begin construction in 2011, Phase 3 in 2012 and Phase 4 in 2013. Substantive construction is anticipated to be complete during 2018.

WHEREAS, the DTS 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 properties; and

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

WHEREAS, consulting parties and the public will be offered the opportunity to provide ongoing comments on station design and transit-oriented development planning at

neighborhood design workshops; and

WHEREAS, the City has implemented zoning “overlay districts” to preserve individual and groupings of historic and cultural resources, including application of architectural and other design guidelines and standards for developments surrounding them; and such overlay districts are already established for Chinatown and the Hawai‘i Capital (civic center) areas; and

WHEREAS, Ordinance 09-04 requires the establishment of transit-oriented development (TOD) overlay zoning districts around every transit station, and this Ordinance ~~continues the commitment to protect and enhance historic and cultural resources by~~ requiring the identification of important historic and cultural landmarks in the area, the establishment of controls to protect and enhance these resources, and encourages adjacent development to reflect the cultural and historic context of the station area, even though it does not prohibit the demolition of historic and cultural resources;¹ and

WHEREAS, the Project will cross lands administered by the Federal Government and is subject to an approval of that crossing by the applicable Federal agencies; and

WHEREAS, the Project is subject to the Native American Graves Protection and Repatriation Act (NAGPRA) where it crosses lands administered by the Federal Government; 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 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, the ACHP, and the State Historic Preservation Officer (SHPO) are signatories to this Programmatic Agreement (PA); and

WHEREAS, the City Department of Transportation Services and the NPS are invited signatories to this PA; and

WHEREAS, all consulting parties were invited to be concurring parties to this PA if

¹ It’s important not to misrepresent the degree of legal protection reflected in the “TOD” ordinance.

they choose; and

WHEREAS, any future extensions that are undertaken as a federal action would undergo a separate independent review under the National Environmental Policy Act and Section 106 of the NHPA, and any such review will be guided by the approaches to treatment of historic properties included in this PA; and,

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

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

NOW, THEREFORE, FTA, ACHP, and the Hawai'i 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) FTA Responsibilities - In compliance with its responsibilities under the NHPA, and as a condition of its funding award to the City of Honolulu under 49 U.S.C. § 5309 and any other subsequently identified Federal funding, FTA will ensure that the City carries out the stipulated provisions of this PA and applicable ACHP policy statements and guidelines subject to this agreement.
- B) SHPD Responsibilities - The SHPD shall specifically review and provide comments for work products completed as part of Stipulations II, III, V, VI, VII, and VIII. 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.
- C) ACHP – The ACHP will provide oversight, advise on disputes, and determine whether the terms of this agreement are being met.
- D) City Responsibilities - The City shall represent the interests of FTA and coordinate all governance 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. The City shall report all plans and documents required by this PA in a timely and accurate manner to the SHPD and other agencies,

as stipulated, for review. The City shall also ensure that all technical solutions developed by the City and as a result of consultation are compliant with government-wide policies and regulations.

- E) Qualifications of Personnel — Unless otherwise specified, Aall work carried out under the terms of this PA shall be conducted and/or supervised by cultural resources professionals (historians, architectural historians, historic architects, and/or archeologists, as appropriate) who meet the Secretary of the Interior’s Professional Qualification Standards set forth in 36 CFR Part 61, Appendix A.
- F) The City shall provide for a qualified ~~-~~architectural historian on the Project staff through the completion of Project construction.

II. Traditional Cultural Properties

- A) Within 30 days of execution of this PA, the City shall undertake a study to determine the presence of Traditional Cultural Properties (TCP) within the APE. Prior to construction commencement, the City shall meet with the SHPD and consulting parties to discuss and identify potential TCPs, as defined by the National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. The City shall undertake studies to evaluate these TCPs for NRHP eligibility.
- B) If eligible TCPs are present, the City will complete effects assessments and seek SHPD concurrence on both eligibility and effects determinations. If there are adverse effects to eligible TCPs, the City shall meet with consulting parties to identify acceptable mitigation. The City will complete all fieldwork, eligibility and effects determination, and mitigation consultation prior to commencement of construction in the immediate vicinity of the adversely affected TCPs. The City shall complete all related mitigation prior to undertaking construction in the immediate vicinity of the adversely affected TCPs. The TCP studies will follow National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.
- C) Regardless of effect determination, the City will complete NRHP nominations for properties that meet the NRHP criteria for TCPs. The SHPD, NPS, and ~~concurring consulting~~ parties with a related and demonstrated interest in each TCP will review draft NRHP nominations and provide comments within 30 days of receipt. The City will consider all comments when completing final NRHP nominations.

III. **Identification and Protection of Archaeological Sites and Burials**

[THIS SECTION IS BEING REVISED BY WORKING GROUP]

The City shall implement the following archaeological stipulations before each construction phase. The four construction phases are described in Stipulation XII.B.

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 new location of any utilities that will be relocated by the Project.
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. 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 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 beginning construction of that phase. Assuming that the Project maintains the schedule outlined in Stipulation XII.B, 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,

4. A subsurface testing regime for locations identified in the AISP,
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 for approval.

C) 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 archaeological inventory survey 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.

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 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 relocation, 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.

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 VIII of this agreement at one or more stations may incorporate archaeological materials recovered during development of the Project.

F) The City shall consult with the OIBC to develop an approach for consultation regarding any iwi kupuna discovered during the archaeological inventory survey. The City, in coordination with the OIBC, shall complete a draft approach for OIBC review within six months of FTA's approval of project entry into final design. 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 decedents, and workflow of actions prior to and upon discovery of iwi kupuna during archaeological inventory survey. The workflow shall consider both avoidance evaluation to allow for preservation in place and reinternment options.

IV. Design Standards

[WE STRONGLY RECOMMEND SUBSTITUTING THE LANGUAGE PROPOSED BY HISTORIC HAWAII FOUNDATION. THIS LANGUAGE IS NOT CONSISTENT WITH OUR UNDERSTANDING OF THE CONSENSUS FOR A MEANINGFUL DESIGN REVIEW PROCESS BASED ON THE LAST CONSULTATION MEETING. IT NEEDS TO BE SUBSTANTIALLY REVISED.]

A) The City shall adhere to the standards set forth in the follow the Project's *Design Pattern Guidebook*, as appropriate, for all elements covered in this Programmatic Agreement. The City shall ~~consider~~ ensure that the design is consistent with the tenets set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties* contained in 36 CFR, Part 68.

B) The City shall conduct a minimum of two neighborhood design workshops for each grouping of stations-. The City shall notify all consulting parties of ~~of~~ the workshops and consider any comments received when completing station design.

C) The City shall provide Preliminary Engineering design plans for built components of the project, such as stations, guideways, and directly related project infrastructure improvements, to the SHPD for review and comment. The SHPD shall provide the City with comments on the plans within 30 days of the agency's receipt. If no comments are received within 30 days, the City will assume that the SHPD has no comment. The City shall consider all comments provided by the SHPD when completing design build or final design plans.

V. Recordation and Documentation

- A) Within three months of execution of this PA, the City shall complete 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 in developing NRHP nominations for historic resources in the area.
1. The City will develop a draft scope of work for the studies describing the context themes, research methodology, report format, photography specifications, and schedule for completion. The City will circulate a draft scope of work to signatory and concurring parties.
 2. Any comments received by the City from signatory and concurring parties within 30 days of receipt of the draft scope of work will be considered by the City in developing a final scope of work in consultation with the SHPD.
 3. Initial field work and photography for each study theme shall be completed prior to construction commencement in relevant geographic areas.

4. Copies of the final studies shall be distributed to repositories listed in Stipulation XII.D.
- B) The City shall complete Cultural Landscape Reports (CLR) related to historic properties along the Honolulu High-Capacity Transit Corridor.
1. Within three months of execution of this PA, the City shall develop a draft scope of work for the CLRs describing the cultural landscapes to be studied, research methodology, report format, photography specifications, and project schedule. All work shall follow 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 *Guidelines for the Treatment of Cultural Landscapes*. The City shall circulate a copy of the draft scope of work to signatory and concurring parties.
 2. Any comments received by the City from signatory and concurring parties within 30 days of receipt of the draft scope of work will be considered by the City in developing a final scope of work in consultation with the SHPD.
 3. Initial field work and photography for each study area shall be completed prior to construction commencement in that area.
 4. Copies of the final CLRs shall be distributed to repositories listed in Stipulation XII.D.
- C) Historic American Building Survey and Historic American Landscape Survey Recordation:
1. The City shall consult with NPS Regional HABS/HAER/HALS (HHH) staff to determine which of the adversely affected historic properties should be documented for HHH recordation. All required HHH archival black-and-white photography will be completed and submitted to NPS Regional staff for approval. Approval shall be received by NPS Regional staff prior to any pre-construction or construction activities to the resources.
 2. The City shall engage a professional photographer to complete archival photography to NRHP standards for all resources that received adverse effect determinations that are not subject to HABS or HALS documentation under Stipulation V.C. 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.D. Additionally, the City shall consult with the SHPD to

determine an appropriate level of written documentation for each above-ground historic property that is not documented under Stipulation V.C or VI. 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.

- D) The City shall have digital photographs taken by a professional photographer, in conjunction with the input of a supervising architectural historian, 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 be housed at the City Municipal Library with copies submitted to the SHPD.
- E) The City shall take 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 from the vehicle in each direction, from Ala Moana to 'Ewa, and 'Ewa to Ala Moana. This film will be housed at the City Municipal Library with a copy submitted to the SHPD.

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 historic properties to be defined during scoping that are related to Modern and Recent Past Architecture in Honolulu/O'ahu dating from 1939-1979 (with Criteria Consideration G applying as appropriate).

1. The City will propose a list of Modern/Recent Past historic properties determined to be eligible for the NRHP and will circulate it to consulting parties.
2. Any comments received by the City from consulting parties within 30 days of receipt of the proposed list will be considered by the City in developing a final list in consultation with the SHPD.
3. The City will also coordinate with the SHPD to nominate these historic properties to the Hawai'i Register. The City shall submit draft reports
4. The City shall submit a draft MPS nomination form to the SHPD and NPS for review and comment. The SHPD and NPS will provide any comments within 30 days of receipt. The City shall consider all comments while preparing the final MPS documentation.

B) Pending the U.S. Navy approving the work and providing access to the site and relevant records, the City shall complete an update to the Pearl Harbor National Historic Landmark (NHL) nomination and the CINCPAC Headquarters NHL nomination. For the Pearl Harbor NHL amendment, emphasis shall focus on those resources closest to the APE and to those not previously mentioned in prior documentation. All work shall be coordinated with the Navy and follow the guidelines set forth in *How to Prepare National Historic Landmark Nominations*. The work shall be carried out and approved by persons meeting the professional qualifications for Historical Architect or Architectural Historian in *The Secretary of the Interior's Historic Preservation Professional Qualification Standards*, (Federal Register, Vol. 62, No. 119, pp. 33,713-14, 33,719-20 (June 20, 1997)).² The City shall submit a draft document to the NPS, Navy, and SHPD, who will review and provide comments within 30 days. The City shall consider all comments in the final NHL nomination. The City will provide the Navy with the updated NHL nominations and accompanying documentation for submittal to the NPS.

C) National Register Nominations

1. The City shall complete NRHP nominations and/or amendments for up to the 31 adversely affected properties located along the project corridor. (Note that two resources are NHLs and are addressed in Stipulation VI.B.) The City will consult with the SHPD to determine if nomination forms for properties already listed in the National Register should be updated and/or amended. All work shall conform to guidance presented in relevant National Register Bulletins. The City will complete all appropriate accompanying documentation, including as photographs and mapping. All nomination forms will be submitted to the SHPD for review.
 - a. The SHPD will provide comments on the NRHP nomination forms within 30 days of receipt. The City will consider the comments and submit final NRHP nomination forms following the established procedures of the National Park Service (36 CFR 60.6(g)). Final nomination forms will be completed before the project begins revenue service operations.

D) Properties documented in the Multiple Property Submissions required by Stipulation VI.A will not be documented on separate, individual NRHP forms beyond what is included in the Multiple Property Submission. The City and SHPD will consult with property owners to obtain access and determine that owners consent to the proposed listing. All properties will also be nominated to the Hawai'i Register.

² These higher standards for professional qualifications are applicable to Navy work within the National Historic Landmark through the Navy's own PA.

- 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.
- F) The City shall develop a searchable database of historic properties (i.e., those listed in or eligible for listing in the NRHP) within the APE and make it publicly available. The database will include an interactive geographic component and include property information (e.g., property name, address, tax map key, construction date, architect, etc.). The City will initiate database development prior to construction commencement and will update, and maintain this database for the project’s duration. The City will add links to the documentation included in Stipulations **II, V, VI, and VIII** to the website as it is approved by the appropriate review agency. Culturally sensitive materials related to Stipulation III will not be posted for the general public. However, if the consulting parties agree, it may be included in a password-protected mode.
 - 1. The City will consult with the SHPD to develop a strategy for making this database and its information available to any organization with the authority and ability to develop, maintain, and support a public research database at the end of construction.

VII. Educational and Interpretive Programs, 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, where appropriate, inside transit vehicles.
 - 1. Signatories and concurring parties will participate in a kick-off meeting to develop the interpretive plan. The City will circulate a draft of the interpretive plan to consulting parties following the kick-off meeting. The City will consider all comments received within 30 days while preparing the final interpretive plan in consultation with the SHPD.
 - 2. The City will submit draft interpretive signage to the SHPD for review and comment. The SHPD will provide comments on the content, design, and proposed placement of interpretive signage within 30 days of receipt of draft materials. The City will consider all comments while preparing final versions.
 - 3. All interpretive signage will be installed before revenue service begins.
- B) The City shall complete a color brochure describing the history of the area along the transit line. 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.

1. Signatories and concurring parties will participate in a kick-off meeting to discuss brochure content. The City will circulate a draft of the brochure plan to consulting parties following the kick-off meeting. The City will consider all comments received within 30 days while preparing the final brochure plan in consultation with the SHPD.
 2. The City will submit a draft brochure, including text and photographs, to the SHPD for review and comment. The SHPD will provide comments on the content and design within 30 days of receipt of draft material. The City will consider all comments while preparing final versions.
 3. The brochure will be completed and printed before revenue service begins.
- C) The City shall prepare materials for children, such as a coloring book or child-friendly game that would educate children about relevant local history. The materials 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. The materials will be available on the project website.
1. The City shall solicit student input to propose and develop the content for the materials
 2. The City will submit a draft product, including text and illustrations, to the concurring parties for review and comment. The concurring parties will provide comments on the content and design within 30 days of receipt of draft material. The City will consider all comments while preparing final versions.
 3. The electronic materials will be completed before revenue service begins.
- D) The City shall establish a Humanities Program that will explore human histories, cultures, and values. This program will enhance visitor and resident exposure to the depth of history and culture in the vicinity of the Project. The Humanities Program will educate the public about important topics in Hawaiian history through conferences/seminars, research fellowships, media programs, exhibits, lectures, and publications. The City and concurring parties will consult to develop this program and the City will provide \$100,000 to fund this program
1. Signatories and concurring parties will participate in a kick-off meeting to discuss the establishment and goals of the Humanities Program. The City will circulate a draft of the Humanities Program plan to consulting parties following the kick-off meeting. The City will consider all comments received within 30 days while preparing the final plan in consultation with the SHPD.

2. The City will consider all input and will establish subcommittees to achieve the goals of the Humanities Program and meet at agreed-upon intervals.
 3. The Humanities Program will continue until all designated funds are exhausted or until revenue service begins.
- E) The City will develop and implement an educational effort/program to encourage the rehabilitation of historic properties located along the transit route. This effort will include printed and electronic information about proper rehabilitation practices; benefits of historic designation; financial incentives available for eligible properties; and existing resources for assistance in pursuing these options. The City will hold two meetings and/or public workshops with owners of historic properties to disperse this information.
1. Signatories and concurring parties will participate in a kick-off meeting to discuss program content. The City will circulate a draft of the program plan to consulting parties following the kick-off meeting. The City will consider all comments received within 30 days while preparing the final program plan in consultation with the SHPD.
 2. The City will submit draft materials, including text and photographs, to the SHPD for review and comment. The SHPD will provide comments on the content and design within 30 days of receipt of draft material. The City will consider all comments while preparing final versions.
 3. The City will provide all owners of eligible or listed properties located within the APE with printed resource materials and will make the materials available on the Project website.
 4. The City will invite all owners of eligible or listed properties located within the APE to the two meetings/workshops and will also announce the meetings/workshops to the public on the Project website. The meeting/workshops will be completed before revenue service begins.
 5. At the conclusion of the effort, the City will submit a summary report to the signatories and concurring parties.
- F) Based on the content developed in Stipulation VII. A), the City will develop an educational field guide of the historic properties (including historic districts) along the transit route. The City will make the field guide available to the public in both print and electronic formats.

VIII. Mitigation of Specific Resources

- A) All lava rock curbstones removed along the edges of pavement because of Project-related work shall be retained by the City for reuse and reinstallation. The 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.

- B) The bridge rails on the Kapalama Canal Bridge do not meet current standards; therefore, they must be replaced or retrofitted to meet current safety standards. The City will maintain or replace the rails matching the current look of the existing rails for viewers off of the bridge and looking to the bridge. The City shall ~~consider~~ ensure that the plans are consistent with the tenets set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties* contained in 36 CFR, Part 68. The City will submit plans for modifications of the bridge to the SHPO for a 30-day review and comment period. In the event that the SHPO does not concur that the plans are consistent with the Secretary's Standards, the City will modify the plans to bring them into consistency with the Standards.

C) The City will replace true kamani trees within the corridor as close as feasible to the current location of the group of 28 true kamani trees on the makai side of Dillingham Boulevard that will be adversely affected.

D) Improvements to Adversely Affected Parks.

1. Signatories and concurring parties will participate in a kick-off meeting to discuss improvements to adversely affected parks. Considering comments offered at the kick-off meeting, the City will develop and circulate a draft park improvement plan to consulting parties. The City will consider all comments received within 30 days while preparing the final plan in consultation with the SHPD.
2. The City shall consider the tenets set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties* contained in 36 CFR, Part 68.
3. The park improvement plan will be completed before construction is complete.
4. Project funds in the sum of \$750,000 shall be budgeted for parks improvements. Should the conferees determine that circumstances preclude improving these parks, project funds budgeted for parks shall be transferred for use to the Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee (Stipulation IX.B).

(E) The City shall provide site-specific mitigation for the loss of 2,000 square feet of open space currently used as a public courtyard directly adjacent to the Dillingham Transportation Building, including the designation of a comparable amount of public space nearby or adjacent to the existing courtyard.

(F) The City will establish a Monitoring Program for all historic properties within the APE. The intent of the Program will be to gather data to evaluate the effectiveness of the TOD Ordinance and other City land use regulations in preventing the loss of historic properties in the vicinity of the project as a result of secondary and cumulative impacts of the project.

(1) Each quarterly report submitted pursuant to Stipulation XIII.(C)(2) shall include documentation regarding permit applications for demolition of, or alterations to, any historic property within the APE. Each quarterly report will identify any permit applications that have been filed regarding historic properties within the APE, and any City actions in response to those permit applications. In the event that a total of XX National Register-eligible resources are demolished or substantially altered in a manner inconsistent with the Secretary's Standards for the Treatment of Historic Properties, the City will establish a Moratorium for historic properties within the APE, pursuant to paragraph (F)(2).

(2) The City will prepare draft legislation, in consultation with the consulting parties, providing for a temporary moratorium of one year on the demolition or substantial alteration of any historic properties within the APE. The moratorium will be for the purpose of studying ways to improve the effectiveness of the City land use laws and regulations in protecting historic properties. The City will submit the draft legislation to the City Council and formally request that the City Council consider and enact the legislation. The City will coordinate with the consulting parties who support the legislation. In the event that the City Council does not pass the moratorium legislation, the City will reconvene the consulting parties to develop alternative measures for strengthening the effectiveness of the City's land use regulations to protect historic properties within the APE from secondary and cumulative effects of the project.

(G) The City will prepare a Preservation Plan for historic properties and districts located within the APE. The Plans are intended to provide guidance for maintenance/repair and alterations for historic property owners to ensure that transit-oriented development is protective of historic resources in the project area. The Plans will provide both preferred maintenance and repair treatment strategies, and also specific material replacement guidelines per the Secretary of the Interior's Standards and LEED standards. The Plans will also provide specification recommendations and alternative material replacement options that will assist in meeting LEED certification goals as well as provide the framework for a proposed maintenance and inspection schedule. The City will circulate draft Plans to the consulting parties for a thirty day review and comment period. The City will take into account all timely comments received on the draft Plans prior to finalizing them. Final digital copies of the Plans will be provided to any concurring party upon request.

IX. Measures to Address Reasonably Foreseeable Indirect and Cumulative Effects Caused by the Project

A) The City shall include a staff position for a qualified Project Architectural Historian, defined in Stipulation I.F. The architectural historian shall oversee completion of the stipulations of this PA, coordinate with the SHPD regarding the elements included in this PA, and coordinate with the Department of Planning and Permitting regarding land use planning activities, including the integration of transit oriented development with historic preservation, in the vicinity of project stations.

1. The Project Architectural Historian shall oversee the provisions of this PA and coordinate with signatory and concurring parties as described in Stipulations II, IV, V, VI, VII, VIII, and IX .

2. Consult with the DPP regarding historic preservation planning efforts and transit-oriented development within the APE.

B) The City, in consultation with the PA signatories and concurring parties, shall create, chair, and provide technical, administrative, and financial support for the operation of a Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee (“HPC”). The City shall allocate \$1 million (\$1,000,000) within the Project’s budget to fund the program administered by the HPC. The City will create and schedule the first meeting of the HPC within three months after execution of this PA. Prior to the creation of the HPC, the City will submit to the SHPO for approval, a list of the agencies, groups, and organizations that will be invited to be represented and serve on the HPC. The HPC shall be comprised of the following seven members: the director of DTS, or his designee, to serve as a voting member and chair of the HPC; one representative, or its designee, from each of the following: the office of the SHPO, DTS, and DPP; and one representative each from three (3) groups or organizations with expertise in historic preservation, architecture, planning, or landscape architecture. The HPC shall establish the goals, criteria, program guidelines, administrative procedures, and funding distribution for the disposition of these funds that will be provided by the City for exterior improvements to eligible or listed historic properties (including contributing resources within historic districts) within the Project’s APE consistent with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* accomplished through grants provided under this section. The HPC shall identify and select an entity or entities that will administer the funds for the purposes established. This entity or entities should be compliant with the requirements of Chapter 6, Article 29 of the Revised Ordinances of the City and County of Honolulu 1990, as amended, *Standards for the Appropriation of Funds to Private Organizations*. The City will dissolve the HPC when the funds are exhausted, but no later than three (3) years after completion of the Project, which ever occurs first.

b.

X. Construction Protection Plan

- A) Before project construction begins, the City shall develop a construction protection plan in consultation with FTA and the SHPD detailing all measures to protect historic properties from physical damage during project construction. Protection measures shall be clearly identified in construction documents. The City will include the construction protection plan within specific contract packages to inform contractors of their responsibilities relative to historic properties. Copies of the construction protection plan will also be provided to consulting parties. The construction protection plan will establish protection measures and procedures and provide for inspection and documentation of existing conditions at the historic properties directly adjacent to project construction activities that may impact them. The vibration limits will include a threshold of 0.2 inches/second for historic buildings. In the event that the threshold is exceeded, construction work will stop until the contractor can assure that the vibration limit will not be exceeded.
- B) As a part of the construction protection plan, the City, in cooperation with its contractors, will create and carry out a Construction Noise and Vibration Mitigation Plan using and all of the mitigation measures defined in the FEIS. Numeric limits and monitoring measures will be developed to minimize noise and vibration impacts.
- C) Before project construction begins, the City shall meet with the construction contractor(s) to review and transmit the construction protection plan.
- D) The City will monitor project construction to ensure that the measures in the construction protection plan are implemented and shall provide a record of monitoring activities in progress reports prepared pursuant to Stipulation XII.C.
- E) The City shall complete post-construction noise monitoring as stipulated in the Final Environmental Impact Statement within U.S. Naval Base, Pearl Harbor NHL.

XI. Post-Review Discoveries

- 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.

- B) While post-review archaeological 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.
- C) In the event of any inadvertent discoveries of burials, the OIBC shall be included in consultation as specified in HAR 13-300-40. When suspected human skeletal remains are found, all work in the vicinity must stop and the archaeologist must secure the area to avoid any additional disturbance. With confirmed human skeletal remains the archaeologist must notify the OIBC, SHPD, the County Coroner's Office, and the County Police Department. With all inadvertent burial finds, SHPD determines burial treatment, either preservation in place or relocation, in consultation with the land owner, the district representative of the OIBC, and any recognized cultural or lineal descendants for the project. By law, SHPD has one day to make its treatment determination for single burials and two days for multiple burials found on Oahu. Construction must remain halted in the vicinity of the burial find until SHPD's treatment decision has been carried out. For preservation in place, typically the planned construction is modified to allow for the remains to stay in place in an appropriate and relatively undisturbed manner. For relocation, typically the remains are disinterred and curated either on the project site, or at SHPD's repository, until the project is completed and reinterment is arranged within the project area. Less commonly, for relocation, the remains are disinterred and immediately reinterred within the agreed upon burial relocation site. Burial treatment is documented in either a "burial site component of an archaeological data recovery plan" for burials that are relocated, or a "burial site component of an archaeological preservation plan" that documents the burial treatment that was carried out. These plans/reports document the conditions of the discovery, the burial treatment, and any subsequent measures that have been agreed to by the land owner to safeguard either the relocation site or the preserve site. Preserved or relocated burial sites are recorded with the Bureau of Conveyances so that the burial sites are not further disturbed in the future.
- D) 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 the Treatment of Historic Properties*. The City shall submit a scope of work or treatment plan to address inadvertent damage to the SHPD for comment before initiating repairs.

XII. Public Involvement

- A) To keep the public informed about PA implementation, the ~~semi-annual~~quarterly progress reports described in Stipulation XII.C will be posted on the Project website.
- B) The City shall add all documentation completed as part of this PA that does not contain sensitive information or locations to the historic resources database that will be created as part of Stipulation V.D.
- C) At any time during implementation of the activities covered in this PA, should an objection pertaining to this PA or the effect of any activity on historic properties be raised by a member of the public, FTA will notify the parties to this PA and take the objection into account, consulting with the objector, and should the objector so request, with any of the parties of this PA, to resolve the objection.

XIII. Administrative Provisions

- 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) Duration

- 1. This PA shall take effect on the date it is signed by the last signatory and shall be in effect until December 31, 2018, or terminated pursuant to Stipulation XII.H.
- 2. Within 90 days of the execution of this PA, the City shall develop a schedule

for the implementation of the provisions of the agreement. The City will submit the schedule to the SHPD for review and comment. The final schedule will include timelines and milestones for completion of deliverables and will be posted on the project website. The City will update the schedule to reflect project changes and will notify the SHPD of any alterations to the schedule.

C) 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~~ three 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, as well as an accounting of impacts on historic properties pursuant to the Monitoring Program established in Stipulation VIII(F). 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.
3. Work products not containing sensitive information 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).

D) Emergency Situation

In the event that during the Project, an emergency situation should occur, such as a natural disaster, which represents an immediate threat to public health, safety, life, or property creating a hazardous condition in relation to a historic property, the City shall notify FTA, ACHP, and SHPD of the conditions which has initiated the situation and the measures to be taken to respond to the emergency or hazardous condition. The FTA and SHPD may submit additional measures to resolve adverse effects within seven days of the notification.

Should the nature of the emergency warrant immediate attention, the City shall consult with the FTA and SHPD via telephone or e-mail. Should the SHPD or the FTA desire to provide technical assistance to the City in responding to such condition, they shall submit comments within five days from notification, if the nature of the emergency or hazardous conditions allows for such coordination.

E) Coordination with Other Federal Involvement

In the event that the City or other agency applies for additional federal funding or approvals for the Honolulu High-Capacity Transit Corridor Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA-PA and notifying and consulting with SHPD and ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.I.

F) Amendments

1. Any signatory to this PA may propose that this PA be amended, whereupon the signatories and consulting parties to the PA shall consult 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 filed with the ACHP.

- G) Termination: If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII.G. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories. Once the PA is terminated and prior to work continuing on the undertaking, FTA must either: (1) execute a new agreement pursuant to 36 CFR 800.6; or (2) request, take into account, , and respond 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.

Execution of this PA by FTA, SHPD, and the ACHP and implementation of its terms evidence that FTA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

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

HAWAI‘I STATE HISTORIC PRESERVATION OFFICER

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John M. Fowler _____
Executive Director **Date**

INVITED SIGNATORIES:

CITY AND COUNTY OF HONOLULU

By: _____
Wayne Y. Yoshioka _____
Director, Department of Transportation Services **Date**

NATIONAL PARK SERVICE

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

CONCURRING PARTIES:

By: _____
NAME _____ **Date**

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

ATTACHMENT 2: Information on Resources with Adverse Effect Determinations