

**DATA SHARING SUPPLEMENTAL AGREEMENT
BETWEEN THE
OAHU METROPOLITAN PLANNING ORGANIZATION, AND THE
HAWAII DEPARTMENT OF TRANSPORTATION, AND THE
DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT AND TOURISM
RESEARCH AND ECONOMIC ANALYSIS DIVISION, AND THE
OFFICE OF PLANNING, AND THE STATE OF HAWAII DEPARTMENT OF
HEALTH, AND THE CITY AND COUNTY OF HONOLULU, ON BEHALF OF ITS
DEPARTMENT OF TRANSPORTATION SERVICES, DEPARTMENT OF
PLANNING AND PERMITTING, DEPARTMENT OF FACILITY MAINTENANCE,
AND DEPARTMENT OF BUDGET AND FISCAL SERVICES, AND THE
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

This Data Sharing Supplemental Agreement (“Agreement”), dated July 1 of 2015 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 Act 132, Session Laws of Hawaii 2015, and the Hawaii Department of Transportation (“HDOT”), the Department of Business Economic Development and Tourism Research and Economic Analysis Division (“DBEDT Research”), the Office of Planning (“OP”), the Hawaii Department of Health (“DOH”), agencies of the State of Hawaii (“State”), the City and County of Honolulu (“City”) on behalf of its Department of Transportation Services (“DTS”), Department of Planning and Permitting (“DPP”), Department of Facility Maintenance (“DFM”), and Department of Budget and Fiscal Services (“BFS”), and the Honolulu Authority for Rapid Transportation (“HART”), a semi-autonomous transit agency (“Operator”). The HDOT, DBEDT Research, OP, DOH, DTS, DPP, DFM, BFS, and HART are collectively referred to hereinafter as “Agencies.”

WITNESSETH

WHEREAS, 23 U.S.C. Sections 134 and 135, 49 U.S.C. Sections 5303 and 5304, 23 Code of Federal Regulations (CFR) Subpart C, as amended, and other Federal laws require that a metropolitan planning organization 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, Act 132, Session Laws of Hawaii 2015 provides for the designation of a metropolitan planning organization for each urbanized area of the State; and

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

WHEREAS, 23 U.S.C. 134, as amended requires the OahuMPO to produce regional plans and programs that encourage and promote the safe and efficient development, management, and operation of surface transportation system to serve the mobility needs of people and freight including accessible pedestrian walkways and bicycle transportation facilities, including but not limited to the development of a long-range transportation plan (Oahu Regional Transportation Plan or "ORTP"), public participation plan, transportation improvement program ("TIP"), and a congestion management process ("CMP").

WHEREAS, 23 U.S.C. 450.314 requires the OahuMPO, the State and public transportation operators to develop a written agreement for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan and TIP; and.

WHEREAS, much of the data and information necessary to carry out the 3-C planning process does not reside with the public transportation operators, but is collected or maintained by other agencies of OahuMPO's member jurisdictions; and

WHEREAS, the City is willing to enter into this agreement on behalf of its agencies that maintain information necessary and useful for OahuMPO to fulfill its legal purposes, to facilitate OahuMPO's collection, use and maintenance of said information; and

WHEREAS, Section 4-2.2, Revised Ordinances of Honolulu, provides that officers and department heads of the City shall cooperate, in a timely and satisfactory manner, with the OahuMPO and provide whatever pertinent or necessary report, information or data required or requested by the OahuMPO in the preparation and updating of the ORTP and other planning documents required under federal law or regulation;

NOW, THEREFORE, in consideration of the promises, mutual covenants, and undertakings set forth herein, the parties hereto to hereby agree as follows:

A. PURPOSE AND DEFINITIONS. The Whereas clauses are true and correct and are hereby adopted as part hereof. The purpose of this Agreement is to agree upon interagency procedures for the collection, maintenance, and sharing of regional data and information deemed necessary to carry out the 3-C transportation planning process.

For the purpose of this Agreement, unless otherwise agreed to by the agency where data originates, “Custodian” means the agency where data originates.

B. COLLECTION OF THE DATA NECESSARY TO CARRY OUT THE MULTIMODAL TRANSPORTATION PLANNING PROCESS. In order for the OahuMPO to carry out regional performance-based transportation planning functions, large amounts and various types of data are required.

The lists below identify the types of resources—held in the form of databases, reports, studies, models, tools, and financial data—which are required by the OahuMPO to facilitate an efficient and effective 3-C planning process. These lists are provided for illustrative purposes only, and are not intended to represent an exhaustive list nor a strict assignment of responsibilities.

DATA DESCRIPTION	OAHU MPO	HDOT	DTS	DPP	DFM	BFS	HART	DBEDT
Traffic and Infrastructure Condition Databases								
a. Roadway characteristics	X	X	X	X				
b. Traffic counts		X						
c. Pavement conditions		X			X			
d. Bridge inventory		X						
e. Bicycle facilities		X	X					
f. Crash data		X						
g. Transit service, operations statistics, and level of service			X				X	

reporting								
h. Transit route modifications			X				X	
i. Intelligent Transportation Systems (ITS) inventory		X	X				X	
Land Use and Population Databases								
j. Socioeconomic and demographic profiles	X			X				X
k. Population forecasting and adjustments	X			X				X
l. Forecasted population	X			X				X
Reports and Studies								
m. Transportation Improvement Program	X	X	X					
n. Transportation studies	X	X	X	X				
Models and Tools								
o. Land Use Model	X			X				
Financial Data								
p. Obligations		X	X			X		
q. Awards		X	X			X		
r. Status reports		X	X					
s. Revenue estimates		X	X			X		

C. MAINTENANCE OF ACCESS TO DATA AND RESOLUTION OF

CONFLICT. The parties hereto agree to work to remove the obstacles that prevent open access to data, and will help to develop data and technology partnerships that support and enable a sustainable data sharing framework. To maintain this coordinated and cooperative partnership, the OahuMPO will develop a list of planning data necessary to carry out the multimodal transportation planning

process (“list of necessary planning data”). This list of necessary planning data will be used for plans and programs that the OahuMPO is required to produce.

To facilitate a more cooperative data sharing process and discussion of available regional data and tools, the draft list of necessary planning data will identify, for each data item, the specific Agency(ies) to whom the request is being made, and will be provided to all parties to this Agreement collectively for review and comment. This list of necessary planning data is intended to serve as a courtesy planning tool and is not intended to be a final list of necessary planning data required by the agency to complete any identified planning effort.

D. USE OF DATA AND INFORMATION. Unless otherwise agreed to by the Member agency where data originates, it is expected that the designated “Custodian” of each data resource will be the agency where data originates. The parties mutually agree that the data Custodian of each individual data resource shall be designated prior to sharing the data. The data’s Custodian will be responsible for setting all conditions for use and for establishment and maintenance of security agreements as needed. Where and how the data will be stored and maintained will also be specified by the data’s Custodian. The Agencies agree to make appropriate reference citations to the data’s Custodian when publishing information obtained from resources shared under the terms of this agreement. It is expected that information shared is derived from the best readily available source(s).

It is assumed that planning data may be constantly undergoing change, does not replace a site survey, and is not warranted for content or accuracy. Agencies do not guarantee the positional or thematic accuracy of data. Geographically referenced data or cartographic digital files are not a legal representation of any of the features they depict, and any assumption of the legal status represented is hereby disclaimed. Unless expressly included when the data is provided to the requestor, data is provided without any implied warranties, including warranties of merchantability or fitness for a particular purpose.

E. COMPREHENSIVE DATA MANAGEMENT AND SHARING STUDY.

This Agreement serves to provide more efficient multi-jurisdictional transportation planning on Oahu. The OahuMPO and its member jurisdictions would like to continue to improve coordination, reduce project delivery times, and enhance overall efficiency of the 3-C planning process. A coordinated approach to planning provides public benefit through improved infrastructure, system operations, safety and economic performance, as well as reduced traffic congestion and more livable communities.

To achieve the objective of a more coordinated data management and sharing process between the OahuMPO and its Agencies, the OahuMPO will conduct a comprehensive data management and sharing study, to be periodically updated, to establish a data sharing pool and recommend a program to outline specific policies and procedures concerning the collection, management, and distribution of data to support the local, metropolitan, and state decision-making process. As part of this process, the establishment of a data management subcommittee to oversee the development, research, and analysis of data may be considered. Pending available funds, the comprehensive data management and sharing study shall be considered by the Policy Board for inclusion in the next Overall Work Program. With the agreement of all parties, this Agreement may be revised based upon the results of said study.

F. EFFECTIVE DATE. The effective date of this Agreement shall be July 1, 2015. A copy of the executed agreement shall be filed with both FHWA and FTA. At such time as this agreement becomes effective, it constitutes the sole and only Data Sharing Supplemental Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

G. DURATION AND TERMINATION.

G.1. Term. Agreement shall remain in effect for an initial period of two (2) years, unless otherwise terminated as provided herein, or until such time as a comprehensive data management study and subsequent revised agreement discussed under Section F is completed and mutually agreed to by all parties hereto.

G.2. Revisions, Additions, or Modifications. This Agreement is subject to mutual understandings and agreements among the parties hereto; and any revisions, additions, or modifications are subject to the approval of all of said parties.

G.3. Termination. Any party may terminate this Agreement for convenience at any time upon no less than ninety (90) days prior written notice to the other parties.

Upon termination of this Agreement for any reason, each party shall return all shared data, information, and records held by it through privilege provided by this Agreement within a period of thirty (30) days. The parties agree that no party waives any of its rights to seek damages of any kind against the other party in the event of the other party's default under this Agreement.

After termination, the Agreement shall be of no further continuing effect and the parties shall have no obligations to each other hereunder except those specifically noted as surviving termination and those arising on or before the date of termination.

H. DISPUTES. The parties hereto shall make a good faith effort to resolve any disputes related to this Agreement.

I. MISCELLANEOUS

I.1. Notices. Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (A) by hand delivery to the person(s) hereinafter designated, or (B) by certified overnight hand delivery (such as FedEx or UPS), or (C) through the United States Postal Service, postage prepaid, certified mail, return-receipt requested, or (D) delivered and received by facsimile telephone transmission or other electronic transmission, provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically submitted, 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 of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

To: Research and Economic Analysis Division
Attention: Administrator
Hawaii Department of Business Economic Development and Tourism
PO Box 2359
Honolulu, HI 96804

- To: Hawaii Office of Planning
Attention: Director
PO Box 2359
Honolulu, Hawaii 96804
- To: Hawaii Department of Health
1177 Alakea St. #402
Honolulu, HI 96813
Attention: Director
- To: Department of Transportation Services
Attention: Director
City and County of Honolulu
650 S King St #3
Honolulu, HI 96813
- To: Department of Planning and Permitting
Attention: Director
City and County of Honolulu
650 S King St #7
Honolulu, HI 96813
- To: Department of Facility Maintenance
Attention: Director
City and County of Honolulu
1000 Uluohia Street, Suite 215
Kapolei, Hawaii 96707
- To: Department of Budget and Fiscal Services
Attention: Director
City and County of Honolulu
530 South King Street, Room 208
Honolulu, HI 96813

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

I.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.

I.3. Incorporation by Reference. All exhibits and other attachments to this agreement that are referenced to this Agreement are, by this reference, made a part hereof and are incorporated herein.

I.4. Governing State and Federal 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. To the extent that any part of this Agreement is found to be in conflict with or in violation of federal law or rules, or jeopardizes OahuMPO certification, or receipt of federal funds, the federal law or rule shall govern, and any conflicting provision of this Agreement shall be interpreted, so far as the language reasonably allows, to follow federal law. If such interpretation in compliance with federal law is not reasonably feasible, the conflicting provisions of this Agreement shall be amended by the parties to comply with federal law or rules.

I.5. 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.

I.6. 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.

I.7. Construction. Both 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 drafted this Agreement. The rule sometimes referred to as "*Fortius Contra Proferentem*" shall not be applied to the interpretation of this Agreement.

I.8. Assignability. This Agreement shall not be assigned by any party to the Agreement without the express written permission of the other parties.

I.9. Signatory Warranty. The undersigned signatories hereby represent and warrant that they are officers as stated below, and that they have full and complete authority to enter into this Agreement.

I.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.

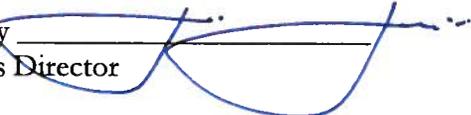
IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed and delivered this Agreement as of the Effective Date.

OAHU METROPOLITAN PLANNING
ORGANIZATION

By _____
Its Chair



HAWAII DEPARTMENT OF TRANSPORTATION

By 
Its Director

HAWAII DEPARTMENT OF BUSINESS ECONOMIC DEVELOPMENT AND TOURISM
RESEARCH AND ECONOMIC ANALYSIS DIVISION

By  for Eugene Tiron
Its Administrator

HAWAII OFFICE OF PLANNING

By 
Its Director

HAWAII DEPARTMENT OF HEALTH

By 
Its Director

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

APPROVAL RECOMMENDED:
DEPARTMENT OF PLANNING AND PERMITTING

By *George J. Otto*
Its Director

APPROVAL RECOMMENDED:
DEPARTMENT OF FACILITY MAINTAINANCE

By *[Signature]*
for Its Director

APPROVAL RECOMMENDED:
DEPARTMENT OF BUDGET AND FISCAL SERVICES

By *[Signature]*
Its Director

HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

By *[Signature]*
Its Executive Director and CEO

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

Kathleen A. Kelly
Deputy Corporation Counsel
KATHLEEN A. KELLY