From: elizabeth.zelasko@dot.gov
To: Miyamoto, Faith; Ted.Matley@dot.gov
CC: aranda@infraconsultllc.com; Zaref, Amy; Souki, Jesse K.
Sent: 12/20/2010 10:13:23 AM
Subject: RE: Honolulu Rail Project

Thanks, Faith. I will share with our counsel to see how they would prefer to handle execution of the PA.

Elizabeth Zelasko
Federal Transit Administration

From: Miyamoto, Faith [mailto:fmiyamoto@honolulu.gov]
Sent: Monday, December 20, 2010 3:03 PM
To: Zelasko, Elizabeth (FTA); Matley, Ted (FTA)
Cc: aranda@infraconsultllc.com; Zaref, Amy; Souki, Jesse K.
Subject: Honolulu Rail Project

Hi Liz and Ted –

See the following email for advice regarding counterpart execution of the PA. We have been discussing how we can expedite the execution process and will be making a recommendation shortly. If you would rather discuss by phone, let's schedule a time to talk.

Faith

From: Souki, Jesse K.
Sent: Friday, December 17, 2010 1:55 PM
To: Miyamoto, Faith
Cc: Takeuchi, Gary Y.
Subject: TRNS PA Counterparts Clause

Faith,

As we discussed, if FTA is considering allowing signature of the PA in counterparts, be sure FTA adds the following language to the end of the PA:

> This agreement may be executed by the parties in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

A "counterparts" clause sets out that the parties may sign separate – ***but identical*** – paper copies and that this practice will constitute valid acceptance. The agreements provided to the parties for signature must be ***identical***.

The first sentence of the above clause, allows several parties to sign one page (e.g., all signatories on one page) and/or separate pages (e.g., NTHP and HHF on one page, OIBC and Hui Malama on separate pages).

One way to avoid error is to keep all originals of the PA (each copy of the PA sent out for counterpart signature is considered an original) together in one place to be distributed to all the parties at the same time via post (paper copies mailed out via certified mail at the same time is best). Each party signs the document and sends the original signature page to you or Elizabeth (whoever is designated) by a date certain of your choosing.

Even though counterparts generally create an enforceable agreement it is best to have all of the signatures appearing on the same page on the same copy of the agreement, even if not all parties signed together at the same place and time. With that in mind, you may want to have at least the Signatories all sign the same page, and then attach counterparts for the non-essential parties to the PA.

The process I describe above is not unlike the process I used on land use transactions for millions of dollars with parties in California, New York and Hawaii—it should work for the PA. The only difference here is that the parties are less sophisticated,

so you'll need to be sure they understand the process, which should be succinctly described in a cover letter accompanying the PA for their signature.

Please let me know if you'd like to discuss further. Feel free to share this email with Elizabeth for her and her counsel's consideration.

Sincerely,
Jesse K. Souki
Deputy Corporation Counsel
City and County of Honolulu
Ph: (808) 768-5135
Fax: (808) 768-1316

Happy Holidays! Please consider the environment before printing this email.

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