FINANCE SUPPLEMENTAL AGREEMENT
BETWEEN THE
OAHU METROPOLITAN PLANNING ORGANIZATION,
HAWAII DEPARTMENT OF TRANSPORTATION,
CITY AND COUNTY OF HONOLULU ON BEHALF OF ITS
DIRECTOR OF TRANSPORTATION SERVICES, AND
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION
(FISCAL YEARS 2025-2027)

This Finance Supplemental Agreement ("Agreement"), is made and entered into on this _____ day of July 2024, by and between the Oahu Metropolitan Planning Organization ("OahuMPO"), a transportation management area metropolitan planning organization ("TMA MPO") organized under 23 United States Code ("U.S.C.") Section 134 and 49 U.S.C. Section 5303, and pursuant to Hawaii Revised Statutes (HRS) Chapter 279D, and the Hawaii Department of Transportation ("HDOT"), an agency of the State of Hawaii ("State"), the City and County of Honolulu ("City"), and the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous transit agency.

WITNESSETH:

WHEREAS, the Federal government, under the authority of 23 U.S.C. Sections 134 and 135, 49 U.S.C. Sections 5303 and 5304, 23 Code of Federal Regulations (CFR) Part 450, Subpart C, as amended, and other federal laws require that a metropolitan planning organization (MPO) be designated for urbanized areas based on a minimum population threshold as defined in federal law to act as a decision-making agency and to receive certain funds for the purpose of carrying out a continuing, cooperative, and comprehensive transportation planning process ("3-C Planning Process"); and

WHEREAS, consistent with federal law, HRS Chapter 279D, as amended, provides for the designation of an MPO for each urbanized area of the State; and

WHEREAS, Chapter 279D, as amended, specifies that each MPO shall be operated according to an executed comprehensive agreement between its member jurisdictions or authorities concerning its organization and structure, the roles and responsibilities of its member jurisdictions or authorities, and the provision of funding and membership dues; and

WHEREAS, the State, City, and HART have entered into such a comprehensive

agreement of July 20, 2015; and

WHEREAS, the OahuMPO is designated under 23 U.S.C. Sections 134(d)(1) and 134(k), as amended, as the transportation management area (TMA) MPO for the island of Oahu, encompassing the Honolulu and Kailua-Kaneohe urbanized areas; and

WHEREAS, HRS Chapter 279D, requires the MPO Policy Board to identify member financial dues necessary to sustain the MPO, and that member financial dues be provided by interagency agreement with the members; and

WHEREAS, the State, the City on behalf of its DTS Director, and HART executed a Finance Supplemental Agreement for FY 2023-2025 on the first day of July 2022, with a term of three (3) years; and

WHEREAS, the State, the City on behalf of its DTS Director, and HART have agreed to pay dues in equal shares to fund OahuMPO, subject to the availability of funds and any necessary appropriations;

NOW, THEREFORE, in consideration of the promises, mutual covenants, and representations set forth herein, the parties hereto desiring to be legally bound, do hereby agree as follows:

SECTION A. PURPOSE

For the reasons recited in the foregoing recitals, which are hereby adopted as part hereof, the purpose of this Agreement is to serve as the interagency agreement for the payment of member dues ("Dues") by the State, the City on behalf of its DTS Director, and HART, to provide local financial support deemed necessary for the function of the OahuMPO to carry out the 3-C Planning Process, consistent with the terms of the Comprehensive Agreement.

SECTION B. APPROVAL AND ALLOCATION OF FISCAL YEARS 2025-2026 FUNDING REQUIREMENTS.

B.1 Approval of Funding to OahuMPO. HDOT, DTS, and HART shall seek funding for Dues payable to the OahuMPO in their annual budgets for fiscal years 2025-2027 in the amount indicated in Subsection B.2 below.

B.2. Allocation of Funding to OahuMPO. The State, the City on behalf of its DTS Director, and HART each agree to pay the following Dues to OahuMPO, subject to the availability of funds and any necessary legislative appropriations, to be utilized by the OahuMPO, in accordance with the Comprehensive Agreement and this Agreement. Said funds shall be paid to OahuMPO not more than sixty (60) days after the start of the state fiscal year.

Term	Dues per partner	Payment Due Date
SFY 2025	ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS ($155,000)	8/31/2024
SFY 2026	ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($175,000)	8/31/2025
SFY 2027	ONE HUNDRED NINETY-FIVE THOUSAND DOLLARS ($195,000)	8/31/2026

This allocation allows OahuMPO to support its operation and planning program by maximizing its annual federal planning grants from the Federal Highway Administration ("FHWA") and Federal Transit Administration ("FTA"). These Dues increases were included in the OahuMPO Strategic Plan for calendar years 2023-2027, endorsed by the OahuMPO Policy Board on December 20, 2022.

B.3. This Agreement replaces and supersedes the FY 2023-2025 Agreement by the same title that was approved on the first day of July 2022 by the OahuMPO, HDOT, DTS, and HART.

SECTION C. REPORTING REQUIREMENTS.

C.1. Reports to the Policy Board and Technical Advisory Committee. The OahuMPO shall provide a written report to the Policy Board and the Technical Advisory Committee on a quarterly basis which includes an accounting of all the approved, active work elements from the Unified Planning Work Program, also known as the Overall Work Program ("OWP"). The report shall identify each work element, the budget allocated to the work element, the budget expended for each work element, and the remaining federal and local funds of each work element.

C.2. Progress Reports for OWP Work Elements. The programs and projects conducted as part of the OWP may be undertaken by the State, City, or HART, or by the OahuMPO itself. The manager of each of those work elements shall provide to OahuMPO's Planning Program Manager an annual progress report in the format and according to the schedule specified in the Overall Work Program Processes and Procedures approved by the OahuMPO Policy Board on December 20, 2022.

SECTION D. USE AND LAPSE OF FUNDS.

D.1. Use of Funds. The funds provided by the State, City, and HART under this Agreement will be used to match federal funds based on the approved OWP. Funds provided by the State, City, and HART under this Agreement may also be used to fully fund projects not involving any federal funds as determined by the approved OWP. The funds provided by the State,

City, and HART under this Agreement will not be linked to any specific OWP project. The OahuMPO Policy Board shall make all decisions regarding the budgeting of the TMA MPO's collective resources. All local funds will be pooled together for purposes of matching federal grants. To simplify the accounting process, parties to this Agreement acknowledge and agree that they are contributing a pro-rata share to all local match that is obligated to work elements in the approved OWP.

D.2. Lapse of Funds. As provided for in the Comprehensive Agreement, the funds provided by the State, City, and HART under this Agreement shall not lapse less than three (3) years after obligation of said funds, subject to any applicable federal, state, or county law that requires the funds to lapse prior to the three-year period. Lapsed funds shall be used to offset the Dues requirement for the next fiscal year immediately following the lapsing of the funds. The parties to this Agreement acknowledge and agree that all lapsed funds will be composed of pro-rata shares from each contributing party and will be thus credited to each contributing party.

SECTION E. APPROVAL OF THE OVERALL WORK PROGRAM.

The OahuMPO Policy Board has the sole authority to approve the OWP and transmit it, via the OahuMPO Executive Director, to FHWA and FTA for approval by the United States Department of Transportation.

SECTION F. FEDERAL PARTICIPATION AND USE OF FEDERAL FUNDS.

F.1. Federal Participation. It is understood and agreed by the parties that in order to permit OahuMPO participation in the expenditure of Federal Metropolitan Planning ("MP") Funds and Section 5303(d) Funds, this Agreement shall be subject to the approval of the FHWA and FTA. The parties agree no supplemental agreement of any nature may be entered into by the parties hereto involving the expenditure of use of Federal MP or Section 5303(d) Funds without the approval of FHWA and FTA, or as otherwise provided for in this section.

F.2. Use of Federal Funds. The OahuMPO and the State, City, and HART agree that no federal appropriated funds in connection with this Agreement have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, grant, loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

F.3. In accordance with 49 CFR 20.100 and 31 U.S.C. 1352, parties utilizing federal funds agree to file a certification and disclosure form upon award of federal contract, grant, or cooperative agreement exceeding One Hundred Thousand Dollars ($100,000).

SECTION G. REVIEW OF LOCAL FUNDING REQUIREMENTS.

The amount of the local funding requirements shall be reviewed by the parties to this agreement at least once every three (3) years. In consultation with the OahuMPO Policy Board, the State, City, and HART shall determine the amount of Dues to be paid annually upon termination of this Agreement and execution of a new agreement.

SECTION H. EFFECTIVE DATE AND TERM

Section H.1. Effective Date. The effective date of this Agreement shall be July 1, 2024. A copy of the executed agreement shall be filed with both FHWA and FTA.

Section H.2. Term. This Agreement shall have a term of three (3) years. At least 90 days prior to expiration of the term, the parties shall review and, if warranted, update the Agreement. The term of this Agreement shall commence on the effective date and terminate on June 30, 2027.

SECTION I. INTERPRETATION.

The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

SECTION J. DISPUTES.

As stated in Section F.2 of the Comprehensive Agreement, dated July 1, 2015, the parties hereto shall make a good-faith effort to resolve any disputes related to OahuMPO.

SECTION K. AUDIT AND RECORDKEEPING PROCEDURES.

The OahuMPO shall keep and maintain all records related to this Agreement and the services rendered pursuant to this Agreement for the period of three (3) years or as required by other applicable federal or state law, whichever is greater. Records shall be furnished to the State Auditor for the annual single audit and to HDOT, DTS, and HART upon request. Said records shall be made available to the public for inspection, examination, and copying pursuant to the terms of Hawaii Revised Statutes Chapter 92F ("Uniform Information Practices Act"). If any litigation, claim, or audit is commenced, said records shall be maintained until all litigation, including appeals, claims, or audits have been concluded or resolved.

SECTION L. MISCELLANEOUS

L.1. Notices. All notices, consents, approvals, waivers, and deletions which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

To: Oahu Metropolitan Planning Organization
Attention: Executive Director
707 Richards Street, Suite 200
Honolulu, Hawaii 96813

To: Hawaii Department of Transportation
Attention: Director
869 Punchbowl Street, Fifth Floor
Honolulu, Hawaii 96813

To: City & County of Honolulu Department of Transportation Services
Attention: Director
711 Kapiolani Boulevard, Suite 1600
Honolulu, Hawaii 96813

To: Honolulu Authority for Rapid Transportation
Attention: Executive Director and Chief Executive Officer
1099 Alakea Street, 17th Floor
Honolulu, Hawaii 96813

L.2. Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any provision of this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances, which are reasonably beyond the control of the party obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

L.3. Relationship of Parties. This Agreement shall be binding only between the OahuMPO, State, City, and HART. This Agreement is not intended to create and does not create an agency or independent contractor relationship between the State, City, or HART and OahuMPO.

L.4. Incorporation by Reference. All exhibits and other attachments to this Agreement that are referenced in this Agreement are, by this reference, made a part hereof and are incorporated herein.

L.5. Governing Law. The rights, obligations, and remedies of the parties as specified under this Agreement shall be interpreted and governed in all aspects by the laws of the State of Hawaii. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the State of Hawaii, the validity of the remaining provisions shall not be impaired. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in the County of Honolulu, Hawaii. Consistent with HRS Chapter 279D, if a conflict between any provision of this Agreement and any federal law or regulation relating to the TMA MPO arises, federal law or regulation shall govern.

L.6. Severability. If any term, provision, or remedy of this Agreement shall, to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term, provision or remedy of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

L.7. Headings. Article and section headings appearing herein are inserted for convenience and reference only and shall in no way be construed to be interpretations of text.

L.8. Construction. All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as *"Verba Fortius Accipiuntur Contra Proferentem"* shall not be applied to the interpretation of this Agreement.

L.9. Assignability. This Agreement shall not be assigned by any party without the express written permission of the other parties.

L.10. Entire Agreements/Amendments. This Agreement constitutes the entire agreement between the parties hereto. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representation of either party, which is not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Agreement, or any of the terms, provisions, and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent, or representative of each of the parties hereto.

L.11 Concurrent Signing This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The Parties agree that they may utilize and shall be bound by their electronic signatures pursuant to Chapter 489E, Hawaii Revised Statutes.

IN WITNESS WHEREOF, HDOT, by its Director, the City, by its Chairperson of the City Council; HART, by its Executive Director and CEO; and the OahuMPO, by its Chairperson of the Policy Board; have hereunto executed this Agreement as of the day and year first above written.

HAWAII DEPARTMENT OF TRANSPORTATION

By _____

Its Director

APPROVED AS TO FORM:

Marjorie Lau

_____

Deputy Attorney General for Hawaii Department of Transportation

OAHU METROPOLITAN PLANNING ORGANIZATION

By _____

Its Chair

APPROVED AS TO FORM:

Patrick K. Kelly

_____

Deputy Attorney General for OahuMPO

CITY AND COUNTY OF HONOLULU

By _____

Its Presiding Officer and Chair of the City Council of the City and County of Honolulu

APPROVAL RECOMMENDED:

DEPARTMENT OF TRANSPORTATION SERVICES

By _____

Its Director

HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

By _____

Its Executive Director and Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

Digitally signed by Ancheta, Brian
Date: 2024.05.28 15:30:21 -10'00'

Deputy Corporation Counsel