

## **Administrative Supplemental Agreement**

This Administrative Supplemental Agreement (“Agreement”), dated \_\_\_\_\_, 2021, 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 Act 132, Session Laws of Hawaii 2015, and the Hawaii Department of Transportation (“HDOT”), an agency of the State of Hawaii.

### **WITNESSETH:**

WHEREAS, the OahuMPO is designated under 23 U.S.C. 134(d)(1), as amended, as the TMA MPO for the island of Oahu, encompassing the Honolulu and Kailua-Kaneohe urbanized areas, and the OahuMPO is duly created pursuant to an Agreement to Establish a Metropolitan Planning Organization on the Island of Oahu between the State of Hawaii (“State”), the City and County of Honolulu (“City”);

WHEREAS, Act 132, Session Laws of Hawaii 2015, provides that transportation management area metropolitan planning organizations shall be attached to HDOT for administrative purposes only;

WHEREAS, the OahuMPO to carry out its responsibilities of a TMA MPO is exempt from Section 26-35, Hawaii Revised Statutes (“HRS”), except for subsections (a)(7), and (a)(8), and (b);

WHEREAS, the OahuMPO is an agency assigned to HDOT for administrative purposes as defined in this Agreement;

WHEREAS, the OahuMPO must comply with applicable Federal laws and regulations, as well as all applicable statutory and administrative rules of the State, and – in those areas where OahuMPO does not have approved policies and procedures of its own which have been reviewed by the State Department of the Attorney General, the City & County of Honolulu Department of Corporation Counsel, and the United States Department of Transportation – the policies and procedures of the HDOT;

WHEREAS, Act 132 Session Laws of Hawaii 2015 states that if a conflict between Act 132 and any Federal law or regulation relating to metropolitan planning organizations arises, Federal law or regulation shall govern;

WHEREAS, the OahuMPO will comply with Federal law, State law, and HDOT or OahuMPO policies unless they conflict with Federal requirement;

WHEREAS, for required actions and processes, when OahuMPO does not have its own legally compliant Policy Board approved policies and procedures, it shall follow the policies and procedures of HDOT;

WHEREAS, the roles and responsibilities of the OahuMPO and the HDOT regarding the assignment of the OahuMPO may be defined by agreement between the two entities;

WHEREAS, the OahuMPO executive director and staff are not subject to Chapter 76, HRS, but are eligible to receive benefits of any state employee benefit program applicable to officers and employees of the State.

WHEREAS, the OahuMPO and the HDOT have the authority to enter into said Agreement; and

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

1. *PURPOSE.* The Whereas clauses are true and correct and are hereby adopted as part hereof. The purpose of this Agreement is to define the administrative roles, responsibilities, and procedures embodied by OahuMPO's assignment to HDOT.

The HDOT will only be responsible for the functions and responsibilities described herein. All other activities necessary for the operation of OahuMPO agency shall be the responsibility of OahuMPO.

2. *BUDGET.* The HDOT shall oversee and implement the established State budget process and ensure funds are budgeted for the OahuMPO "dues." The OahuMPO shall annually develop and approve the OWP, manage its own budget, maintain its own records, and provide all necessary documentation required by the HDOT to comply with Chapter 37 HRS and its implementing regulations and policies. Approval of the OWP by Federal Highway Administration ("FHWA") and the Federal Transit Administration ("FTA") shall constitute acknowledgment by all parties that the OWP meets the Federal requirements of 23 CFR §450.308.

A. *Authority.* Chapter 37 of the Hawaii Revised Statutes, Budget Formulation Policy, Budget Act (Annual), Budget Execution Policy, Executive Memorandums, Administrative Directives, Comptroller Memorandum, HDOT Departmental Staff Manual ("DSM").

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

State Funds:

1. The HDOT is responsible to budget its share of "dues" to participate in the MPO process.
2. The HDOT shall confirm the availability of its dues after being invoiced for dues by the OahuMPO per the approved Finance Supplemental Agreement.

Federal Funds:

3. The HDOT will notify the OahuMPO in writing of the availability for drawdown of all funding requests.
4. The HDOT will notify the OahuMPO in writing of all approved grant closeout and de-obligation.
5. The HDOT will provide to the OahuMPO timesheets of HDOT staff that record their time spent in direct administrative support of OahuMPO in order to receive Federal reimbursement for administrative costs.
6. The HDOT shall annually notify OahuMPO of the amount of Federal planning funds allocated to it as soon as possible after

the funds have been apportioned to the HDOT by FHWA and FTA.

- ii. OahuMPO: The responsibilities of the OahuMPO include the following.

State Funds:

1. The OahuMPO will submit to the HDOT an eight year multiyear financial plan (previous biennium, current biennium and four out years) on October 15 of each fiscal year and as requested.
2. The OahuMPO will invoice the HDOT for the HDOT's dues, as identified in the approved Finance Supplemental Agreement. The invoice shall include documentation as required by this agreement.
3. The OahuMPO shall include in every annual OWP, starting from Federal Fiscal Year 2016, funding for reimbursement of any HDOT costs associated with the functions and services provided in direct administrative support of the OahuMPO.

Federal Funds:

4. The OahuMPO shall submit a written request for all grant closeouts.

3. *FINANCE*. The HDOT shall administer and process the HDOT's planning, programming and program reporting activities as mandated by the Executive Budget Act to meet the OahuMPO's financial obligations. The HDOT shall administer the Oahu transportation management area metropolitan planning organization revolving fund ("revolving fund"). The OahuMPO shall manage its own budget, and provide the HDOT with any invoices, requisitions, reconciliations, and any other documentation required for processing.

A. Authority. Chapter 40 of the Hawaii Revised Statutes and the State of Hawaii Accounting Manual.

B. Functional Responsibilities.

- i. HDOT: The responsibilities of the HDOT include the following.
  1. The HDOT shall process invoices from the OahuMPO for Federal reimbursements.
  2. The HDOT shall pay the OahuMPO's expenses from the OahuMPO revolving fund provided the OahuMPO has authority and cash.
  3. The HDOT is responsible for supporting the annual financial audit, which is procured by the State Auditor.
  4. The HDOT shall process the OahuMPO payroll provided the OahuMPO has authority, cash, and appropriate documents are in order.

5. The HDOT shall invoice the OahuMPO for administrative costs for services provided to the OahuMPO.
  6. The HDOT shall deposit member financial dues, all revenues from the operations of the OahuMPO, appropriations by the legislature out of the state highway fund to the OahuMPO, Federal funds, grants, and any other moneys made available to the fund into the OahuMPO revolving fund by check or Journal Voucher as needed.
  7. The HDOT shall perform FTA drawdowns as necessitated by the OahuMPO's FTA reimbursement requests, subject to availability of funds
  8. The HDOT shall file FTA Federal reports as necessitated by the FTA.
  9. The HDOT shall invoice and process the OahuMPO's FHWA reimbursement requests, subject to availability of funds
  10. The HDOT shall prepare the appropriate documents as necessary for contract encumbrances.
- ii. OahuMPO: The responsibilities of the OahuMPO include the following.
1. The OahuMPO shall establish fiscal policies and procedures consistent with 2 CFR 200, including the establishment of appropriate financial controls to comply with Federal and State regulations.
  2. The OahuMPO is responsible to manage its own budget.
  3. The OahuMPO shall reconcile the actual costs against the OWP and for any related financial audits.
  4. The OahuMPO shall provide the HDOT with a properly approved original invoice and a properly approved purchase requisition which will include:
    - a) OWP project number or line item;
    - b) Total cost for the invoice; and
    - c) Federal funds reimbursable share of the invoice.
  5. The OahuMPO shall fully cooperate with the financial auditor procured by the State Auditor and is responsible for its annual financial audit and A-133 (single) audit.
  6. The OahuMPO shall report annually to the legislature no later than twenty days prior to the convening of each regular session beginning with the regular session of 2016 on a detailed accounting of the activities of the revolving fund for the previous fiscal year.

4. *CONTRACTING*. The HDOT reviews and approves as to form and process the OahuMPO procurement and contracting activities to ensure fair and equitable treatment of all persons who deal with the OahuMPO, foster full and open competition, and ensure fiscal integrity, responsibility, and efficiency in the procurement and contracting process. Where State funds are involved, the HDOT

will continue to do so until such time that the OahuMPO develops and approves its own written procurement procedures.

A. Authority. Section 103D, HRS and Subsections 3-122, 3-123, 3-124, 3-125, 3-126, 3-128, and 3-131, HAR (collectively known as the “Hawaii Procurement Code”), Section 368-1.5 HRS; 49 U.S.C. Chapter 53, MAP-21 Section 20005, FTA Master Agreement, Title VI of the Civil Rights Act of 1964 (“Title VI”), and 49 CFR Section 26 (“DBE”).

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

1. Review and approve as to form and process.
2. Develop DBE goal, determine if DBE eligibility standard is met, and advise on implementation of DBE requirements.
3. Delegate procurement authority to the OahuMPO Executive Director provided that the OahuMPO Executive Director meets State requirements to receive procurement authority.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

1. Provide supporting documentation for OahuMPO procurement and contracting activities pursuant to the approved procurement procedures such as, but not limited to: annual notice to providers of professional services, selection committee members and affidavits, project or consultant service advertisement, selection of consultant, negotiations, fee approval, debriefing, response to protests, contract execution, and notice to proceed.
2. Ensure compliance with DBE requirements and Title VI.
3. The OahuMPO will provide additional documentation in accordance with Federal requirements and submit documents at all stages throughout the procurement process for review as to form and process.

5. *FEDERAL FUNDING - FTA.* The HDOT shall process the FTA grants for Federal funding appropriated to the OahuMPO, and the OahuMPO shall be responsible for developing and submitting the approved OWP and funding reimbursement requests.

A. Authority. 49 U.S.C. Chapter 53, 49 U.S.C. 5305(d) Metropolitan, MAP-21 Section 20005 Metropolitan Transportation Planning Program, FTA Master Agreement

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

1. Using the agreed upon distribution formula, the HDOT will calculate and provide the OahuMPO written notice of their share

of the 49 U.S.C. Section 5305(d) Metropolitan Planning Program (MPP) funds

2. Annually, the HDOT will provide a Memorandum of Agreement (“MOA”) and Certifications and Assurances for the OahuMPO’s signature.
3. The HDOT will submit and maintain an application to the FTA for funding on behalf of the OahuMPO.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

1. The OahuMPO will develop and submit to the HDOT the information necessary for the processing of the request for obligation of Federal funds.
2. The OahuMPO shall submit an Application For Federal Assistance FTA Section 5303 Metropolitan Planning Program form to the HDOT for each year’s apportionment.
3. The OahuMPO shall submit to the HDOT quarterly grant updates pursuant to FTA directive.
4. The OahuMPO will keep a record of the Federal and State required Federal grant and financial documents.
5. All documents shall be made available to the HDOT upon request.
6. The OahuMPO shall maintain asset management records.

6. *FEDERAL FUNDING - FHWA*. The HDOT shall process the FHWA funds for the FHWA Federal funding appropriated to the OahuMPO, and the OahuMPO shall be responsible for developing and submitting the OWP and funding reimbursement requests.

A. Authority. 23 U.S.C. Chapter 104(f) Planning (“PL”) Funds

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

1. Using the agreed upon distribution formula, the HDOT will calculate the distribution and provide the OahuMPO written notice of the OahuMPO’s share of the PL funds.
2. The HDOT will submit and maintain an application to the FHWA for funding on behalf of the OahuMPO.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

1. The OahuMPO will develop and submit to the HDOT the information necessary for the processing of the request for obligation of Federal funds.
2. The OahuMPO will keep a record of the Federal and State required Federal grant and financial documents.

7. *HUMAN RESOURCES.* Pursuant to Act 132, Session Laws of Hawaii 2015, OahuMPO executive director and staff are not subject to Chapter 76, HRS. Therefore, the OahuMPO shall be responsible for all of its human resources matters. All employees of OahuMPO shall be eligible to receive the benefits of any State or Federal employee benefit program generally applicable to officers and employees of the State. The OahuMPO has a duty to ensure that its employees work in an environment free of discriminatory behavior. Pursuant to Department of Human Resources Development (“DHRD”) Policy 1000.001, OahuMPO shall ensure that employees are qualified, proficient, and productive, and that compensation is set in a reasonable manner and in proper relation to other employees.

A. Authority. Title VI, Executive Order 12898 (EJ), the Americans with Disabilities Act 1990 (ADA), Sections 503 and 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Chapter 378 FIRS, Section 368-1.5 HRS, DHRD Policies No. 601.00, 1000.001, and Guidance statements, HDOT civil rights policy statements.

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

1. Provide notice of changes in the DHRD Policy No. 601.001, Guidance statement, or any HDOT civil rights policy statements.
2. Maintain documentation and statistical data on race, color, national origin and sex on staff.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

1. The OahuMPO shall track employee work hours, vacation hours, and sick leave hours, except for the OahuMPO staff person responsible for this function (the HDOT shall assist with this person’s tracking).
2. Ensure OahuMPO staff knowledge of the DHRD and the HDOT civil rights policies, including but limited to: Policy No. 601.001, Guidance Regarding the Employment of Transgendered Individuals, Non-Discrimination and Anti-Harassment, Sexual Harassment, and Breast Feeding.
3. Adhere to the HDOT’s civil rights training requirements.
4. Promptly investigate, document, and report all reported civil rights claims.
5. The OahuMPO’s shall comply with all applicable Federal and State (other than Chapter 76 HRS) laws and regulations.
6. The OahuMPO shall establish and maintain policies and procedures consistent with applicable State and Federal laws and regulations for human resources, including, but not necessarily limited to:

- a) Qualification and hiring of staff members;

- b) Training and development;
- c) Termination, suspension, and discipline of staff;
- d) Benefits and compensation;
- e) Performance management and performance reviews of staff;
- f) Hours of operation, breaks, and leave time;
- g) Employee access to personnel records;
- h) Employee privacy;
- i) Drug and alcohol issues;
- j) Temporary employees and independent contractors;
- k) Strategic planning, vision statement, mission statement, and agency values.

8. *INFORMATION AND TECHNOLOGICAL SERVICES.* The HDOT shall process for any OahuMPO computer hardware or software acquisition requests. Any interface with HDOT systems will require the approval of the HDOT. The OahuMPO shall operate and maintain their own Information and Technology (“IT”) system, including but not limited to acquisition, installation, access, maintenance, and consultant services.

A. Authority. HDOT DSM and other HDOT IT policies and procedures.

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

- 1. Review and provide recommendation of Telecom and ICSD-205 (Computer hardware or software) requests that are generated by the OahuMPO. ICSD-205 forms are required by the Office of Enterprise Technology Services (“ETS”) for any purchase of computer hardware and software.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

- 1. Budgeting and acquisition of software and hardware
- 2. Budgeting and acquisition of IT consultant services
- 3. Network connectivity and Telecom needs.
- 4. Installation, access and maintenance to its applications
- 5. PC and server maintenance needs
- 6. IT related staff whether Contractor or OahuMPO staff

9. *ENSURING NON-DISCRIMINATORY PUBLIC INPUT.* The HDOT and the OahuMPO have a mutual duty to ensure that a comprehensive transportation planning process is used that incorporates input from the public. The process further entails the monitoring and collection of varied data pertaining to transportation issues.

A. Authority. Title VI, Executive Order 12898 (“EJ”), the Americans with Disabilities Act 1990 (“ADA”), Sections 503 and 504 of the Rehabilitation Act of 1973, Age



Discrimination Act of 1975, Section 368-1.5 HRS, DHRD Policies No. 601.00, 1000.001, and Guidance statements, HDOT civil rights policy statements.

B. Functional Responsibilities.

i. HDOT: The responsibilities of the HDOT include the following.

1. Advise on Title VI obligations and compliance documents, and perform project management reviews to ensure compliance.
2. Assist in the coordination of Title VI Training for the OahuMPO.
3. Maintain documentation and statistical data on race, color, national origin and sex on participants and beneficiaries of OahuMPO projects.
4. Advise on ensuring public involvement with OahuMPO's transportation planning process.

ii. OahuMPO: The responsibilities of the OahuMPO include the following.

1. Adhere to all Federal and State of Hawaii civil rights laws.
2. Adhere to all civil rights policies listed in this section.
3. Promptly investigate, document, and report all reported civil rights claims.
4. Ensure full participation of all social, economic and ethnic populations impacted by the OahuMPO's planning processes, including but not limited to: dissemination of project information to minority media and ethnic/gender related organizations, participation in public meetings in predominately minority communities, and provision of information on languages other than English when reasonable steps to ensure meaningful access to Limited English Proficiency persons requiring language services".
5. Collect, document, and report data on gender, race and national origin of the public meeting attendees, and verify the level of participation of Title VI protected group members when public meetings are held in predominately ethnic minority communities.
6. Provide timely and accurate data to the HDOT on Title VI issues, including but not limited to the Annual Title VI Update Report.
7. Perform Title VI compliance assessments as part of the annual reviews of the OahuMPO's work and transportation programs.

10. EFFECTIVE DATE

The effective date of this Agreement shall be \_\_\_\_\_. 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 Administrative Supplemental Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

## *11. REIMBURSEMENT OF ADMINISTRATIVE COSTS*

The OahuMPO shall reimburse the HDOT for the costs of providing administrative services. This includes but is not limited to time, labor and necessary material. The total of all reimbursements in a fiscal year shall not exceed the amount of funding budgeted in the approved OWP. The reimbursement of costs is subject to the Federal grant requirements of 2 CFR §200, including documentation of level-of-effort.

## *12. DURATION AND TERMINATION*

### *A. Term*

Agreement shall remain in effect for an initial period of three (3) years and may be renewed in writing for subsequent three (3) year terms upon the mutual agreement of the parties hereto.

### *B. Termination*

Either party may terminate the Agreement for convenience at any time upon no less than one hundred eighty (180) days prior written notice to the other party. In the event of a default by either party, the non-defaulting party shall notify the other party, in writing, of the default and of the time to cure the default (Notice to Cure). If such default is not cured, or sufficient effort is not made by the defaulting party, as determined solely by the non-defaulting party, to cure said default within sixty (60) business days after the date of the Notice to Cure, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice to the other party.

## *13. DISPUTES*

The parties hereto shall make a good-faith effort to resolve any disputes related to OahuMPO.

## *14. MISCELLANEOUS*

### *A. Notices*

Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to the other, 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 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

B. Force Majeure

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.

C. Relationship of Parties

This Agreement is not intended to create and does not create an agency or independent contractor relationship between HDOT and OahuMPO.

D. 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.

E. Governing State 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.

F. 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.

G. 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.

H. 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 any party to this Agreement. The rule sometimes referred to as "*Fortius Contra Preferentem*" shall not be applied to the interpretation of this Agreement.

I. Assignability

This Agreement shall not be assigned by either party without the express written permission of the other party.

J. Signatory Warranty

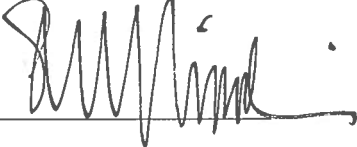
The undersigned signatories hereby represent and warrant that they are officers as stated below, and that they have full and complete authority to enter into this Agreement.

K. 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 

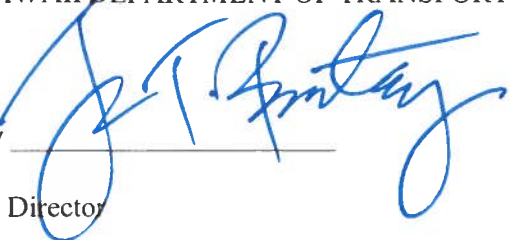
Its Chair

APPROVED AS TO FORM

  
Deputy Attorney General, State of Hawaii

**DUANE M. KOKESCH**

HAWAII DEPARTMENT OF TRANSPORTATION

By 

Its Director

APPROVED AS TO FORM

  
Deputy Attorney General, State of Hawaii

**MARJORIE A. LAU**