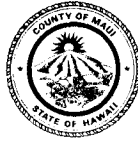


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Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 17, 2016

Mr. Dave Taylor, Director
Department of Water Supply
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Taylor:

SUBJECT: **ACCESS THROUGH THE HANS MICHEL PROPERTY FOR
MAINTENANCE AND OPERATION OF KANAHA VALLEY
STREAM** (WR-27)

Attached please find an agreement dated June 3, 1994, between Hans Michel and the Board of Water Supply.

The agreement lists 20 obligations to be fulfilled by Mr. Michel or the Board. This agreement is now under the purview of the Department of Water Supply.

May I please request an update on the Department's obligations cited in the agreement?

May I request a response no later than **Tuesday, November 1, 2016**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Kimberley Willenbrink at ext. 7761, or Clarita Balala at ext. 7668).

Sincerely,

A handwritten signature in cursive script that reads "Gladys C. Baisa".

GLADYS C. BAISA, Chair
Water Resources Committee

wr:ltr:027aws01:kcw

Attachment

cc: Mayor Alan M. Arakawa
Mr. Hans Michel

AGREEMENT

THIS AGREEMENT, made and entered into this 3 day of June, 1994, by and between HANS MICHEL, whose address is 1404 Olona Place, Lahaina, Maui, Hawaii 96761-1754, referred to as the "Owner", and the BOARD OF WATER SUPPLY of the COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Maui, Hawaii, its successors and assigns, referred to as the "Board",

W I T N E S S E T H:

WHEREAS, the Owner represents that he is the fee simple owner of a parcel of real property situated at Panaewa (Kanaha Valley), Lahaina, Maui, Hawaii, identified as Tax Map Key 4-6-17:12, referred to as the "Property"; and

WHEREAS, the Board operates and maintains the Kanaha Pump Station No. 2 located within the Property; and

WHEREAS, the Board utilizes the existing unimproved roadway located on the Property to access the Board's 0.30 MG Kanaha Tank, and the Kanaha Pump Stations No. 1 and No. 2; and

WHEREAS, the Board desires to obtain from the Owner title to the Kanaha Pump Station No. 2 site and easements for waterlines and access; and

WHEREAS, the Owner had made a request to the Board to provide compensation, improvements, water service, and

miscellaneous work in exchange for the conveyance of title to the Kanaha Pump Station No. 2 site and easements for waterlines and access; NOW, THEREFORE

W I T N E S S E T H F U R T H E R T H A T:

FOR AND IN CONSIDERATION of the mutual obligations of the parties to be performed as hereinafter set forth, it is hereby understood and agreed by the Owner and the Board that:

1. Water Meter for the Property:

The Board shall provide a five-eighth inch (5/8") water meter for water service to the Property. The meter shall be installed after (1) the Owner makes a request to the Board for water service and (2) the Owner enters into an elevation agreement. The water meter shall be installed by the Board at no charge (no water system development fee or installation charge). The meter shall be located within the Property and adjacent to the existing 0.30 MG Kanaha tank site. The Owner shall pay the Board for water consumed through the meter at the Department's current rates at the time of water consumption.

2. Maintenance of the Dirt Roadway Located Between the Lahainaluna High School's Piggery and the Board's Kanaha Pump Station No. 2:

The Board shall maintain the existing roadway and stream crossing located within the Property. The Board shall

pursue a resolution with the State of Hawaii on the maintenance of the roadway and stream crossing located within the State of Hawaii property identified as Tax Map Key 4-6-18:7. The Board shall limit its maintenance work to repair damage or wear caused by the Board with crushed rock waste or base coarse. Damage to the stream crossing due to storm generated stream flows shall be jointly funded by the Owner and Board.

3. Drainage Control Improvements Within the Board's 0.30 MG Kanaha Tank Site:

The Board shall repair damages to the roadway adjacent to the southern boundary of the 0.30 MG Kanaha tank site, referred to as the "Tank Site", caused by rainfall surface runoff flowing through the Tank Site. Repair work shall restore the surface of the ground to their original condition to the extent that such restoration work is reasonably possible.

4. Board Vehicles Parking on the Property Adjacent to the 0.30 MG Kanaha Tank:

The Owner shall allow Board vehicles to park on the Property on the southern side adjacent to the Tank Site. The Board shall provide grading work to maintain the parking area.

5. **Grading of the Roadway Near the Tank Site Access Driveway Gate:**

The Board shall perform excavation work to the area near the Tank Site access driveway gate along the roadway to provide the Owner with a turn-around area for vehicles. The Board shall grade the area only one time to the satisfaction of the Owner.

6. **Board 0.30 MG Kanaha Tank Site Boundary Adjustment:**

The Board shall modify the subdivision map (SD 90-15) currently being processed for the acquisition of the Tank Site lot to delete the portion of land the Owner wishes to acquire. The Owner shall coordinate with the State to acquire the State owned land.

7. **Easements:**

The Owner shall grant easements within the Property in favor of the Board for (1) Board vehicle parking, (2) the 0.30 MG Kanaha tank overflow discharge, (3) the 0.30 MG Kanaha tank site surface runoff discharge, (4) the pump prelubrication discharges at Pump Stations No. 1 and No. 2, (5) vehicular access along the existing dirt road to the 0.30 Kanaha MG tank site and Pump Stations No. 1 and No. 2, and (6) waterlines and appurtenances. The locations of the subjects within this paragraph are shown on the map attached hereto as Exhibit "B".

8. Repair Eroded Areas Within the Property and Along the Pedestrian Trail:

The Board shall discuss with the State of Hawaii and Pioneer Mill Co., Ltd. the request by the Owner to repair the pedestrian trail along the cliff that was eroded by the overflow water from the screenbox and also the erosion on the Property caused from the overflow water.

9. Boulder Removal:

The Board shall, at its own cost, remove the five boulders from the Property. The Owner may choose to have the Board relocate the boulders to a different location within the Property.

10. Relocation of Board Waterlines:

The Board shall, at its own cost, relocate a portion of the six-inch waterline from Pump Station No. 2 into the access easement area (onto the existing roadway area).

11. Ownership of the Pump Site No. 2:

The Owner shall grant, convey and dedicate unto the Board title to the Kanaha Pump Site No. 2 site, as revised. The Board shall transfer the title for the Kanaha Pump Station No. 2 site back to the Owner or his heirs in the event the pump station function is abandoned by the Board, at no cost to the Owner or his heirs.

12. Relocation of Access Gate at Pump Station No. 2:

The Board shall relocate the vehicle access to the east side of the Pump Station No. 2. The Owner shall provide the Board the necessary easements for such access from the roadway. The Owner shall provide the necessary easements to Maui Electric Company for any power pole relocations as required.

13. Grading of Land Near Pump Station No. 2 for Access Onto Kanaha Stream:

The Board shall discuss with the State of Hawaii and Pioneer Mill Co., Ltd. the grading (excavation) work the Owner requested at the area east of the Pump Station No. 2. The Owner desires the grading work to provide improved access for heavy construction equipment into the Kanaha Stream bed.

14. Flowage Easement for Discharge From the Lahaina Water Treatment Plant Improvements and the Existing State and Pioneer Mill Co., Ltd. Water Systems:

The Board shall pay Owner TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for the flowage easement. The easement path shall extend from the southern boundary line of the Property to the Kanaha Valley. Owner shall not interfere with, terminate, or in any way restrict or affect the Board's easement for any reason, including suspected or actual unauthorized use by anyone other than the Board.

The Board shall not give permission to anyone to use the flowage easement, except its employees and agents who are pursuing business of the Board.

15. Payment of Attorney Fees:

The Board shall pay the Owner for his attorney expenses in the sum of NINE HUNDRED AND NO/100 DOLLARS (\$900.00) incurred during the May 11, 1993 meeting.

16. Reimbursement to the Owner for Improvements Performed by the Owner Which Benefitted the Board:

The Board shall pay FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) to the Owner for the materials, equipment and labor the Owner had expended for various maintenance and improvements performed which benefits the Board.

The locations of the subjects within paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 are shown on the map attached hereto as Exhibit "A", as revised.

17. Damage or Injury from Landslide or Earthquake and Falling Rocks:

The Owner shall not be responsible or liable for any damage to property or vehicles or injuries to person caused by landslide or earthquake and rocks from the hillside. Board shall indemnify and protect Owner from any and all claims for damage to Board's property or vehicle or injury to its employees resulting from such landslide, earthquake or falling rocks, including attorney's fees and costs.

18. Stream Crossing and Heavy Flood Water:

Owner shall not be held responsible for loss of vehicles or injury to person (its employees and agents) when crossing the stream. The Board shall indemnify and protect Owner from any or all claims for loss of Board's vehicles, or injury to its employees and agents, when crossing the stream during heavy flood water, including attorney's fees and costs.

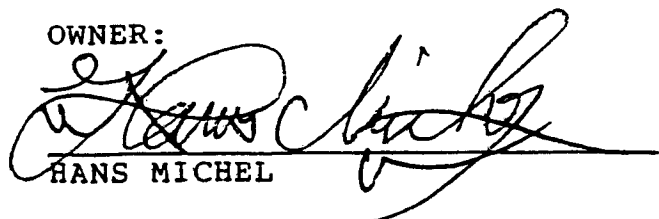
19. Damage to Vehicle and Injuries to Employees and Agents:

The property belonging to Owner is a farm. Owner shall not be held responsible for any damage to Board's vehicles or its employees and agents caused by collisions with the Owner's animals. The Board shall indemnify and protect Owner from any and all claims for damage to vehicles or injury to its employees and agents caused by collision with Owner's animals, including attorney's fees and costs.

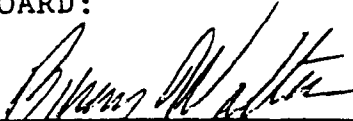
20. The Board shall not give permission to anyone to use the roadway easement, except its employees and agents who are pursuing business of the Board.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

OWNER:

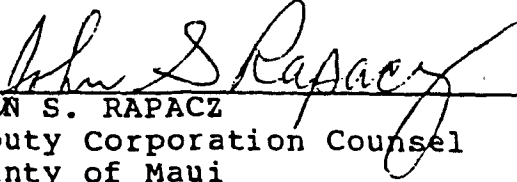

HANS MICHEL

BOARD:



BYRON WALTERS
Its Chairperson

APPROVED AS TO FORM
AND LEGALITY:



JOHN S. RAPACZ
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

)

)

SS:

COUNTY OF MAUI

)

On this 3 day of June, 1994, before me personally appeared HANS MICHEL, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Raymond Wilson

Notary Public, State of Hawaii

My commission expires: 6/17/95

STATE OF HAWAII

)

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SS:

COUNTY OF MAUI

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On this 28th day of September, 1994, before me appeared BYRON WALTERS, to me personally known, who, being by me duly sworn, did say that he is the Chairperson of the BOARD OF WATER SUPPLY of the County of Maui, and that the seal affixed to the foregoing instrument is the lawful seal of the BOARD OF WATER SUPPLY, and that said instrument was signed and sealed on behalf of said BOARD OF WATER SUPPLY, and said BYRON WALTERS acknowledged said instrument to be the free act and deed of said BOARD OF WATER SUPPLY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Josephann Miller

Notary Public, State of Hawaii

My commission expires: 4/19/98