

## **SPECIAL PROVISIONS**

All defined terms in the Agreement shall have the same meaning in these Special Provisions.

### **I. PROJECT**

The Honolulu Rail Transit Project ("H RTP") is described in the Final Environmental Impact Statement as a twenty (20) mile grade separated fixed guideway transit system between East Kapolei and Ala Moana. The Contractor shall provide services in the fields of history, archaeology, architectural history, and historic architecture related to the design and construction of the H RTP. The Contractor shall also provide Section 106 consultation, provide supervisory/reviewer services, work with disparate groups and prepare documentation required in the Programmatic Agreement (PA).

### **II. SCOPE OF WORK**

The Contractor's scope of work under this Agreement is set forth in Exhibit 1, attached hereto and incorporated by reference herein. "Contractor" shall have the same meaning as "Kāko'o".

### **III. FEDERAL CLAUSES**

Pursuant to a Full Funding Grant Agreement ("FFGA"), HART is the recipient of financial assistance from the Federal Transit Administration ("FTA"). Accordingly, this Agreement is subject to all terms and conditions set forth in the FFGA. In addition, all provisions set forth in FTA Circular 4220.IF, as amended, are hereby incorporated by reference herein. Anything to the contrary notwithstanding, all FTA-mandated terms and conditions shall control in the event of a conflict with other provisions contained in the Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART or the City to be in violation of FTA-mandated terms and conditions.

The Contractor shall, at all times during the term of this Agreement, comply with all applicable Federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between HART/City and FTA relating to the H RTP, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, "Federal Requirements"). The Contractor's failure to comply with the Federal Requirements shall constitute a material breach of the Agreement. The Federal Requirements are contained in Exhibit 6, attached hereto and incorporated by reference herein.

### **IV. SPECIAL PROVISIONS EXHIBITS**

The following exhibits are attached hereto and incorporated by reference herein:

EXHIBIT 1 - SCOPE OF SERVICES

EXHIBIT 2 - SECTION 106 PROGRAMMATIC AGREEMENT

EXHIBIT 3 - CONTRACT COST

EXHIBIT 4 - COMPENSATION AND INVOICING

EXHIBIT 5 - LETTER OF SUBCONTRACT INTENT

EXHIBIT 6 - FEDERAL REQUIREMENTS

1. ATTACHMENT 1.6A) - DBE PARTICIPATION REPORT
2. ATTACHMENT 1.6B) - FINAL REPORT OF DBE PARTICIPATION AND INSTRUCTIONS FOR COMPLETION OF THE FINAL REPORT OF DBE PARTICIPATION

## **EXHIBIT 1**

### **SCOPE OF SERVICES**

#### **1.0 SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KĀKO‘O)**

##### **1.1. CONTRACTED SERVICE**

The Kāko‘o shall meet the *Secretary of Interior’s Professional Qualification Standards* set forth in 36 C.F.R. pt. 61 regarding qualifications for preservation professionals in the areas of history, archaeology, architectural history, architecture or historic architecture. The Kāko‘o consulting team may include expertise in the areas of history, archaeology, architectural history, architecture, cultural resources, and administration (collectively referred to as the “Kāko‘o”). The Kāko‘o is described in the *Final Programmatic Agreement Among the U.S. Department of Transportation Federal Transit Administration, the Hawai‘i State Historic Preservation Officer, the United States Navy, and the Advisory Council on Historic Preservation Regarding the Honolulu High-Capacity Transit Corridor Project in the City and County of Honolulu, Hawai‘i* (“PA”), attached as Exhibit 2.

##### **1.2. DURATION**

The position shall provide professional services for approximately two (2) years during the design and construction of the Honolulu Rail Transit Project (“Project”) with the option to extend for up to four years, at the discretion of HART and subject to availability of funding. The Kāko‘o shall continue to perform the Kāko‘o responsibilities for the duration of this PA pursuant to Stipulation XIV.D which will go beyond the completion of construction.

##### **1.3 EXPERIENCE**

The Kāko‘o shall have a minimum of ten (10) years of verifiable team experience in Section 106 consultation, including consultation with Native Hawaiian Organizations and historic preservation organizations. The Kāko‘o shall have experience preparing and implementing documents prepared pursuant to Section 106 Consultation process, including but not limited to programmatic agreements and memorandum of agreements. The Kāko‘o shall have a thorough understanding of the Programmatic Agreement for the Project. In addition, the Kāko‘o shall have specific Native Hawaiian cultural experience, including cultural resources management, iwi kupuna, NAGPRA, Hawaiian language, Hawaiian toponymy, and Hawaiian history. The Kāko‘o should also have field experience and be familiar with the Area of Potential Effect (“APE”). The Kāko‘o shall also possess adequate administrative skills.

## **1.4 RESPONSIBILITIES**

### **1.4.1 Principal Task**

The Kāko‘o’s primary responsibility shall be to independently monitor, assess, and report to the Consulting Parties (“CP”) under the PA on HART’s compliance with the PA Stipulations. The Kāko‘o shall serve as the liaison between the CPs and HART/FTA in regards to compliance with PA. The Kāko‘o shall serve as quality control to ensure that the CPs’ voice and concerns are heard in timely and efficient manner. The Kāko‘o should be the first to receive a concern raised by the CPs in relationship to the PA and the last to record the conclusion of the issue as part of the administrative record for compliance with the PA.

### **1.4.2 Specific Tasks as provided in the PA Stipulation I.H and Deliverables**

1.4.2.1 Establish and coordinate consultation and Project status update meetings as stipulation in Stipulations III.B and IX.B. On an as needed basis, additional meetings may be held to address unforeseen effects on historic properties determined to be eligible with the APE as provided in Appendix A of the PA. The Kāko‘o shall convene and conduct regularly scheduled monthly meetings (Kāko‘o meetings) with the CPs to provide status updates on issues related to the PA. The Kāko‘o shall be responsible to maintain a current list of CPs and their authorized representatives, including the Signatory Parties. The Kāko‘o shall be responsible to maintain the administrative record for the consultation with the CPs. For each scheduled meeting, the Kāko‘o shall mail out meeting notes at least 2 weeks in advance, distribute an agenda and handouts for each meeting, maintain a sign-in sheet, record the meeting notes and within 3 weeks after the meeting distribute the meeting notes to the CPs for comments and approval. The Kāko‘o shall prepare a list of pending action items from the previous CP meeting, identifying parties assigned to each task and due dates within seven days after the meeting notes have been approved. The Kāko‘o shall provide at a minimum written monthly status report of open and completed action items to ensure timely resolution of issues raised by the CPs. The Kāko‘o shall coordinate the CPs’ request for outside expertise, resources, or attendance at these Kāko‘o meeting. The Kāko‘o shall be responsible for ensuring that the CPs’ requests are reviewed and resolved by HART and FTA in a timely fashion. With respect to Stipulation III.B, the Kāko‘o shall attend the Oahu Island Burial Council Meetings (OIBC) when a matter related to HART is on the agenda, the Recognized Cultural Descendant Meetings, and, if requested, attend meetings with Native Hawaiian Organizations (“NHO”) on issues related to the PA and provide updates to the CPs on these meetings.

1.4.2.2 Establish and maintain lines of project-related communication and consultation with the consulting parties and the design and construction engineers, including oversight and monitoring of internet sites created for the project. The Kāko‘o shall coordinate a meeting with the HART design and construction engineers prior to the Neighborhood Design Workshops on those stations designs where the SOI standards shall apply. If the designs have been finalized the Kāko‘o may request a presentation by the Design and Construction

Engineers, if requested by the CPs. The Kāko‘o shall maintain communications with the Project’s internet site manager and ensure that the website is regularly updated with information generated by the Kāko‘o.

1.4.2.3 Monitor, assess and report, in writing, to the consulting parties on mitigation related to Phases I through IV and any associated deliverables of this PA that are to be reviewed by the consulting parties (Stipulations III through XII). The Kāko‘o shall review and comment on all engineering documents provided by HART prior to distribution to the CPs. The Kāko‘o shall research and provide written responses to CPs questions or comments of any documents, including archaeological, architectural, cultural, or historic (including but not limited to national register nominations, historic context studies, cultural landscape reports, traditional cultural properties reports, interpretative plans, humanities programs and educational materials) submitted for their review. The Kāko‘o, if so requested by the CPs, may call upon expert speakers to assist in research of traditional cultural properties, including recognized cultural and lineal descendants, kupuna or those possessing ancestral knowledge of a particular area. The Kāko‘o shall coordinate with HART requests to meet with Design, Engineering, or Construction staff to address any comments raised by the CPs. HART shall respond to the Kāko‘o within two weeks, unless otherwise extended, of any requests by the Kāko‘o.

1.4.2.4 Monitor and report on the City’s compliance during the design and construction process for the Project with the special historic preservation design guidelines referred to in Stipulation IV.A, Design Standards.

1.4.2.5 Monitor and report on work performed on historic properties with respect to measures to resolve adverse effects caused by the Project in accordance with Stipulations IX.C (demolition monitoring) and X.C (construction monitoring) of this PA. The Kāko‘o shall distribute to the CPs the demolition monitoring report prepared by HART as provided for in Stipulation IX.C. The Kāko‘o shall submit any comments or issues raised by the CPs on the demolition monitoring report to HART within seven days of receiving the comment. The Kāko‘o shall provide to the CPs HART’s responses to any comments or issues raised. With respect to Stipulation X.C, the Kāko‘o shall distribute to the CPs any reports received by HART on any historic properties adversely affected by the Project. The Kāko‘o, within seven days of receiving any comments from the CPs, shall send them to HART for review and response. The Kāko‘o shall document as part of the administrative record the reports, comments, and resolutions of any issues raised by the CPs.

1.4.2.6 Coordinate regularly with the FTA and SHPD in connection with the Kāko‘o’s observations and recommendations regarding the progress of the Project in implementing measures to resolve adverse effects called for under this PA. If the Kāko‘o finds HART in non-compliance with the PA, then the Kāko‘o shall provide HART a reasonable opportunity to remedy the non-compliance. The Kāko‘o shall submit at a minimum, annual reports to FTA and SHPD regarding HART’s compliance with the PA Stipulations, including any findings of non-compliance and HART’s actions to remedy the non-compliance. The

Kāko‘o shall distribute its report to all CPs for comments. The Kāko‘o shall coordinate with FTA and SHPD any CPs comments it receives on the report.

1.4.2.7 Report to the City (currently HART), the FTA and SHPD concerning the existence, if any, of previously unidentified adverse effects of the Project on historic properties within the APE (that is, adverse effects which are not otherwise materially identified in the PA). The Kāko‘o shall prepare a written report to FTA and SHPD, including the criteria under Appendix A of the PA and its independent assessment and research, concerning the existence of any previously unidentified adverse effects of the Project on historic properties within the APE that have been brought to its attention by a CP or through its own independent assessment.

1.4.2.8 Submit written reports concerning the progress of the Project in the implementation of the Stipulations set forth herein in accordance with the reporting requirements in Stipulation XIV.E, with copies available to any other interested party who so requests. The Kāko‘o shall distribute any written reports it prepares concerning the progress of the Project at it relates to the implementation of the PA stipulations to the CPs and timely post the reports on HART’s website. The Kāko‘o shall prepare and submit an annual report detailing major PA milestones over the previous calendar year to HART and FTA 30 days prior to the CP Annual meeting. The Kāko‘o shall distribute the annual report to the CPs two weeks before the CP Annual meeting. The Kāko‘o shall prepare a written final close out report of the Section 106 Compliance 90 days after the completion of all construction. The written report shall be provided to FTA and HART upon its completion and provide them thirty days to comment. The Kāko‘o shall distribute the final report and the FTA and HART’s comments to all CPs for their review and comment within thirty days of receipt. The Kāko‘o may convene a final meeting with the CPs, if so requested. The Final report shall be submitted to SHPD for review and concurrence.

1.4.2.9 Address requests by consulting parties to review deliverables and documentation that are provided to concurring parties. The Kāko‘o shall document and coordinate all requests by the CPs to review deliverables and documentation that are provided to the concurring parties.

1.4.2.10 Collect any comments from the consulting parties that identify impacts different from those stated in this PA to historic properties located within the APE for HART and FTA processing. The Kāko‘o shall research the issues presented as described in Appendix A and prepare a recommendation for the disposition of the request and action by FTA. The Kāko‘o may conduct an independent field or site visit with the CPs and HART and SHPD. The notification process for consulting parties to submit requests for consideration is outlined in Appendix A of the PA. The Kāko‘o shall receive and coordinate all comments from the CPs that identify impacts that are different from those stated in the PA to historic properties located with the APE, including those submitted pursuant to Stipulation IX.D. The Kāko‘o shall ensure that the CPs’ comments fully comply with the requirements under Appendix A of the PA and conduct thorough research, including obtaining comments from other CPs or

knowledgeable persons in the area. The Kāko‘o may convene a meeting with the CPs, if deemed necessary and appropriate to fully develop a recommendation to FTA. The Kāko‘o shall have 30 days from its determination that the CPs comments/request has fully complied with Appendix A of the PA and notified the CP that it has 30 days to prepare a recommendation to the FTA on the CPs’ request. The Kāko‘o shall transmit its recommendation to the FTA and HART within 30 days, unless the CPs waives the 30 days and permits a reasonable extension of time to make its recommendations. The Kāko‘o shall document and maintain an administrative record of any comment/request received by the CPs under this task.

1.4.2.11 Provide administrative support and technical assistance required by the consulting parties to meet the terms of this PA such as the timely submission of deliverables and issuance of regular public updates regarding historic preservation issues. The Kāko‘o shall timely review, document, and address each request by the CP for administrative support or technical assistance. If the Kāko‘o needs additional resources to address the CPs request, it may forward the request to HART for consideration.

1.4.2.12 Develop a best practice manual related to historic properties and a Section 106 “lessons learned” case study on the Project that may be helpful to future Section 106 processes on this and other projects. The best practice manual and “lessons learned” case study will be made available to the consulting parties and other interested parties within one (1) year of the completion of Phase 1 construction. When complete, FTA will make the best practice manual available on their public website. The Kāko‘o shall prepare submit to the CPs an outline of the best practice manual and lessons learned within six months of execution of this contract. Within a year of the contract, the Kāko‘o shall prepare a Draft of the best practice manual and lessons learned for the CPs review and comment. Within thirty days of receipt of the CPs’ comments, the Kāko‘o shall respond to the comments. Within ninety days, the Kāko‘o shall submit a revised draft of the best practice manual and lessons learned. The final documents shall be prepared within one year of the completion of Phase 1 construction.

EXHIBIT 2

**PROGRAMMATIC AGREEMENT**

Among the  
U.S. Department of Transportation Federal Transit Administration  
The Hawai'i State Historic Preservation Officer  
The United States Navy  
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 or Undertaking) 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 (NHPA) of 1966, as amended (16 U.S.C. § 470f) and its implementing regulation at 36 C.F.R. pt. 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 via the Honolulu International Airport 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 (PA) through Resolution 10-305, CD 1 on November 22, 2010; and

**WHEREAS**, by operation of law, Section 16-129 of the Revised Charter of the City and County of Honolulu 1973, as amended, provides that all lawful obligations and liabilities owed by or to the City relating to the City's fixed guideway mass transit system shall be assumed by the Honolulu Authority for Rapid Transportation on July 1, 2011; and

**WHEREAS**, pursuant to 36 C.F.R. pt. 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:

- Advisory Council on Historic Preservation (ACHP)
- 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

- AIA Honolulu
- Hawai'i Community Development Authority
- Office of Hawaiian Affairs
- O'ahu Island Burial Council
- Hui Mālama I Nā Kūpuna O Hawai'i Nei
- Royal Order of Kamehameha
- Ahahui Ka'ahumanu
- Hale O Nā Ali'i O Hawai'i
- Māmakakaua: 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
- Nānāikapono Hawaiian Civic Club
- Hawaiian Civic Club of Wahiawa
- Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic Club
- Waikīkī Hawaiian Civic Club
- Princess Ka'iulani Hawaiian Civic Club
- Wai'anae Hawaiian Civic Club
- Merchant Street Hawaiian Civic Club
- Prince Kūhiō Hawaiian Civic Club
- Pearl Harbor Hawaiian Civic Club
- Hawaiian Civic Club of 'Ewa-Pu'uloa
- Kalihi-Pālama Hawaiian Civic Club
- Hawaiian Civic Club of Honolulu; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.10, FTA has notified the Secretary of the Interior of the consultation for FTA's adverse effect determination that the undertaking will have an adverse effect on the United States Naval Base, Pearl Harbor National Historic Landmark (NHL), and the CINCPAC Headquarters Building 250 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 SHPD, has defined the undertaking's Area of Potential Effects (APE) as depicted in Attachment 1 for the Airport Alternative; and

**WHEREAS**, the FTA, in consultation with the SHPD, has determined that the 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: Honouliuli 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 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; Kapālama 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'uuanu Stream Bridge; Chinatown Historic District; Merchant Street Historic District; HDOT Harbors Division Offices; Pier 10/11 Building; Aloha Tower; Irwin Park; Walker Park; HECO Downtown Plant; Dillingham Transportation Building; and Mother Waldron Playground; and

**WHEREAS**, an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for the inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, craftsmanship, feeling, or association as summarized in Attachment 2 from the Project's technical reports and the Project's Final Environmental Impact Statement (EIS). Adverse effects may include reasonably foreseeable effects caused by the Project that may occur later in time, be farther removed in distance, or be cumulative; 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 C.F.R. § 800.4(b)(2); and

**WHEREAS**, the timing of activities listed in this PA are estimated based on FTA granting approval to enter final design in 2011, and FTA signing a full-funding grant agreement during 2012. 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. The City may request and FTA may approve minor construction on Phase I to begin prior to FTA granting approval for the project to enter final design; and

**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 adverse effects on historic properties; and

**WHEREAS**, all built components will follow the Project's *Design Language Pattern Book*; 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, through the application of architectural and other design guidelines and standards for developments surrounding them; and such overlay districts are already established for Chinatown, Merchant Street, and the Hawai'i Capital (civic center) areas; and

**WHEREAS**, City Ordinance 09-04 (2009), *Relating to Transit-Oriented Development* (TOD Ordinance), requires the establishment of transit-oriented development zones (TOD Zone) and implementing regulations around every transit station which, among other things, shall include (1) The general objectives for the particular TOD Zone in terms of overall economic revitalization, neighborhood character, and unique community historic and other design themes; (2) Desired neighborhood mix of land uses, general land use intensities, circulation strategies, general urban design forms, and cultural and historic resources that form the context for TOD; and (3) Identification of important neighborhood historic, scenic, and cultural landmarks, and controls to protect and enhance these resources; and

**WHEREAS**, the TOD Ordinance cannot preempt applicable state and federal historic preservation laws such as Hawai'i Revised Statutes (HRS) Chapter 6E, *Historic Preservation*, and Section 106 of the NHPA; and

**WHEREAS**, the City will comply with development controls in Special District Regulations in Chapter 21 of the Revised Ordinances of the City and County of Honolulu 1990 (ROH) which include policies that safeguard special features and characteristics of particular districts, such as the Chinatown and Merchant Street Historic Districts, to allow for their preservation and enhancement; and

**WHEREAS**, the Project will cross lands controlled or owned by the federal government and is subject to an approval of that crossing by the applicable federal agencies, which may elect to adopt this PA at any time; and

**WHEREAS**, this PA was developed with public involvement pursuant to 36 C.F.R. § 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 C.F.R. § 800.6(a)(1), FTA has notified the 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, the U.S. Navy and the Hawaii State Historic Preservation Officer (SHPO) are signatories to this PA; and

**WHEREAS**, FTA invited the City and the NPS to be invited signatories to this PA; and

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

**WHEREAS**, signatories, invited signatories, concurring parties and consulting parties are all consulting parties; and

**WHEREAS**, FTA commits to continued engagement and ongoing communication with the consulting parties for the duration of this PA; and

**WHEREAS**, any future extensions of the Project with federal involvement 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 C.F.R. § 800.16; and

**NOW, THEREFORE**, FTA, ACHP, the Hawai'i SHPO and the U.S. Navy 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 under 49 U.S.C. § 5309 and any other subsequently identified FTA funding of the Undertaking, FTA will ensure that the City carries out the stipulated provisions of this PA in accordance with any applicable ACHP policy statements and guidelines.

**B. SHPD Responsibilities**—The SHPD shall specifically review and provide comments for work products completed as part of this PA.

**C. ACHP Responsibilities**—The ACHP will provide oversight and advise on disputes.

**D. U.S. Navy Responsibilities** – The U.S. Navy will work with the City, FTA, other signatories and consulting parties, and their contractors to coordinate and assist where necessary, in carrying out the stipulations listed below that affect Navy interests and Navy properties.

**E. City Responsibilities**—The City shall represent the interests of FTA and coordinate all activities described in the PA to carry out 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 submit 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 treatment measures developed by the City and as a result of consultation are compliant with government-wide policies and regulations.

**F. Qualifications of Personnel**—Unless otherwise specified, all 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 *Procedures for State, Tribal, and Local Government Historic Preservation Programs*, 36 C.F.R. pt. 61, Appendix A.

**G.** The City shall provide an architectural historian through the completion of Project construction, who meets the qualifications described in Stipulation I.E for the purpose of coordinating Section 106 Project activities with other City departments (e.g., Department of Planning and Permitting (DPP)) and to ensure consideration of historic preservation in TOD and other development projects along the Project corridor.

#### **H. PA Project Manager**

The City shall fund an independent PA Project Manager (*Kako'o*) within six (6) months of the PA being signed to assist with the coordination of all reviews and deliverables required under the terms of the PA.

The *Kako'o* shall meet the *Secretary of the Interior's Professional Qualification Standards* set forth at 36 C.F.R. pt. 61 regarding qualifications for preservation professionals in the areas of history, archaeology, architectural history, architecture or historic architecture.

#### **Procurement**

To the extent permissible by applicable state and federal procurement laws, the FTA and SHPD shall review and approve (1) the procurement request for the *Kako'o* prior to the release of such request, (2) the qualifications of the final candidates under consideration by the City prior to the final selection of the *Kako'o* by the City, and (3) the scope of work of the *Kako'o* to be included in the City's contract with the *Kako'o*, in order to ensure that the *Kako'o* duties and responsibilities are consistent with the provisions of this Stipulation

Upon making its selection of the *Kako'o*, the City shall provide written notification thereof to the FTA, SHPD and other Signatory and consulting parties.

#### **Duration**

The *Kako'o* shall serve during the design and construction process for the Project. The *Kako'o* shall continue to perform the *Kako'o's* responsibilities for the duration of this PA pursuant Stipulation XIV.D.

#### **Roles and Responsibilities**

The *Kako'o's* principal task shall be to independently monitor, assess and report to the consulting parties on compliance by the City with this PA, specifically, the implementation of the measures to resolve adverse effects stipulated herein.

In addition, the City shall continue to engage, as part of its Project design team, consultant(s) which have professional qualifications meeting Secretary of the Interior's professional standards in the areas of history, archaeology, architectural history, architecture, or historic architecture, as appropriate, to carry out the specific provisions of this PA. The City shall also continue to be responsible for the performance of further studies, evaluations and other tasks required to meet the Stipulations set forth in this PA.

In this context and consistent with the independent monitoring, reporting and advisory role assigned to the *Kako'o* under this PA, the *Kako'o* shall perform the following responsibilities:

1. Establish and coordinate consultation and Project status update meetings as stipulated in Stipulations III.B and IX.B. On an as needed basis, additional

meetings may be held to address unforeseen effects on historic properties determined to be eligible within the APE as provided for in Appendix A.

2. Establish and maintain lines of project-related communication and consultation with the consulting parties and the design and construction engineers, including oversight and monitoring of internet sites created for the Project.
3. Monitor, assess and report, in writing, to the consulting parties on mitigation related to Phases I through IV and any associated deliverables of this PA that are to be reviewed by the consulting parties (Stipulations III through XII).
4. Monitor and report on the City's compliance during the design and construction process for the Project with the special historic preservation design guidelines referred to in Stipulation IV.A, Design Standards.
5. Monitor and report on work performed on historic properties with respect to measures to resolve adverse effects caused by the Project in accordance with Stipulations IX.C (demolition monitoring) and X.C (construction monitoring) of this PA.
6. Coordinate regularly with the FTA and SHPD in connection with the *Kako'o's* observations and recommendations regarding the progress of the Project in implementing measures to resolve adverse effects called for under this PA.
7. Report to the City, the FTA and SHPD concerning the existence, if any, of previously unidentified adverse effects of the Project on historic properties within the APE (that is, adverse effects which are not otherwise materially identified in the PA).
8. Submit written reports concerning the progress of the Project in the implementation of the Stipulations set forth herein in accordance with the reporting requirements in Stipulation XIV.E., with copies available to any other interested party who so requests.
9. Address requests by consulting parties to review deliverables and documentation that are provided to concurring parties.
10. Collect any comments from the consulting parties that identify impacts different from those stated in this PA to historic properties located within the APE for City and FTA processing. The *Kako'o* shall research the issues presented as described in Appendix A and prepare a recommendation for the disposition of the request and action by FTA. The notification process for consulting parties to submit requests for consideration is outlined in Appendix A of this PA.

11. Provide administrative support and technical assistance required by the consulting parties to meet the terms of this PA such as the timely submission of deliverables and the issuance of regular public updates regarding historic preservation issues.
12. Develop a best practice manual related to historic properties and a Section 106 “lessons learned” case study on the Project that may be helpful to future Section 106 processes on this and other projects. The best practice manual and “lessons learned” case study will be made available to the consulting parties and other interested parties within one (1) year of the completion of Phase 1 construction. When complete, FTA will make the best practice manuals available on their public website.

## II. Traditional Cultural Properties

A. Through preliminary cultural resources research for the Project, the FTA and the City have only identified one Traditional Cultural Property (TCP), the Chinatown Historic District. Within thirty (30) days of execution of this PA, the City shall undertake a study, at the request of the consulting parties, to determine the presence of previously unidentified TCPs within the APE, which includes cultural landscapes if present. Prior to construction commencement, the City shall meet with the SHPD, consulting parties, and other parties with expertise, including Native Hawaiian organizations (NHOs) to discuss and identify potential TCPs, as defined by the National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Building on cultural practices analysis already completed to address Act 50, Session Laws of Hawaii 2000 requirements, the City shall undertake studies to evaluate these TCPs for NRHP eligibility in accordance with guidance in National Register Bulletin 38. The TCP study shall be completed by qualified staff with experience in ethnographic studies and TCP assessments for NRHP eligibility.

If FTA determines that eligible TCPs are present, the City will complete effects assessments and seek SHPD concurrence on both eligibility and effects determinations. SHPD will have thirty (30) days to review eligibility and effect determinations. If FTA or the SHPD determine that there are adverse effects on eligible TCPs, the City shall meet with consulting parties to identify measures to avoid, minimize, or mitigate adverse effects. The City will complete all fieldwork, eligibility and effects determination, and consultation to develop treatment measures prior to the commencement of construction. The City shall complete any treatment measures prior to undertaking each construction phase that would adversely affect a TCP. Regardless of effect determination, the City will complete NRHP nominations for properties that meet the NRHP criteria for TCPs. The SHPD, NPS and consulting parties, including NHOs, will review draft NRHP nominations and provide comments within thirty (30) days of receipt. The City will consider all comments when completing final NRHP nominations. The City will submit final NRHP nominations to SHPD.

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

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

#### **A. Initial Planning**

1. The APE for archaeological resources is defined as all areas of direct ground disturbance by the Project. This APE for archaeology includes any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, utility installation, grading to provide parking, or other construction-related ground disturbance, including preparation of construction staging areas. The APE includes the new location of any utilities that will be relocated by the Project.
2. The City shall develop an Archaeological Inventory Survey (AIS) Plan for the APE for each construction phase and shall submit it to the SHPD. The SHPD will provide comments to the City to be taken into account in revising the AIS plan or accept the AIS Plan within thirty (30) days. The AIS Plan shall follow the requirements of Hawai'i Administrative Rules (HAR) Chapter 13-276, *Rules Governing Standards for Archaeological Inventory Surveys and Reports*.
3. The O'ahu Island Burial Council (OIBC) will have jurisdiction to determine the treatment of previously identified Native Hawaiian burial sites pursuant to HAR Chapter 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*. Any *iwi kupuna* (Native Hawaiian burials) discovered during the AIS shall be treated as previously identified burial sites.

#### **B. OIBC, Lineal and Cultural Descendents, and NHO Consultation**

1. Within sixty (60) days of execution of this PA, the City shall consult with the OIBC, lineal and cultural descendents, NHOs and other interested parties that are identified in discussion with OIBC, about the scope of investigation for the AIS Plan for construction of Phase 4. The City shall provide preliminary engineering plans and existing utility maps to assist in the scoping process. The AIS Plan will provide for investigation of the entire Phase 4 area, including from Waiakamilo Road to Ala Moana Center. In the portion of Phase 4 with the greatest potential for resources as identified in the *Honolulu High-Capacity Corridor Project Archaeological Resources Technical Report* (RTD 2008n), the AIS Plan will evaluate all areas that will be disturbed by the Project. The AIS Plan will include a review of historical shoreline location, soil type, and, where indicated by conditions, the survey measures listed in Stipulation III.C, including subsurface testing, for each column location, utility relocation, and major features of each station and traction power substation location based on preliminary engineering design data. The AIS Plan shall be submitted to the SHPD within four (4) months of execution of this PA. SHPD will provide comments on the AIS Plan to the City within sixty (60) days. The City will incorporate any timely

comments in revising the AIS Plan. Archaeological investigation will begin following approval of the AIS Plan by the SHPD.

2. The City shall complete the AIS for Phase 4 (Middle Street to Ala Moana Center) prior to beginning final design for that area.

3. The City shall inform OIBC of the status of the AIS. The City will continue to meet regularly with the OIBC, either as a taskforce, or with the council of the whole, for the duration of the construction period of the Project.

4. The City, in coordination with the OIBC, lineal and cultural descendents, NHOs, and other interested parties that are identified in discussion with OIBC shall complete a draft protocol for consultation regarding treatment of any *iwi kupuna* identified during the AIS. It shall be provided to the OIBC for review within six (6) months of the execution of this PA. The protocol shall address, at minimum, a process for communication about any identified *iwi kupuna*, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendents and NHOs, and workflow of actions prior to and upon identification of *iwi kupuna* during AIS. The workflow shall provide for options to avoid moving *iwi kupuna* (preservation in place) versus relocation options. Avoidance shall include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, modification of span length, and alternate utility locations. The City will take into account any comments provided within sixty (60) days from the OIBC, lineal and cultural descendents, NHOs and other interested parties to finalize the draft protocol. The City will proceed in accordance with the protocol once it is approved by FTA. Nothing in this protocol will supersede HRS § 6E 43.5, or HAR Chapter 13-300.

5. Dispute Resolution Specific to Stipulation XIV.C: Should the parties identified in this stipulation be unable to resolve elements identified in this stipulation, the parties would first consult with the signatories to this PA for guidance. Should the parties still be unable to resolve the dispute, the provisions of Stipulation XIV.C would take effect.

C. **Fieldwork**—The City shall conduct archaeological fieldwork as presented in the AIS Plan. For construction Phases 1, 2 and 3, the archaeological fieldwork shall be completed in advance of the completion of final design for each phase so that the presence of any sensitive archaeological sites/burials discovered during fieldwork may be considered during final design and measures incorporated to avoid and/or minimize adverse effects on historic properties. The City shall inform OIBC of status of the archaeological investigation. Fieldwork required by the AIS Plan shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection by pedestrian inventory) within the APE,

2. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted,
3. A subsurface testing regime for locations identified in the AIS Plan,
4. A description of archaeological methods specific and applicable to the findings will be used in analysis, and
5. Draft and final reports summarizing the results of the fieldwork and analysis shall be submitted to the SHPD for review and approval.

**D. Treatment Plans**—Based on the results of the AIS fieldwork and in consultation with the SHPD, the City shall develop a specific treatment plan to avoid, minimize, or mitigate adverse effects on historic properties including archeological sites and burials pursuant to applicable state laws, including HRS Chapter 6E, *Historic Preservation*, and HAR Chapter 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*, 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.

1. Any human remains found on lands owned or controlled by the federal government will be addressed in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.*, in coordination with the affected land management agency.
2. 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 is to be relocated, the City will consult with the OIBC to determine appropriate reinterment, which may include relocation to Project property in the vicinity of the discovery.

**E. Mitigation Plans**—Subsequent to the archaeological fieldwork and development 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**
  - a. The City may 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 Qualification Standards for Archeology*, 48 Fed. Reg. 44738-9 (Sept. 29, 1983).
  - b. The City shall develop a follow-up monitoring report per HAR § 13-279-5 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 location 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 ninety (90) days after the completion of construction of that phase.

2. Data Recovery Programs

- a. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports) will be prepared by the City 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 that specify the disposition of recovered objects shall be submitted by the City, in consultation with the FTA and the Navy (as applicable), to the SHPD for review and approval and shall be in compliance with applicable laws, such as HAR Chapter 13-278, *Rules Governing Standards for Archaeological Data Recovery Studies and Reports*, and should be consistent with 36 C.F.R. Part 79, *Curation of Federally-Owned and administered Archaeological Collections*.

F. **Curation**—The City will curate recovered materials in accordance with applicable laws, such as HAR Chapter 13-278 and 36 C.F.R. 79. The City shall consult with public and private institutions to pursue an opportunity to provide public access to the recovered materials. Interpretive materials as described in Stipulation VII of this PA at one or more stations may incorporate archaeological materials recovered during development of the Project.

Any human remains found on lands owned or controlled by the federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

IV. Design Standards

A. The City shall develop standards for, and maintain and update the Project's *Design Language Pattern Book* for use in all Project elements. The pattern book shall be available electronically. For stations within the boundary of or directly adjacent to an eligible or listed historic property, the City shall comply with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, and will make every reasonable effort to avoid adverse effects on historic properties. If the FTA,

the City and the Kako`o find that the standards cannot be applied, the City shall consult with the consulting parties to develop a treatment plan to minimize and mitigate adverse effects on the historic property.

**B.** The City shall conduct a minimum of two neighborhood design workshops for the stations in each of the Project phases. The City shall notify all consulting parties of the workshops and consider any comments received when completing station design.

**C.** At the earliest practicable time during preliminary engineering, prior to Project entry into final design, the City shall provide preliminary engineering design plans for built components of the Project, such as stations, guideway, and directly related Project infrastructure improvements, to consulting parties for review and comment. For stations within boundaries of or directly adjacent to listed or eligible historic properties, the City shall also provide plans during the final design phase. The consulting parties shall provide the City with comments on the plans within 30 days of receipt. The City shall consider and provide written documentation of that consideration on the project website of all comments provided by the consulting parties prior to completing preliminary engineering or final design plans.

## **V. Recordation and Documentation**

**A.** Within ninety (90) days of execution of this PA, the City shall complete draft 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 properties 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 the consulting parties.
- 2.** Any comments received by the City from consulting parties within thirty (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.** The City shall submit draft context studies to the SHPD for review, and all comments provided by the SHPD will be reconciled in consultation with the City within thirty (30) days while preparing the final studies.
- 5.** Copies of the final studies shall be distributed to repositories listed in Stipulation XIV.E.5.

**B.** The City shall complete Cultural Landscape Reports (CLR) related to historic properties along the Honolulu High-Capacity Transit Corridor.

1. Within ninety (90) days 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 NPS 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 NPS, *Guidelines for the Treatment of Cultural Landscapes*. The City shall circulate a copy of the draft scope of work to the consulting parties.

2. Any comments received by the City from consulting parties within thirty (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. The City shall submit draft CLRs to the SHPD and consulting parties for review based upon a distribution list defined in advance in cooperation with the consulting parties. The SHPD will provide comments within thirty (30) days of receipt of draft materials. SHPD will have forty-five (45) days for review if multiple reports come in within ten days of each other. The City will consider all comments from the consulting parties and stakeholder groups while preparing final versions.

5. Copies of the final CLRs shall be distributed to repositories listed in Stipulation XIV.E.5.

**C.** Historic American Building Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscape Survey (HALS) Recordation

1. The City shall consult with the NPS HABS/HAER/HALS (HHH) coordinator in the Pacific West Regional Office to determine which of the historic properties that received adverse effect determinations will be documented by completing HHH recordation. After this determination, the NPS will stipulate the appropriate type and level of HHH documentation for each property.

2. The City shall ensure that all HHH documentation for properties identified in Stipulation V.C.1 is completed in accordance with NPS recommendations, including requisite draft and final submission requirements.

3. The City shall ensure that final HHH documentation is completed for a property and accepted by NPS prior to commencement of activities that could impact the historic property and/or affect its integrity.

4. The NPS shall provide comments on draft report submittals within 30 days of receipt and will provide comments on final report submittals within 30 days of receipt. If the City includes multiple reports in a submittal or submits multiple reports within a 10-day period, NPS will be allowed 45 days for review.

5. The City may request NPS to review the photographic documentation portion of a HHH report prior to completion of the full report, to accommodate construction schedules. The City shall only make such requests when the pace of the construction schedule makes it unlikely that a draft and final HHH report can be completed and reviewed in time for construction to commence on or near the specific property. In such instances, the City shall submit the archival black and white prints and negatives to NPS for review. NPS will provide comments within 30 days of receipt. The City will ensure that the full draft HHH report is submitted within six (6) months of NPS approval of photographic documentation.

D. 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 HHH 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 XIV.E.5. Per the schedule established by Stipulation XIV.E.3, 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.

E. 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 view sheds 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.

F. 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 Documentation (MPD) for Modern/Recent Past historic properties dating from 1939-1979. Additionally, the City shall complete a single Multiple Property Submission (MPS), including all appropriate accompanying documentation.

1. The City and SHPD will consult with property owners to obtain access and determine their consent to the proposed listing. Listing procedures shall be consistent with HAR Chapter 13-197, *Practice and Procedure before the Hawaii Historic Places Review Board* and HAR Chapter 13-198, *The Hawaii and National Registers of Historic Places Programs*. Should owners object to listing or access, the City shall document the properties to the extent possible from public right-of-way and using available research or alternative properties may be selected by the City, in consultation with SHPD, for documentation. The SHPD will determine appropriate listing procedures according to Hawai'i Administrative Rules for the properties whose owners do not consent.

2. As part of the MPD, the City will propose a list of Modern/Recent Past historic properties determined eligible for the NRHP to be advanced for nomination and will circulate it to the consulting parties.

3. The City will consider any comments received from the consulting parties within thirty (30) days in developing a final list in consultation with the SHPD.

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 thirty (30) days of receipt. The City shall consider all timely 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, in consultation with the Navy, or the Navy, if it chooses, shall complete an update to the Pearl Harbor NHL nomination and the CINCPAQ Headquarters NHL nomination. For the Pearl Harbor NHL amendment, emphasis shall focus on those resources closest to the APE and to those not previously documented in the existing nomination. All work shall be coordinated with the Navy and follow the guidelines set forth in *National Park Serv., U.S. Dep't of the Interior, How to Prepare National Historic Landmark Nominations* (1999). 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*, 62 Fed. Reg. 33,713-14, 33719-20 (June 20, 1997). The City shall submit a draft document to the NPS, Navy, and SHPD. The City shall consider all comments received from NPS, Navy, and SHPD within 30 days in preparing the final NHL nomination. The City will provide the Navy with the updated NHL nominations and accompanying documentation, including requisite maps and photographs for submittal to the NPS.

**C. National Register Nominations**

1. The City shall complete NRHP nomination forms and/or amendments for all 31 of the 33 properties (Attachment 2) that received adverse effect determinations located along the Project corridor (note that two resources are NHLs and are addressed in Stipulation VI.B). The City shall complete NRHP nomination forms for the potential Little Makalapa Navy Housing Historic District—although FTA has determined that the Project will have no adverse effect on this potential district. See Section 4.16 of the Project's Final EIS. The City will consult with the SHPD to determine if nomination forms for properties already listed in the NRHP should be updated and/or amended. The City and SHPD will consult with property owners to obtain access and determine their consent to the proposed listing. Should owners object to listing or access, the City shall document the properties to the extent possible from public right-of-way and using available research. This information will be provided to the SHPD, who will determine appropriate listing procedures according to Hawai'i Administrative Rules for owners who do not consent. All work shall conform to guidance presented in relevant National Register Bulletins. The City will complete all appropriate accompanying documentation, including photographs and mapping.

2. The City will submit draft nomination forms to the SHPD for review. The SHPD will provide comments within thirty (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 under 36 C.F.R. § 60.6(g). Final nomination forms will be completed before the Project begins revenue service operations.

In addition, the City shall complete nomination forms for Makalapa Navy Housing District and the Little Makalapa Navy Housing District, shall provide the forms for review by the SHPD and the Navy, and submit the nominations forms to the National Park Service under 36 C.F.R. § 60.6(g) or, if the Navy chooses, under 36 C.F.R. § 60.9. Final nomination forms shall be submitted to the National Park Service prior to the second Pearl Harbor Station design workshop as described in Stipulation IV.B.

3. The City will also coordinate with the SHPD to nominate these historic properties to the Hawai'i Register of Historic Places if they are not already included.

**D.** Properties documented in the MPS required by Stipulation VI.A will not be documented on separate, individual NRHP forms beyond what is included in the MPS.

**E.** All NRHP and Hawai'i Register of Historic Places nominations will follow the procedures set forth in HRS Chapter 6E, *Historic Preservation*, and HAR Chapter 13-198, *The Hawaii and National Registers of Historic Places Programs*, as appropriate. Completion of the stipulated NRHP nominations does not guarantee listing; the Keeper

of the NRHP may determine that the properties are not eligible for listing. Listing of any property in the NRHP is subject to NPS review and approval.

F. The City shall develop a searchable database of historic properties within the APE in a format suitable for public use. 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 the database for the duration of this PA. The Navy reserves the right to approve the inclusion of any Navy historic properties in any public database.

G. 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**

The City shall implement the following stipulations before revenue service begins.

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 these themes at an appropriate station location. Interpretive signage will be installed at or near relevant transit stations and, where appropriate, inside transit vehicles.

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 printed and made available at stations to transit riders.

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. The City shall solicit student input to propose and develop the content for the materials. 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.

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 Humanities Program will also consider conducting select architectural surveys as a component of the potential program that may inform other program

aspects. The City will develop this program's goals in consultation with consulting parties, and the City will provide one hundred thousand dollars (\$100,000) to fund this program. The City will establish subcommittees to achieve the goals of the Humanities Program and meet at agreed-upon intervals. In the absence of additional funding from the City, the Humanities Program will continue until all designated funds are exhausted or until revenue service begins, whichever occurs later.

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. The City will invite all owners of eligible or listed properties located within the APE and also within a 2,000-foot radius of station locations 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. At the conclusion of the effort, the City will submit a summary report to the consulting 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.

G. Consulting parties will be invited to participate in a kick-off meeting to develop a work plan, content for deliverables, and schedule for all products required within Stipulation VII. The City will circulate a draft of the work plan, preliminary content outline, and schedule to consulting parties following the kick-off meeting. The City will consider all comments received within thirty (30) days while preparing the final work plan and schedule in consultation with the SHPD.

H. The City will submit drafts of all work products required in Stipulation VII to the consulting parties for review and comment. The consulting parties will provide comments on the content, design, and other relevant product components within thirty (30) days of receipt of draft materials. The City will consider all comments while preparing final versions.

## **VIII. Mitigation for Specific Historic Properties**

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 prior to the beginning of revenue service operation. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.

B. The bridge rails on the Kapālama Canal Bridge must be replaced or retrofitted to meet current safety standards. The City will maintain or replace the rails to match the appearance of the historic rails and to maintain existing views to and from the bridge. The City shall consider *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, in developing draft plans to provide to SHPD for review per Stipulation IV.

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 removed. The City will replace the trees prior to revenue service operation. In consultation with the SHPD landscape plans will be developed by the City during final design so that new plantings will provide similar advantages to the community. If new plantings do not provide "equitable mitigation" (e.g., older mature trees that are removed), additional younger trees will be planted that will, in time, develop similar benefits.

D. **Improvements to Adversely Affected Parks**

1. The City will invite consulting parties, property owners, and other stakeholders to participate in a kick-off meeting to discuss improvements to adversely affected historic parks. Based upon design standards contained in Stipulation IV, and 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 thirty (30) days while preparing the final plan in consultation with the SHPD.

2. The City shall consider *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, and make every effort to avoid adverse effects on historic properties.

3. The City will ensure completion of the park improvement plan before construction is complete.

4. Project funds in the sum of seven hundred fifty thousand dollars (\$750,000) shall be budgeted for implementation of the parks improvement plan. Should the City, following consultation with consulting parties, property owners, and stakeholders, 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).

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, *Kako'o* and other consulting parties, and coordinate with the Department of Planning and Permitting (DPP) regarding land use planning activities, including the integration of transit-oriented development with historic preservation in the vicinity of Project stations.

B. The City, in consultation with the consulting 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 two million dollars (\$2,000,000) 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 SHPD 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 comprised the following seven (7) 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: SHPD, DTS, and DPP; and one representative each from three (3) non-governmental groups or organizations with expertise in historic preservation, cultural resources, 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 both Project related and other 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*, 36 C.F.R. pt. 68, accomplished through grants provided under this section. The HPC shall also consult with the City and SHPO on the existence of potential unforeseen adverse effects as a result of Project actions on the Chinatown and Merchant Street Historic Districts.

The HPC shall identify and select an entity or entities that will administer the funds for the purposes established. This entity or entities shall be compliant with the requirements of ROH Chapter 6, Article 29, as amended, *Standards for the Appropriation of Funds to Private Organizations*. The City will dissolve the HPC when the funds are exhausted, but not before six (6) months after completion of the Project and no later than three (3) years after completion of the Project, whichever occurs first.

C. To examine Project impacts related to development along the Project corridor, the City shall monitor the proposed demolition of resources built before 1969 within the APE and within a 2,000-foot radius of each station. This shall occur by monitoring demolition permits. The City shall establish a baseline for demolitions by calculating an annual average and standard deviation of demolitions that occurred within these areas between 2005 and 2008. The City shall include this baseline data and an explanation of its relevance to project planning and implementation in the first six-month report submitted pursuant to Stipulation XIV.E.3. The SHPD shall provide location information on previously identified eligible or listed historic properties within the 2,000-foot radius of each station location. If and when in any year during project construction the number of demolitions of listed or eligible resources within the APE or resources within the

station areas built before 1969 is greater than one standard deviation above the baseline, then the City shall notify the consulting parties during each scheduled quarterly and annual review of the PA.

D. If any Signatory to this PA finds during the duration specified in Stipulation XIV.D that there is likely to be a significant adverse indirect or cumulative effect on a resource determined eligible for the National Register as part of the Section 106 process for this project and that the adverse effect was not evaluated in this PA, that Signatory shall notify FTA. Post-review direct effect discoveries are handled in stipulation XII.A.

If consulting parties identify during the duration of this PA that a significant adverse indirect or cumulative effect on a resource determined eligible for the National Register as part of the Section 106 process for this project was not evaluated in this PA, the consulting party shall follow procedures identified in Stipulation I.H.10.

Upon such notification, FTA will call a meeting of the consulting parties to discuss what next steps would be appropriate under the new circumstances to mitigate the effects on such resources.

E. In the Chinatown and Merchant Street Historic Districts, these specific additional requirements shall apply regarding unanticipated cumulative adverse effects referenced in Stipulation IX. D, above:

1. During design, implementation, testing, and the first six months of full operation of the Project, the City shall follow the process described below to address unanticipated and reasonably foreseeable present and future non-Project actions that could, in combination with the Project, have cumulative adverse effects on the historic resources in the Chinatown and Merchant Street Historic Districts (hereinafter, the "Two Historic Districts") that may cause irreversible or long-term adverse effects on qualifying characteristics of the Two Historic Districts that were to be preserved or protected based upon the terms of this Agreement or other executed Section 106 Agreement document(s) associated with the Two Historic Districts.
2. City shall request all City agencies that are constructing projects related to the Project within the Two Historic Districts to submit preliminary documents to the City to allow coordination of the Project activities with such other work and to allow the City's assessment of the Project to include the potential for unanticipated cumulative adverse effects on the Two Historic Districts.
3. City, its historic preservation consultants, and the *Kako'o*, in cooperation with the FTA, will consult with SHPO and the Project Historic Preservation Committee in assessing whether there is an unanticipated cumulative adverse effect related to the Project in the Two Historic Districts.
4. If FTA, the City and SHPO agree that Project plans or completed activities in conjunction with unanticipated and reasonably foreseeable present and future

non-Project actions are likely to result in unanticipated cumulative adverse effects on the Two Historic Districts per Stipulation IX.D., above, then the City, in consultation with FTA, shall consider measures with respect to the Project to mitigate or minimize such effects, including technical or financial measures for the protection, rehabilitation, or repair and Project design modifications. Disagreements between the City and SHPO, including those related to effects findings, will be resolved pursuant to Stipulation XIV.C.

5. City shall make all appropriate City-generated and prepared documentation related to the Project for Section 106 purposes and utilized in consideration of unanticipated indirect and cumulative adverse effects in Section IX.D. available to the consulting parties via the Project website. Consulting parties will be notified of the documentation posting to the Project website via electronic notification. SHPO, ACHP, the Navy and FTA will respond within 30 days of receipt of all required documentation. All other consulting parties shall have 21 days to comment on the documentation. The City will provide paper copies of such documentation to consulting parties upon request. Should consulting parties fail to respond within 30 days after receipt of all documentation, it shall be assumed that they have no comments on the proposed action or mitigation, if any, to minimize or mitigate unanticipated cumulative adverse effects.

6. The review of the documentation by all parties per Section IX.D. shall focus on the historic elements of the Two Historic Districts, as defined in the state or National Register of Historic Places, which may be caused by the Project relative to unanticipated cumulative adverse effects.

7. City, in coordination with FTA, and SHPO will consider and respond to comments about the Project related to the Two Historic Districts from consulting parties as provided for in Stipulation I.H.10. The review, in particular, will address the potential for unanticipated cumulative adverse effects on the Two Historic Districts. The review will also attempt to resolve specific disagreements about how City intends to address unanticipated cumulative adverse effects per Section IX.D. of this Agreement. If City, in consultation with SHPO is unable to reach a resolution with the consulting parties who have commented pursuant to Section I.H.10 regarding an unanticipated cumulative adverse effect on the Two Historic Districts, the City will notify the FTA, and as appropriate, consult with the ACHP, in accordance with Stipulation X.I.V.

F. In addition to the mitigation presented in this stipulation, mitigation for indirect and cumulative effects is provided in Stipulations IV.A-B and VII.A-F.

## **X. Construction Protection Plan**

A. During final design, DTS, in cooperation with its contractors and FTA, will develop a Construction Mitigation Plan (CMP). The CMP will include a Noise and Vibration Mitigation Plan. Per requirements to be included in the FTA Record of Decision (ROD) and FTA guidance entitled, *Transit Noise and Vibration Impact Assessment*, FTA-VA-90-1003-06 (2006) (FTA Guidance Manual), DTS shall perform quantitative assessments of both noise and vibration which will inform the CMP. Noise and vibration control plans will be updated every six (6) months. The updated plans should predict the construction noise and vibration impacts at sensitive receptor locations based upon the proposed construction equipment and methods. Appropriate construction plan noise and vibration mitigation measures shall be employed as identified in FTA's Guidance Manual.

Numeric limits and monitoring measures will be developed to minimize noise and vibration impacts. Vibration criteria included in Table 12-3, *Construction Vibration Damage Criteria*, of the FTA Guidance Manual will be applied. Note that most historic properties in the corridor are non-engineered timber or masonry; a criterion of 0.2 inches per second of peak particle velocity would be applicable to these structures. Noise and vibration mitigation strategies will be included in the Noise and Vibration Mitigation Plan.

B. Before Project construction begins, the City shall meet with the construction contractor(s) to review and transmit the CMP.

C. The City will monitor Project construction to ensure that the measures in the CMP are implemented and shall provide a record of monitoring activities in progress reports prepared pursuant to Stipulation XIV.E.

D. With the cooperation of the Navy, the City shall complete post-construction noise monitoring as stipulated in the Project's Final EIS within U.S. Naval Base, Pearl Harbor NHL.

E. The City, in consultation with FTA shall ensure that any inadvertent damage resulting from the Project to historic properties shall be repaired, to the extent possible, in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68. The City, in consultation with the FTA, shall submit a scope of work or treatment plan to address inadvertent damage to the SHPD for comment before initiating repairs.

## **XI. City Contractors and Contract Adherence to PA**

FTA and the City shall ensure that contracts developed in the implementation of all construction phases of the Project shall expressly refer to and require compliance with the stipulations of this PA. Contractors responsible for work set forth in this PA shall have qualified staff that meets the *Secretary of Interior's Professional Qualification*

*Standards*, 48 Fed. Reg. 44,738-39 (Sept. 29, 1983) for history, archaeology, architectural history, architecture, or historic architecture with experience in historic preservation planning to ensure the satisfactory compliance with the terms of the PA during the design and construction of each project construction phase.

The *Kako'o* will provide guidance regarding the implementation of the terms of this PA to all contractors, particularly those involved in construction-related activities.

The City shall require, on an annual basis, or more frequently as circumstances require, historic preservation and cultural awareness training for the construction contractors and employees. The training shall include information related to the following topics:

- a) Illegal collection and disturbance of historic and prehistoric cultural materials, including human remains.
- b) Scope of applicable laws and regulations.
- c) Initial identification and reporting of archeological materials, human remains, and historic buildings or structures that may potentially be discovered during the course of their work.

Training materials, schedules and lists of persons trained will be made available to the consulting parties of this PA and other interested parties on an annual basis.

## **XII. Post-Review Discoveries**

**A.** Post-review discoveries are not anticipated for built historic properties. Notwithstanding, the City agrees to cease all work in the vicinity of the discovery should an unanticipated adverse effect on a built historic property be found during construction. The City will notify the signatories and provide information about the unanticipated adverse effect and the City's proposed treatment plan within a period of three (3) business days. Signatories will provide comments on the City's proposed treatment plan within three (3) business days. The City, in consultation with FTA and SHPD, will consider any timely comments in developing a final treatment plan. FTA will not allow work to resume in the vicinity of the unanticipated adverse effect until a treatment plan has been finalized. The City will proceed in accordance with the treatment plan.

**B.** Because of the linear nature of the Project and because any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, utility installation, grading to provide parking, or other construction-related ground disturbance, including preparation of construction staging areas and the new location of any utilities that will be relocated by the Project, will be the subject of a comprehensive AIS, post-review archaeological discoveries after completion of AISs are not anticipated.

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, the City shall ensure that all work in the vicinity stops and that a City

archaeologist will secure the area to avoid any additional disturbance, pursuant to HRS § 6E-43.6. If the remains are identified to be human, the City will notify SHPD as required by law. (Non-human remains that are determined by the Project archaeologist not to be a protected resource will be documented in Project files and no further action taken.) With confirmed human skeletal remains, the archaeologist must also notify the OIBC, 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 landowner, the district representative of the OIBC, and any recognized cultural or lineal descendents or NHOs for the Project. Pursuant to §§ 6E-43.6(c) and (d), SHPD has one (1) day to make its treatment determination for single burials and two (2) days for multiple burials found on O'ahu. Recognizing the extent of the Project and the sensitivity of any discoveries, the Project will allow an extended time for SHPD determination of treatment by an additional three (3) days for a total of four (4) days for single burials and five (5) days for multiple burials; provided that this extension of time shall not affect other obligations, duties, or responsibilities required under HRS Chapter 6E and applicable regulations. Information generated in the AISs in Stipulations III.B, III.C and III.D will assist SHPD and OIBC in identifying and notifying lineal and cultural descendants and defining a treatment plan since background research is an integral component of the AIS. Construction must remain halted in the vicinity of the burial find until SHPD's treatment decision has been carried out or any other requirements of law have been met.

C. The City, in consultation with the OIBC and the SHPD, will be responsible for carrying out the burial treatment for post-review discoveries.

1. For preservation in place, the City will modify the planned construction to allow for the remains to stay in place in accordance with the burial treatment plan.
2. Pursuant to HRS § 6E-43.6(f), in cases where remains are archaeologically removed, SHPD shall determine the place of relocation, after consultation with the City, OIBC, affected property owners, representatives of the relevant ethnic group, and any identified lineal descendants, as appropriate.

Parties identified in this Stipulation XII.C will consider the inclusion of either of the following two provisions in a post-review discovery treatment plan: (1) If a reinterment site was not identified in a Treatment Plan in Stipulation III.D, the City will disinter the remains, curate the remains at the Project site until the associated Project phase is completed and then immediately arrange for reinterment within the Project area; or (2) If reinterment sites are identified as part of the Treatment Plans in Stipulation III.D, immediate reinterment to those identified sites will be the preferred practice

3. The City will document burial treatment 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, access and any subsequent measures that have been agreed to by the landowner to safeguard either the relocation site or the preserve site. The City will record preserved or relocated burial sites with the Bureau of Conveyances so that the burial sites are not further disturbed in the future.

D. Any human remains found on lands owned or controlled by the Federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

### **XIII. Public Information**

Elements of public involvement and information are included throughout this PA. In addition, the City shall undertake the following:

A. To keep the public informed about PA implementation, the semi-annual progress reports described in Stipulation XIV.E will be posted on the Project website.

B. With the exception of sensitive information or locations, the City shall add all documentation completed as part of this PA to the historic properties database that will be created as part of Stipulation VI.F. However, if the consulting parties agree, the sensitive information or locations may be included in a password-protected mode.

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 signatories 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.

### **XIV. Administrative Provisions**

A. **Implementation Schedule**—Within sixty (60) days of the execution of this PA, the City shall develop a schedule for the implementation of the provisions of this PA. The City will submit the schedule to the signatories and concurring parties 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 signatories and concurring parties of any alterations to the schedule.

B. **Project Modifications**—Should the Project alignment be changed in any way that FTA determines results in a change to the APE, the City shall update the APE maps, and FTA and the City, in consultation with other consulting parties, shall ensure that the requirements of this PA are met, after further consultation and assessment of effects, with regard to the new portions of the APE.

**C. Dispute Resolution**—Should any Signatory or Invited Signatory 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 thirty (30) days after receipt of all pertinent documentation, the ACHP shall 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 proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within thirty (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.

**D. Duration**

1. This PA shall take effect on the date it is signed by the last Signatory and shall be in effect for ten (10) years from the date of execution, or terminated pursuant to Stipulation XIV.I. At least six (6) months prior to the end of the 10-year period, FTA will provide an update on the status of the work associated with all stipulations. At that time, and before the 10-year period elapses, the signatories may amend the content of the PA, which may include extension of the duration of the PA, in accordance with Stipulation XIV.H if they determine that it is necessary to complete all stipulations.

**E. Monitoring and Reporting**

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

2. For the first twenty-four (24) months following the implementation of this PA, the City shall hold quarterly (every three (3) months) meetings with the consulting parties to discuss implementation of this PA including near-term planned activities.

3. Every six (6) months following the execution of this PA, until it expires or is terminated, the City shall provide all signatories to this PA a summary report detailing the work undertaken pursuant to its terms. Such report shall include

any scheduling changes proposed, any problems encountered, and any disputes or objections received during efforts to carry out the terms of the PA.

4. After the 24-month period mentioned in Stipulation XIV.E.2. above, FTA shall conduct annual meetings of consulting parties to discuss implementation of this PA over the preceding year and planned activities for the coming year. FTA shall evaluate the effectiveness of this PA and whether any amendments or changes are needed based on the City's summary reports or Project modifications and provide its evaluation to the signatories prior to the meeting

5. 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 Library (3 copies).

**F. Emergency Situation**—Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 of the NHPA and this PA. In the event that an emergency situation should occur during the Project, FTA shall follow the provisions of 36 C.F.R. § 800.12.

**G. 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 of the NHPA by agreeing in writing to the terms of this PA and notifying the signatories. Any necessary amendments will be considered in accordance with Stipulation XIV.H.

**H. Amendments**—Any Signatory to this PA may propose that this PA be amended, whereupon the signatories 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.

**I. 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 Signatory parties to attempt to develop an amendment per Stipulation XIV.H. If within thirty (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 C.F.R. § 800.6; or (2) request, take into account, and respond to comments of the ACHP under 36 C.F.R. § 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.

**J. Native Hawaiian Organization (NHO)**— If, at any time during implementation of the provisions of this PA, an NHO informs the City or FTA that it attaches religious and cultural significance to properties within the APE, FTA shall invite that NHO to participate in reviews and consultation carried out under the terms of this PA.

**SIGNATORY PARTIES**

**Federal Transit Administration**

\_\_\_\_\_  
Leslie T. Rogers, Regional Administrator

Date: \_\_\_\_\_

**Hawai'i State Historic Preservation Officer**

\_\_\_\_\_  
William J. Aila, Jr., Interim Chairperson of the Board of Land and Natural Resources

Date: \_\_\_\_\_

**United States Navy**

\_\_\_\_\_  
Rear Admiral Dixon R. Smith, Commander, Navy Region, Hawaii

Date: \_\_\_\_\_

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
John M. Fowler, Executive Director

Date: \_\_\_\_\_

**INVITED SIGNATORY PARTIES**

**City and County of Honolulu**

\_\_\_\_\_  
Wayne Y. Yoshioka, Acting Director, Department of Transportation Services

Date: \_\_\_\_\_

**National Park Service**

\_\_\_\_\_  
Christine S. Lehnertz, Regional Director, Pacific West Region

Date: \_\_\_\_\_

**CONCURRING PARTIES**

**Historic Hawai'i Foundation**

\_\_\_\_\_

Date: \_\_\_\_\_

**National Trust for Historic Preservation**

\_\_\_\_\_

Date: \_\_\_\_\_

**University of Hawai'i Historic Preservation Certificate Program**

\_\_\_\_\_

Date: \_\_\_\_\_

**AIA Honolulu**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hawai'i Community Development Authority**

\_\_\_\_\_

Date: \_\_\_\_\_

**Office of Hawaiian Affairs**

\_\_\_\_\_

Date: \_\_\_\_\_

**O'ahu Island Burial Council**

\_\_\_\_\_

Date: \_\_\_\_\_

**Royal Order of Kamehameha**

\_\_\_\_\_

Date: \_\_\_\_\_

**The Ahahui Ka'ahumanu**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hui Mālama I Nā Kūpuna O Hawai'i Nei**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hale O Nā Ali'i O Hawai'i**

\_\_\_\_\_

Date: \_\_\_\_\_

**Māmakakaua: Daughters and Sons of the Hawaiian Warriors**

\_\_\_\_\_

Date: \_\_\_\_\_

**Association of Hawaiian Civic Clubs**

\_\_\_\_\_

Date: \_\_\_\_\_

**Ali'i Pauahi Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Ka Lei Maile Ali'i Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**King Kamehameha Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Nānāikapono Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hawaiian Civic Club of Wahiawa**

\_\_\_\_\_

Date: \_\_\_\_\_

**Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic**

\_\_\_\_\_

Date: \_\_\_\_\_

**Waikīkī Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Princess Ka'iulani Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Wa'ianae Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Merchant Street Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Prince Kūhiō Hawaiian Civic Club**

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Date: \_\_\_\_\_

**Pearl Harbor Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hawaiian Civic Club of 'Ewa-Pu'uloa**

\_\_\_\_\_

Date: \_\_\_\_\_

**Kalihi-Pālana Hawaiian Civic Club**

\_\_\_\_\_

Date: \_\_\_\_\_

**Hawaiian Civic Club of Honolulu**

\_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX A - Consulting Party Comment Review and Disposition Process**

If there are unanticipated effects on historic properties identified within the APE found after the execution of the Programmatic Agreement (PA), the process developed in this PA and applicable appendix to resolve any adverse effects upon such properties shall satisfy Section 106 responsibilities pursuant to 36 C.F.R. § 800.13. If there is an inadvertent discovery of burial remains that are not “historic property” as defined under 36 C.F.R. § 800.16(l), Stipulation XII of this PA and HRS § 6E-43.6 shall apply. If there is an inadvertent discovery of a historic property, Stipulation XII of this PA shall apply.

The following procedure has been developed to implement Stipulation I.H of the PA. The PA Project Manager (*Kako'o*) will manage the review and disposition of comments from consulting parties related to this Appendix A as part of its assigned responsibilities.

### **NOTIFICATION PROCESS**

1. Notification letter must come from a consulting party.
2. Notification letter should include the following information:
  - Consulting party contact information including telephone number, email, and mailing address.
  - Identify the impacted resource (i.e., a historic property, historic district, a property that was previously not considered historic, other).
  - Provide a general description of unforeseen impact.
  - Explain how the impact is different from what is stated in the Final Environmental Impact Statement (Final EIS).
  - Identify the possible cause of the impact.
  - List any additional information or related studies.
3. Send or deliver the notification letter to the Department of Transportation Services (DTS) at the City and County of Honolulu and FTA Region IX noting the project identification (HHCTCP) and subject (Section 106 Programmatic Agreement) to:

Wayne Y. Yoshioka  
Acting Director  
Department of Transportation Services  
650 S. King Street, Third Floor  
Honolulu, HI 96813-3017

Ted Matley  
FTA Region IX  
P.O. Box 21648  
201 Mission Avenue, Suite 1650  
San Francisco, CA 94105

4. DTS and FTA will share the letter with the *Kako'o*. Within 30 calendar days of DTS and FTA receiving the notification letter, the *Kako'o* shall research or cause to be researched the issues listed in the notice, and write a recommendation for the disposition of the request for action by FTA.

5. The *Kako'o*, the City and the FTA shall consult with the Consulting Parties regarding the notification and appropriate action.

6. Within seven calendar days of receiving the recommendation from the *Kako'o*, FTA will take appropriate action and communicate the outcome of their review and decision to all of the Consulting Parties.

## Attachments

Attachment 1: APE for Historic Resources; APE for Archaeological Resources  
(CD enclosed)

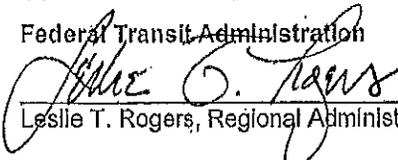
Attachment 2: Information on Resources with Adverse Effect Determinations



**J. Native Hawaiian Organization (NHO)**— If, at any time during implementation of the provisions of this PA, an NHO informs the City or FTA that it attaches religious and cultural significance to properties within the APE, FTA shall invite that NHO to participate in reviews and consultation carried out under the terms of this PA.

**SIGNATORY PARTIES**

Federal Transit Administration

  
Leslie T. Rogers, Regional Administrator

Date: JAN 11 2011

Hawai'i State Historic Preservation Officer

Date: \_\_\_\_\_

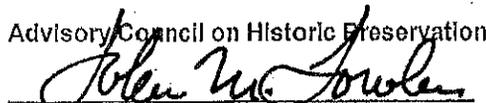
William J. Alla, Jr., Interim Chairperson of the Board of Land and Natural Resources

United States Navy

Date: \_\_\_\_\_

Rear Admiral Dixon R. Smith, Commander, Navy Region, Hawaii

Advisory Council on Historic Preservation

  
John M. Fowler, Executive Director

Date: 1/8/11

**INVITED SIGNATORY PARTIES**

City and County of Honolulu

Date: \_\_\_\_\_

Wayne Y. Yoshioka, Acting Director, Department of Transportation Services

National Park Service

Date: \_\_\_\_\_

Christine S. Lehnertz, Regional Director, Pacific West Region

**J. Native Hawaiian Organization (NHO)**— If, at any time during implementation of the provisions of this PA, an NHO informs the City or FTA that it attaches religious and cultural significance to properties within the APE, FTA shall invite that NHO to participate in reviews and consultation carried out under the terms of this PA.

**SIGNATORY PARTIES**

**Federal Transit Administration**

\_\_\_\_\_  
Leslie T. Rogers, Regional Administrator

Date: \_\_\_\_\_

**Hawai'i State Historic Preservation Officer**

*William J. Alla, Jr.*  
\_\_\_\_\_  
William J. Alla, Jr., Interim Chairperson of the Board of Land and Natural Resources

Date: 1/13/11

**United States Navy**

\_\_\_\_\_  
Rear Admiral Dixon R. Smith, Commander, Navy Region, Hawaii

Date: \_\_\_\_\_

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
John M. Fowler, Executive Director

Date: \_\_\_\_\_

**INVITED SIGNATORY PARTIES**

**City and County of Honolulu**

*Wayne Y. Yoshioka*  
\_\_\_\_\_  
Wayne Y. Yoshioka, Acting Director, Department of Transportation Services

Date: 1/10/11

**National Park Service**

\_\_\_\_\_  
Christine S. Lehnertz, Regional Director, Pacific West Region

Date: \_\_\_\_\_

HHCTCP Programmatic Agreement  
Final - January 2011

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**J. Native Hawaiian Organization (NHO)** — If, at any time during implementation of the provisions of this PA, an NHO informs the City or FTA that it attaches religious and cultural significance to properties within the APE, FTA shall invite that NHO to participate in reviews and consultation carried out under the terms of this PA.

**SIGNATORY PARTIES**

Federal Transit Administration

Leslie T. Rogers, Regional Administrator

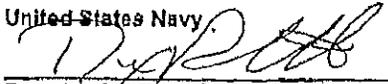
Date: \_\_\_\_\_

Hawai'i State Historic Preservation Officer

William J. Aila, Jr., Interim Chairperson of the Board of Land and Natural Resources

Date: \_\_\_\_\_

United States Navy



Rear Admiral Dixon R. Smith, Commander, Navy Region, Hawaii

Date: 1/12/11

Advisory Council on Historic Preservation

John M. Fowler, Executive Director

Date: \_\_\_\_\_

**INVITED SIGNATORY PARTIES**

City and County of Honolulu

Wayne Y. Yoshioka, Acting Director, Department of Transportation Services

Date: \_\_\_\_\_

National Park Service

Christine S. Lehnertz, Regional Director, Pacific West Region

Date: \_\_\_\_\_



Honolulu Rail Transit Project

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**EXHIBIT 3**  
**CONTRACT COST**

**Initial Term of the Contract**

**Monthly Fee**

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Total
<b>Year 1</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Year 2</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Total for Initial Term</b>												\$200,000.00	

**Option 1, after Initial Term**

**Monthly Fee**

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Total
<b>Year 3</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Year 4</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Year 5</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Year 6</b>	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.33	\$8,333.34	\$8,333.34	\$8,333.34	\$8,333.34	\$100,000.00
<b>Total for Option</b>												\$400,000.00	

**EXHIBIT 4**

**COMPENSATION AND INVOICING**

1. Subject to the provisions set forth in this Agreement, the Contractor will be paid on a monthly basis by HART for authorized and satisfactorily completed work and services rendered under this Agreement. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals. The amount to be paid to the Contractor shall be computed as hereinafter set forth; provided that such payment shall not exceed the amount of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) (hereinafter called the "Total Price"). The payments for services and the Work performed under this Contract are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including State general excise and use tax (GET) and county one-half percent (0.5%) GET surcharge.

2. Compensation for work and services shall be on the payment schedule set forth in Exhibit 3-Contract Cost.

3. Payment Schedule. Each month the Contractor shall submit to HART an invoice for payment for Project work completed to the end of the previous month in a form and in reasonable detail as determined by HART. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be completed pursuant to the rates and limitations set forth hereinabove. Within thirty (30) days of receipt of an invoice and upon approval of the work satisfactorily completed and amount billed, HART will pay the invoice as approved. At no time shall the total cumulative amount paid for the Project work exceed the Total Price.

**EXHIBIT 6**

**HONOLULU RAIL TRANSIT PROJECT**

**SECTION 106 PROGRAMMATIC AGREEMENT  
PROJECT MANAGER KĀKO‘O II  
PROFESSIONAL SERVICES CONTRACT**

**FEDERAL REQUIREMENTS**

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**Attachment 1.6 a) - DBE PARTICIPATION REPORT**

**Attachment 1.6 b) - FINAL REPORT DBE PARTICIPATION**  
**INSTRUCTIONS FOR COMPLETION OF THE FINAL REPORT OF DBE PARTICIPATION**

## **FEDERAL REQUIREMENTS**

### **1.0 GENERAL**

The CONTRACTOR understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if HART issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONTRACTOR agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

#### **1.1 No Government Obligation to Third Parties**

(a) HART and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to HART, the CONTRACTOR, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **1.2 Program Fraud and False or Fraudulent Statements and Related Acts**

(a) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(c) The CONTRACTOR shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **1.3 Access to Records and Reports**

(a) The CONTRACTOR shall provide HART, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and

records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The CONTRACTOR shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONTRACTOR shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONTRACTOR shall maintain the same until HART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### **1.4 Federal Changes**

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

#### **1.5 Civil Rights Requirements**

The CONTRACTOR shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONTRACTOR shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

#### **1.6 Disadvantaged Business Enterprises (DBE)**

(a) DBE Assurances. The CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART deems appropriate.

The above paragraph shall be included in each subcontract the CONTRACTOR signs with a subcontractor.

(b) Prompt Payment. The CONTRACTOR shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by HART. Full and prompt payment by the CONTRACTOR to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. HART has established an overall DBE goal of 13.00% for the duration of this agreement and a separate contract goal has not been established for this procurement. DBE firms and small businesses shall have an equal opportunity to participate in the agreement. The CONTRACTOR shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

(3) A DBE firm must be certified by the Hawai`i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to HART. The CONTRACTOR shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONTRACTOR shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the CONTRACTOR to DBE subcontractors. Payments to the CONTRACTOR will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) to this Exhibit.

(e) Records. On request, the CONTRACTOR shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The CONTRACTOR shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONTRACTOR shall also promptly notify HART of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

### **1.7 Veterans Employment**

As provided by 49 U.S.C. §5324(k), to the extent practicable, the CONTRACTOR agrees and assures that its subcontractors: (1) will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. Chapter 53; and (2) will not give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **1.8 Government-Wide Debarment and Suspension (Non-procurement)**

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. § 180.220(b) and 2 C.F.R. § 1200.220. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

(b) The CONTRACTOR is required to comply with 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200, Subpart C, and must include the requirement to comply with 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200, Subpart C, in any lower tier covered transaction equal to or exceeding

\$25,000 it enters into. By signing the Agreement, the CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by HART. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to HART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200, Subpart C, throughout the Agreement period. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

### **1.9 Lobbying**

The "CERTIFICATION REGARDING LOBBYING," as executed by the CONTRACTOR in Exhibit 7 of the Special Provisions is incorporated herein by reference. The CONTRACTOR and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to HART.

### **1.10 Clean Air Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

### **1.11 Clean Water Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

### **1.12 Fly America Requirements**

(a) The CONTRACTOR shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that HART and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The CONTRACTOR shall include the requirements of this section in all subcontracts that may involve international air transportation.

### **1.13 Energy Conservation Requirements**

(a) The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The CONTRACTOR shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **1.14 Recycled Products**

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

### **1.15 ADA Access**

The CONTRACTOR shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the CONTRACTOR agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

### **1.16 Seismic Safety**

The CONTRACTOR shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

### **1.17 Text Messaging While Driving**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and U.S. DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the CONTRACTOR is encouraged to comply with the terms of the following:

(a) Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other

electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The CONTRACTOR is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(i) CONTRACTOR-owned or CONTRACTOR-rented vehicles or Government-owned, leased or rented vehicles;

(ii) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(iii) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the CONTRACTOR's size, such as:

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

### **1.18 Sensitive Security Information**

The CONTRACTOR, as a third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

### **1.19 Incorporation of FTA Terms**

(a) The Special Provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART to be in violation of the FTA terms and conditions.

(b) The CONTRACTOR shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

<b>DBE PARTICIPATION REPORT</b> This report shall be submitted with each invoice as a condition of payment under this Contract.				
<b>Project Name:</b>				
<b>Contract No:</b>		<b>Consultant Name:</b>		
<b>Federal ID No.:</b> (OWP WE #, FTA Grant #, FHWA Project #)		<b>Contract Amount (including amendments):</b>	\$	
<b>Period Covered By This Report:</b>	<b>Current</b> (Invoice # _____)		<b>Total to Date</b>	
	To			
<b>Total Invoice Amount</b>	(A) \$		(B) \$	
<b>Payment Requested:</b>	<b>DBE?</b> (Yes/No) <b>DBE Code</b> (if "Yes")	<b>Prior Amount*</b>	<b>Current Amount*</b>	<b>Total Amount to Date*</b>
<b>Prime Consultant</b>		\$	\$	\$
<b>Subcontractors</b> (attach additional sheets as needed):				
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
<b>TOTALS</b>		\$	\$	(C) \$
<b>DBE Participation to Date (C/B)</b>		%		

***\*Insert dollar amounts for DBEs only***

## ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

### Acknowledgment of Prompt Payments by Contractors to Subcontractors:

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

- 1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.
- 2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION**

This report must be submitted by the Consultant with the final invoice or request for payment under this contract.

Project Title: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Project No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Period Covered by this Report: \_\_\_\_\_

Contract Amount (including amendments): \$ \_\_\_\_\_

Final Payment Amount: \$ \_\_\_\_\_ Invoice No.: \_\_\_\_\_

Total Payment to DBE: \$ \_\_\_\_\_

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount
Name Address Telephone No.		

Add additional sheets as necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

**ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION**

**Acknowledgment of Prompt Payments by Contractors to Subcontractors:**

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

### Instructions for completing the final report of DBE participation:

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period Covered by this Report:	Same period as invoice period
Consultant Name:	Self-Explanatory
Consultant No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
Total Payment to DBE	Total \$ amount paid to DBE
Acknowledgement of Prompt Payment	Self-Explanatory