Message

From: Michael Matsuo [MMATSUO@hbws.org]
Sent: 12/8/2017 7:12:44 PM
To: Johnson, Jeff [JEFF.JOHNSON@aecom.com]
CC: Ernest Lau [elau@hbws.org]; Linder, Steven [Linder.Steven@epa.gov]; Pallarino, Bob [Pallarino.Bob@epa.gov]; Joe Tracy (JTracy@intera.com) [JTracy@intera.com]; John Sigda (jsigda@intera.com) [jsigda@intera.com]; Mark Manfredi (mark.manfredi@navy.mil) [mark.manfredi@navy.mil]; steven.chang@doh.hawaii.gov; Terry Tolan [TTolan@intera.com]; Namihira, Tammy (tnamihira@honolulu.gov) [tnamihira@honolulu.gov]; Joan White [JWHITE@hbws.org]; Priscilla May [pmay@hbws.org]; Brown, David K. [david.brown@morganlewis.com]; Lau, Jeff A (jlau3@honolulu.gov) [jlau3@honolulu.gov]; ERWIN KAWATA [EKAWATA@hbws.org]
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008
Attachments: AECOM COE to Halawa Shaft for Seismic Survey DRAFT Rev2017-12-08.docx

Hi Jeff,

Please find attached the revised draft COE. Please have the appropriate AECOM official sign the document and return the signature page and COI to me.

Mahalo, Mike

From: Michael Matsuo
Sent: Wednesday, December 06, 2017 8:29 AM
To: 'Johnson, Jeff' <JEFF.JOHNSON@aecom.com>; ERWIN KAWATA <EKAWATA@hbws.org>
Cc: Ernest Lau <elau@hbws.org>; Steven Linder (linder.steven@epa.gov) <linder.steven@epa.gov>; Bob Pallarino (pallarino.bob@epa.gov) <pallarino.bob@epa.gov>; Joe Tracy (JTracy@intera.com) <JTracy@intera.com>; John Sigda (jsigda@intera.com) <jsigda@intera.com>; Mark Manfredi (mark.manfredi@navy.mil) <mark.manfredi@navy.mil>; Steve Chang (steven.chang@doh.hawaii.gov) <steven.chang@doh.hawaii.gov>; Terry Tolan <TTolan@intera.com>; Namihira, Tammy (tnamihira@honolulu.gov) <tnamihira@honolulu.gov>; Joan White <JWHITE@hbws.org>; Priscilla May <pmay@hbws.org>; Brown, David K. <david.brown@morganlewis.com>; Lau, Jeff A (jlau3@honolulu.gov) <jlau3@honolulu.gov>
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hi Jeff,

We acknowledge the need to submit the ACH form and Form W-9 for AECOM to pay BWS directly for any costs associated with the seismic survey COE. We'll complete the form and submit it soon.

Regarding your requests for editing Paragraph 16 (sorry, when I did the actual draft COE, the paragraph numbering shifted, so yes, Paragraph 12 in the original COE template we sent you is Paragraph 16 in the actual draft COE) and deleting the Release and Waiver form, I have to check with our legal counsel on that. I'm not entirely certain that AECOM's indemnification would cover any claims or suits that anyone entering our property could bring against BWS. The R&W form is standard for all our COEs. I understand that additional time may be needed for all individuals entering our property to review and sign the R&W form. But, it is important that BWS be protected as much as possible. I'll get back to you as soon as I can.

Mahalo for your patience.

Mike

From: Johnson, Jeff [mailto:JEFF.JOHNSON@aecom.com]
Sent: Tuesday, December 05, 2017 6:17 PM
To: Michael Matsuo <MMATSUO@hbws.org>; ERWIN KAWATA <EKAWATA@hbws.org>

Cc: Ernest Lau <elau@hbws.org>; LISA KIM <LKIM@hbws.org>; Steven Linder (linder.steven@epa.gov) <linder.steven@epa.gov>; Bob Pallarino (pallarino.bob@epa.gov) <pallarino.bob@epa.gov>; Joe Tracy (JTracy@intera.com) <JTracy@intera.com>; John Sigda (jsigda@intera.com) <jsigda@intera.com>; Mark Manfredi (mark.manfredi@navy.mil) <mark.manfredi@navy.mil>; Steve Chang (steven.chang@doh.hawaii.gov) <steven.chang@doh.hawaii.gov>; Terry Tolan <TTolan@intera.com>; Namihira, Tammy (tnamihira@honolulu.gov) <tnamihira@honolulu.gov>; Joan White <JWHITE@hbws.org>; Priscilla May <pmay@hbws.org>
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hello Michael:

Regarding the fee identified in the first paragraph on page 1 of the Consent of Entry, please be aware that the payment can currently be made to City and County of Honolulu; however, any payment directly to Board of Water Supply will require that the ACH form included in the attached email be completed and provided to AECOM.

AECOM has reviewed the Consent of Entry and AECOM respectfully requests the following:

(1) Paragraph 12 to read as follows:

> 12. Risk of Loss ; Indemnity. Grantee assumes all risk of loss, including, without limitation, all risk of damage to property and bodily injury or death to persons, incurred in, on or about the Grantor's Property ~~during, or directly or indirectly~~ arising directly or indirectly out of, the entry onto and use of the Grantor's Property by Grantee or Grantee's agents, employees, volunteers, contractors, agents, invitees, servants and representatives (hereafter collectively "Authorized Persons"), ~~regardless of what causes any such damage, injury or death~~. Grantee hereby waives all claims that Grantee may have, now or in the future, against Grantor and Affiliates, for any such damage, injury or death. Further, Grantee agrees to indemnify, defend and hold harmless Grantor and Affiliates from and against any and all claims, liabilities, damages, losses costs and expenses, including reasonable attorneys' fees and costs (hereafter collectively "Claims"), for which Grantor and Affiliates may become liable, including, without limitation, Claims made by any Authorized Persons or any person, including insurance companies and employees, claiming under, or reporting to, or under the supervision or control of Grantee or any Authorized Persons, which Claims, directly or indirectly, arise out of, are caused or occasioned by, or result from: (a) the entry by Grantee or any Authorized Persons onto Grantor's Property, (b) the performance by Grantee or any Authorized Persons of work at or about Grantor's Property, (c) a breach of this Consent of Entry by Grantee, (d) any permitted improvement or other improvement or property placed on the Grantor's Property by Grantee or any Authorized Persons, and/or (e) any negligent or more culpable act or omission of Grantee or any Authorized Persons on or about Grantor's Property. Grantee further agrees that in case of any Claim, threatened or actual, against Grantor and/or Affiliates, upon written request of Grantor and/or Affiliates, Grantee shall defend the same at Grantee's expense by counsel reasonably satisfactory to the person requesting the same. If no request is made for such defense or if Grantee does not provide such defense, then Grantee shall reimburse Grantor and Affiliates for the cost of such defense, and agrees to cooperate with Grantor and Affiliates in such defense, including, but not limited to, the providing of affidavits and testimony upon request of Grantor and Affiliates. Without limiting the foregoing, if as a result of Grantee's actions or inactions, or use of Grantor's Property or construction, use or maintenance of any improvements, whether or not permitted by this Consent of Entry, or impacts on any land, flora, fauna, or natural resources, Grantor is cited by any governmental agency, Grantee shall at its sole expense, but with input from Grantor, defend such citation, cure any violations of applicable laws or regulations, and pay any fines or damages assessed. Grantee may, at its sole cost, appeal any decision to pay any fines or damages. The rights and obligations under this Section 12 shall survive the termination of this Consent of Entry.

REASON: The way it is currently written (prior to the requested changes above) it could be interpreted that if lightning strikes and injures or kills a bystander while watching AECOM's vehicles entering onto the City's property or if an earthquake strikes and causes damage to property, injury or death of person(s) "in, on or about" the City's property while AECOM's vehicles are entering onto the City's property, AECOM "assumes all risk" of such damage, injury or death since AECOM is required to do so "regardless of what causes any such damage, injury or death."

(2) Request to remove the "Release and Waiver Form" requirement from the COE agreement
REASON: AECOM's obligations under the Consent of Entry protects BWS with the Indemnity Clause requiring AECOM to defend and hold harmless BWS, therefore it is requested that the Release and Waiver Form be removed from the COE agreement. There is concern that we may also run into delays or push back from each person required to sign the "Release and Waiver Form". It is AECOM's responsibility to advise each employee being requested to sign the Release and Waiver Form to carefully review the document and suggest that they may wish to consult their own legal counsel before signing the document. It is important that each person being required to sign this document understand the scope and breadth of this Release and Waiver Form, including the rights that they are surrendering under its terms. Therefore, given AECOM's obligations under the COE agreement which already requires that AECOM defend and protect BWS, we respectfully request to remove this Release and Waiver Form from the COE agreement.

Please advise if you have any questions.

Jeff Johnson

Jeff Johnson
AECOM Technical Services, Inc.
D: 808.356.5340
C: 808.227.2761

From: Michael Matsuo [mailto:MMATSUO@hbws.org]
Sent: Saturday, December 02, 2017 2:56 PM
To: Johnson, Jeff; ERWIN KAWATA
Cc: Ernest Lau; LISA KIM; Steven Linder (linder.steven@epa.gov); Bob Pallarino (pallarino.bob@epa.gov); Joe Tracy (JTracy@intera.com); John Sigda (jsigda@intera.com); Mark Manfredi (mark.manfredi@navy.mil); Steve Chang (steven.chang@doh.hawaii.gov); Terry Tolan; Namihira, Tammy (tnamihira@honolulu.gov); Joan White; Priscilla May
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hi Mr. Johnson,

Please find attached for your review the draft Consent of Entry for the seismic survey work on the BWS Halawa Shaft and Xeriscape Garden property. If it meets with your approval, please have the appropriate AECOM official sign the Consent and email me a copy of the signature page with your Certificate of Insurance. A copy of the executed Consent of Entry will be sent to you for your files once we have processed it.

If you have any questions, please contact me as shown below. Mahalo!

Mike Matsuo, P.E.
Land Administrator
Land Division
Board of Water Supply
Phone: (808) 748-5951
Fax: (808) 550-5004
Email: mmatsuo@hbws.org

From: Johnson, Jeff [mailto:JEFF.JOHNSON@aecom.com]
Sent: Friday, December 01, 2017 7:26 AM
To: ERWIN KAWATA <EKAWATA@hbws.org>
Cc: Ernest Lau <elau@hbws.org>; LISA KIM <LKIM@hbws.org>; Steven Linder (linder.steven@epa.gov)

<linder.steven@epa.gov>; Bob Pallarino (pallarino.bob@epa.gov) <pallarino.bob@epa.gov>; Joe Tracy (JTracy@intera.com) <JTracy@intera.com>; John Sigda (jsigda@intera.com) <jsigda@intera.com>; Mark Manfredi (mark.manfredi@navy.mil) <mark.manfredi@navy.mil>; Michael Matsuo <MMATSUO@hbws.org>; Steve Chang (steven.chang@doh.hawaii.gov) <steven.chang@doh.hawaii.gov>; Terry Tolan <TTolan@intera.com>
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hello Erwin:

The terms below are acknowledged. Thank you for your assistance.

JJJ

Jeff Johnson
AECOM Technical Services, Inc.
D: 808.356.5340
C: 808.227.2761

From: ERWIN KAWATA [mailto:EKAWATA@hbws.org]
Sent: Friday, December 01, 2017 4:46 AM
To: Johnson, Jeff
Cc: Ernest Lau; LISA KIM; Steven Linder (linder.steven@epa.gov); Bob Pallarino (pallarino.bob@epa.gov); Joe Tracy (JTracy@intera.com); John Sigda (jsigda@intera.com); Mark Manfredi (mark.manfredi@navy.mil); Michael Matsuo; Steve Chang (steven.chang@doh.hawaii.gov); Terry Tolan
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hello Jeff,

We acknowledge your request to apply up to a maximum of 10 hits at each location using the 12-pound sledge hammer within the survey area. Per our discussion all strikes using the 40 kg and 12 pound hammers will be limited to the survey area denoted as Transect line B and at the 5 feet intervals specified in your Nov. 29, 2017 letter (attached for reference). Any non-conformance with the survey conditions discussed in this letter and herein (which will also be made part of the BWS consent of entry) will result in immediate termination of the survey and removal of all AECOM and survey personnel from our Halawa Shaft and Xeriscape Garden property.

Per our discussion, the survey is tentatively scheduled for Dec. 14, 2017 with utility toning performed on Dec. 12. The final survey and toning dates are pending final BWS approval of the consent of entry (COE) to our Halawa Shaft and Xeriscape Garden property. Your BWS point of contact and officer-in-charge for the survey and COE will be the BWS Land Administrator, Mr. Michael Matsuo, who will be contacting you to begin the COE process. I will continue to be the overall BWS Red Hill project administrator but your primary communications regarding the survey logistics will be with Mr. Matsuo. You can reach Mr. Matsuo at MMatsuo@hbws.org or 748-5951. Thank you for your assistance. Please let me know if you have any further questions.

Erwin

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From: Johnson, Jeff [mailto:JEFF.JOHNSON@aecom.com]
Sent: Thursday, November 30, 2017 6:29 PM
To: ERWIN KAWATA <EKAWATA@hbws.org>
Cc: Ernest Lau <elau@hbws.org>; LISA KIM <LKIM@hbws.org>; Steven Linder (linder.steven@epa.gov) <linder.steven@epa.gov>; Bob Pallarino (pallarino.bob@epa.gov) <pallarino.bob@epa.gov>; Joe Tracy

(JTracy@intera.com) <JTracy@intera.com>; John Sigda (jsigda@intera.com) <jsigda@intera.com>; Mark Manfredi (mark.manfredi@navy.mil) <mark.manfredi@navy.mil>; Michael Matsuo <MMATSUO@hbws.org>; Steve Chang (steven.chang@doh.hawaii.gov) <steven.chang@doh.hawaii.gov>; Terry Tolan <TTolan@intera.com>; Michael Matsuo <MMATSUO@hbws.org>
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hello Erwin:

Please see below regarding the three items we discussed today.

1. Regarding the number of hits at each location where the 12-pound sledge hammer is used, we will do up to a maximum of 10 hits at each location. We anticipate fewer hits (4 – 5) will be required for most locations, but more hits are required if there is a lot of interference.

2. We understand that the transect cannot extend beyond your property boundary.

3. We understand that there are irrigation lines located in the grassy area and will take precaution to avoid damage to the lines.

Thank you for your assistance. Please advise if you have any additional questions.

JJJ

Jeff Johnson
AECOM Technical Services, Inc.
D: 808.356.5340
C: 808.227.2761

From: Johnson, Jeff
Sent: Wednesday, November 29, 2017 6:56 PM
To: 'ERWIN KAWATA'
Cc: Ernest Lau; LISA KIM; Steven Linder (linder.steven@epa.gov); Bob Pallarino (pallarino.bob@epa.gov); Joe Tracy (JTracy@intera.com); John Sigda (jsigda@intera.com); Mark Manfredi (mark.manfredi@navy.mil); Michael Matsuo; Steve Chang (steven.chang@doh.hawaii.gov); Terry Tolan; Michael Matsuo
Subject: RE: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Hello Erwin:

Attached is AECOM's response to comments in your letter dated November 22, 2017. Also attached is an Excel file of an Automated Clearing House Authorization Form referenced in AECOM's Response to Comment No. 2 in the event it needs to be completed. If you have any questions or additional comments, please let me know.

Thx,
JJJ

Jeff Johnson
AECOM Technical Services, Inc.
D: 808.356.5340
C: 808.227.2761

From: ERWIN KAWATA [mailto:EKAWATA@hbws.org]
Sent: Wednesday, November 22, 2017 3:29 PM
To: Johnson, Jeff
Cc: Ernest Lau; LISA KIM; Steven Linder (linder.steven@epa.gov); Bob Pallarino (pallarino.bob@epa.gov); Joe Tracy (JTracy@intera.com); John Sigda (jsigda@intera.com); Mark Manfredi (mark.manfredi@navy.mil); Michael Matsuo; Steve Chang (steven.chang@doh.hawaii.gov); Terry Tolan; Michael Matsuo
Subject: Red Hill - AECOM letter dated November 20, 2017 re request for access for seismic survey at TMK 99010008

Jeff,

Attached is the BWS reply to the subject AECOM letter dated November 20, 2017 (copy included for reference). The hard copy will be sent by postal mail. If you have any questions, please call me.

Erwin Kawata
Honolulu Board of Water Supply
630 South Beretania Street
Honolulu, Hawaii 96813
Office: 808-748-5080
Email: ekawata@hbws.org

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