PROGRAMMATIC AGREEMENT FRAMEWORK

DISCUSSION DRAFT

WHEREAS, the City and County of Honolulu (City) Department of Transportation Services (DTS) and Federal Transit Administration (FTA) propose the Honolulu High-Capacity Transit Corridor Project (Project) comprised of a 23-mile fixed transit guide-way from Ala Moana to East Kapolei; and,

WHEREAS, the FTA is the Lead Federal Agency responsible for all aspects of compliance of the National Historic Protection Act (16 USC 470(f)) and it's implementing regulations at 36 CFR 800; and,

WHEREAS, the FTA has consulted with the Hawaii State Historic Preservation Division (SHPD) pursuant to 36 CFR Part 800, and the Advisory Council on Historic Preservation (ACHP) as well as the O'ahu Island Burial Council (OIBC) and Office of Hawaiian Affairs (OHA), 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; and

WHEREAS, the City DTS has participated in consultation and has been invited to be a signatory to this Agreement, and the OHA and OIBC have been invited to participate in this Agreement as invited signatories; and,

WHEREAS, the Project will cross lands administered by the United States Navy and United States Army, and subject to the Native American Grave Protection and Repatriation Act (NAGPRA), and have each therefore been consulted and invited to be a signatory to this Agreement; and

WHEREAS, the FTA has determined that the Project will likely have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and the Hawaiian Register of Historic Places (HRHP); 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.

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

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

NOW, THEREFORE, FTA and the Hawaii SHPD 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 shown on Exhibit A included with this document:

STIPULATIONS

The FTA shall ensure that the following measures are carried out before each construction phase:

A. Initial Planning

1. The Area of Potential Effects (APE) shall be defined as all areas of direct ground disturbance. This 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. Develop an Archaeological Inventory Survey Plan (AISP) within the APE for each construction phase, for approval by Hawaii SHPD.
3. Determine properties within the APE that are eligible for the National Register of Historic Places as Traditional Cultural Properties, if any. This will include properties described in *Cultural Resources Technical Report*, and include consultation with appropriate traditional communities and groups, to identify properties that are not already recognized in the *Historic Resources Technical Report.*

B. Conduct archaeological fieldwork as presented in the AISP.

Fieldwork phase will include:

a. Pedestrian inventory within the APE, and

b. A sample survey of ground-penetrating radar (GPR), with subsurface inspection as warranted, and

c. A subsurface testing regime for locations identified in the ASIP, and

d. Analysis, including C^{14} dating, and palynology, and

e. A report summarizing the results of the field work and analysis, prepared for review and approval of the SHPD.

f. Given the results of the archaeological inventory survey field work, 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 an appropriate sample of the Undertaking's subsurface impacts (e.g., columns and utilities).

C. Mitigation Plan

Subsequent to the archaeological inventory survey fieldwork, develop mitigation plans as appropriate. The mitigation plans may include:

1. Archaeological Monitoring Plan

   Develop an archaeological resources monitoring plan specifying the locations within the construction phase that require a monitor, and describing the level of monitoring necessary. The

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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).

A follow-up monitoring report for the Undertaking shall be submitted to State Historic Preservation Division (SHPD). The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking shall remain confidential and the precise location data may be provided in a separate confidential index.

2. Burial Treatment

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) will be prepared for the review and approval of the SHPD and OIBC as appropriate under law. Any remains found on federal or Department of Hawaiian Homelands properties will be addressed as appropriate under the Native American Graves Protection and Repatriation Act (NAGPRA) in coordination with the applicable agency.

3. Data Recovery Programs

1. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports for review and approval of the SHPD) will be prepared as appropriate in consultation with the SHPD.
2. If archaeological monitoring encounters cultural deposits, consultation with SHPD will occur to determine the need for data recovery work for these areas.
3. Completion of data recovery work must be verified by the SHPD prior to initiation of construction within the area of these sites.
4. Data recovery plan(s) shall be submitted by the City DTS, through FTA, to the SHPD for review and approval.

D. Amendments to this Programmatic Agreement

1. Any party to this PA may request that any item or stipulation of the PA be amended; whereupon the parties to the PA shall consult with each other in accordance with 36 CFR Part 800 to consider such amendment.
2. Should any party to this PA object to the plans prepared pursuant to these stipulations 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 PA that are not the subject of the dispute will remain unchanged.

E. Termination of the PA

1. If necessary and appropriate, SHPO may request, at any time, a review of the stipulations. This PA shall be effective upon being signed and considered in full force and effect until replaced by future agreement, or until the Undertaking 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 Undertaking has been completed, and the monitoring plan submitted and approved, this PA shall terminate by its own course without the necessity of further action by any of the other signatories to this PA

F. Timeframe for Undertaking Initiation

Should the undertaking not take place within 5 years of the executed PA, the parties shall consult in accordance with 36 CFR Section 800 to determine whether amendment should be considered.