

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740

June 24, 2024

Via email only at county.clerk@mauicounty.us

Honorable Alice Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: Litigation Matter – Settlement Authorization
COUNTY OF MAUI RISK FILE NO. 2023-1035 OF RINZAI ZEN
MISSION

Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI RISK FILE NO. 2023-1035 OF RINZAI ZEN MISSION." The purpose of the proposed resolution is to discuss settlement options with regard to the above-referenced lawsuit.

I request that the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible. For further information, I have also attached the claim filed in this matter.

An executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and/or the Committee.

If you have any questions or concerns, please do not hesitate to contact us. Thank you for your anticipated assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Gores".

JOHN J. GORES
Deputy Corporation Counsel

cc:
Attachment

2024 JUN 25 AM 9:00
OFFICE OF THE
COUNTY CLERK

RECEIVED

MOANA M. LUTEY
County Clerk



RICHELLE M. THOMSON
Deputy County Clerk

OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

July 13, 2023

John Mullen & Company, Inc. (JMC)
Via email: claims@johnmullen.com

Attn: Unit Code 99

Respectfully transmitted is a copy of a claim against the County of Maui filed by Alan Nago, on behalf of Rinzai Zen Mission, of 120 Alawai Road, Paia, which was received by our office on July 13, 2023.

Respectfully,


MOANA M. LUTEY
County Clerk

Attachment

cc: Mayor
Corporation Counsel
Council Chair

/lks

COUNTY OF MAUI

RECEIVED

CLAIM FOR DAMAGE OR INJURY 2023 JUL 13 AM 8:21

PLEASE PRINT CLEARLY

- 1. Claimant: Mr. Mrs. Ms. Alan Nago for Rinzai Zen Mission
- 2. Address: 120 Alawai Rd. Paia, HI 96779 Next to Baldwin Beach Park
- 3. Telephone No. 808 281-7181 Email: frannago@live.com
- 4. Date of Accident: 12-20-2022, Tuesday; 9:34 A.M.
- 5. Location of Accident: 120 Alawai Rd. Paia, HI 96779, Next to Baldwin park
- 6. Amount of Claim: Property Damage \$ 36,584.31 Personal Injury \$

7. Describe the accident in detail. Indicate all the facts, causes, persons involved, witnesses, extent of damage, etc., and why you think the County is responsible. Attach additional sheets as needed.

The Iron wood tree from Baldwin Beach Park fell during a storm on to our Temple property, knocking out power cable, and damaging our Columbarium.
with myself, Chris Kinzle, Alvin Kametani (East Maui Park Supervisor at the time) and Noah were present to assess the damages. Once the tree was removed from our Temple, we took it upon our selves to replace & repair the fencing area at our own cost. we are not seeking reimbursement for this repair.

8. If you carry insurance applicable to this claim, please provide the name and address of the insurance company and your policy number.

No insurance is applicable for this claim

Policy No. _____

A. Did you file a claim with your insurance company? _____

If yes, amount claimed \$ _____ Deductible amount \$ _____

B. If a claim was filed with your insurance company, what action do they intend to take?

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Alan Nago, President, Rinzai Zen Mission
 (Signature of Claimant)

7-7-2023
 (Date)

Karla H. Peters

Parks Maintenance Superintendent
Parks & Recreation
County of Maui
700 Hali'a Nakoia St., Unit 2
Wailuku, Maui, Hawaii 96793
Office: (808) 270-7327
karla.peters@co.maui.hi.us

Our Mission: "Provide safe, satisfying and cost effective recreational opportunities for the residents of and visitors to Maui County."

>>> Fran Nago <frannago@live.com> 12/21/2022 6:54 AM >>>

Good morning Karla,

This is Alan Nago from Rinzai Zen Mission. We experienced a power outage a few days ago due to a fallen Ironwood tree from the Baldwin Beach Park onto our power lines. It brought down our power lines and pole and damaged part of our Columbarium. Would you please be able to assist us by sending someone down to our Temple to assess our situation? Thank You, Aloha, Alan. (808) 281-7181.

Get Outlook for iOS



Erin Nago <erinnago@gmail.com>

Fwd: Rinzai Zen Mission,

1 message

Fran Nago <frannago@live.com>
To: Erin Nago <erinnago@gmail.com>

Thu, Jan 12, 2023 at 9:26 AM

Get Outlook for iOS

From: Fran Nago <frannago@live.com>
Sent: Thursday, January 12, 2023 8:54:33 AM
To: Karla Peters <Karla.Peters@co.maui.hi.us>
Subject: Re: Rinzai Zen Mission,

I got the info, Karla. Thank You for being so prompt and helpful, appreciate it! Aloha, Alan.

Get Outlook for iOS

From: Karla Peters <Karla.Peters@co.maui.hi.us>
Sent: Thursday, January 12, 2023 8:47:57 AM
To: Fran Nago <frannago@live.com>
Cc: Chris Kinzle <Chris.Kinzle@co.maui.hi.us>; Karissa Kaeo <Karissa.Kaeo@co.maui.hi.us>; Yassin Oleiwan <Yassin.Oleiwan@co.maui.hi.us>
Subject: Re: Rinzai Zen Mission,

Hi Alan,

It was nice speaking with you! As discussed, please see information below regarding the damage to the Columbarium. Should you have any questions regarding the process, please contact Susan Pacheco at the County's Risk Management Division. Susan's email is Susan.Pacheco@co.maui.hi.us.

First, please download, print and complete the Maui County Claim Form: <https://www.mauicounty.gov/DocumentCenter/View/12851/Claim-Form-Revision-?bidId=>. Please follow the instructions on the first page as the process requires an original document to be submitted. The fillable form is also attached for your use.

It's important that you take good photos of the damage in as much detail possible. I've attached the photos that were provided to Chris. If you want to pay to fix the damages now, please submit receipts to the Risk Management Division for reimbursement once it's complete. These receipts should reflect just the corrections/fixes for the related damage.

if you prefer to defer the work and get paid first, you will need to submit three bids from contractors for the work and will get a check for the lowest cost bid.

Take care!
Karla



Ironwood tree that fell on to Rinzaï
Zen Mission property from Baldwin Beach Park.
12-20-2022 Temple in Background.





Debris from iron wood tree from Baldwin
Beach Park on Rinzai Zen Mission property.
It Knocked out Power & Cable Lines,
12-20-2022



Baldwin Beach Park Ironwood tree over
Temple's fence.
12-20-2022



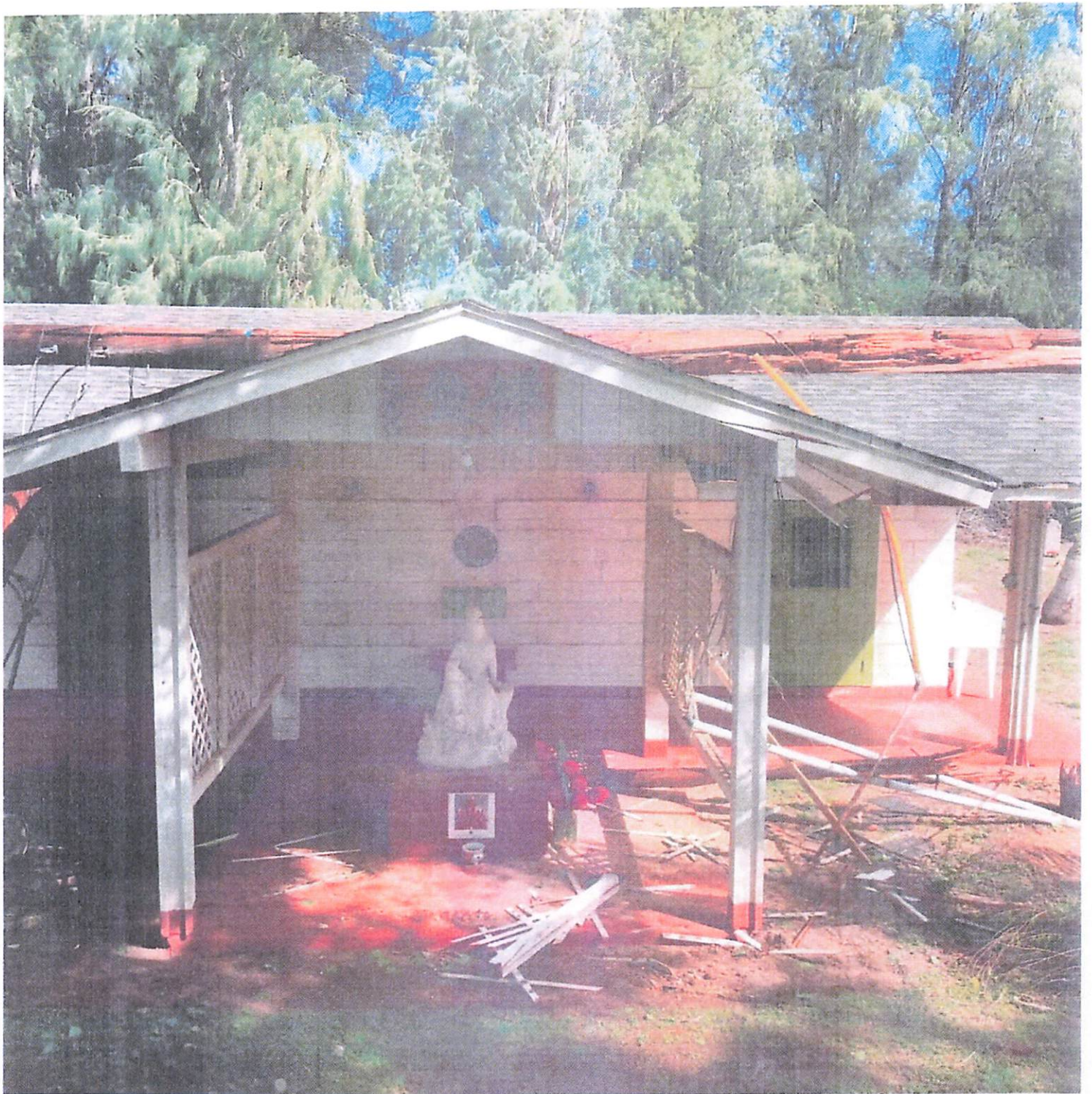
Damaged Fencing from fallen Tree.

12-20-22

Our Temple had taken on the replacement and repair of the fencing at our own cost. We are not seeking reimbursement for this repair.

Repaired Fencing
3-18-2023



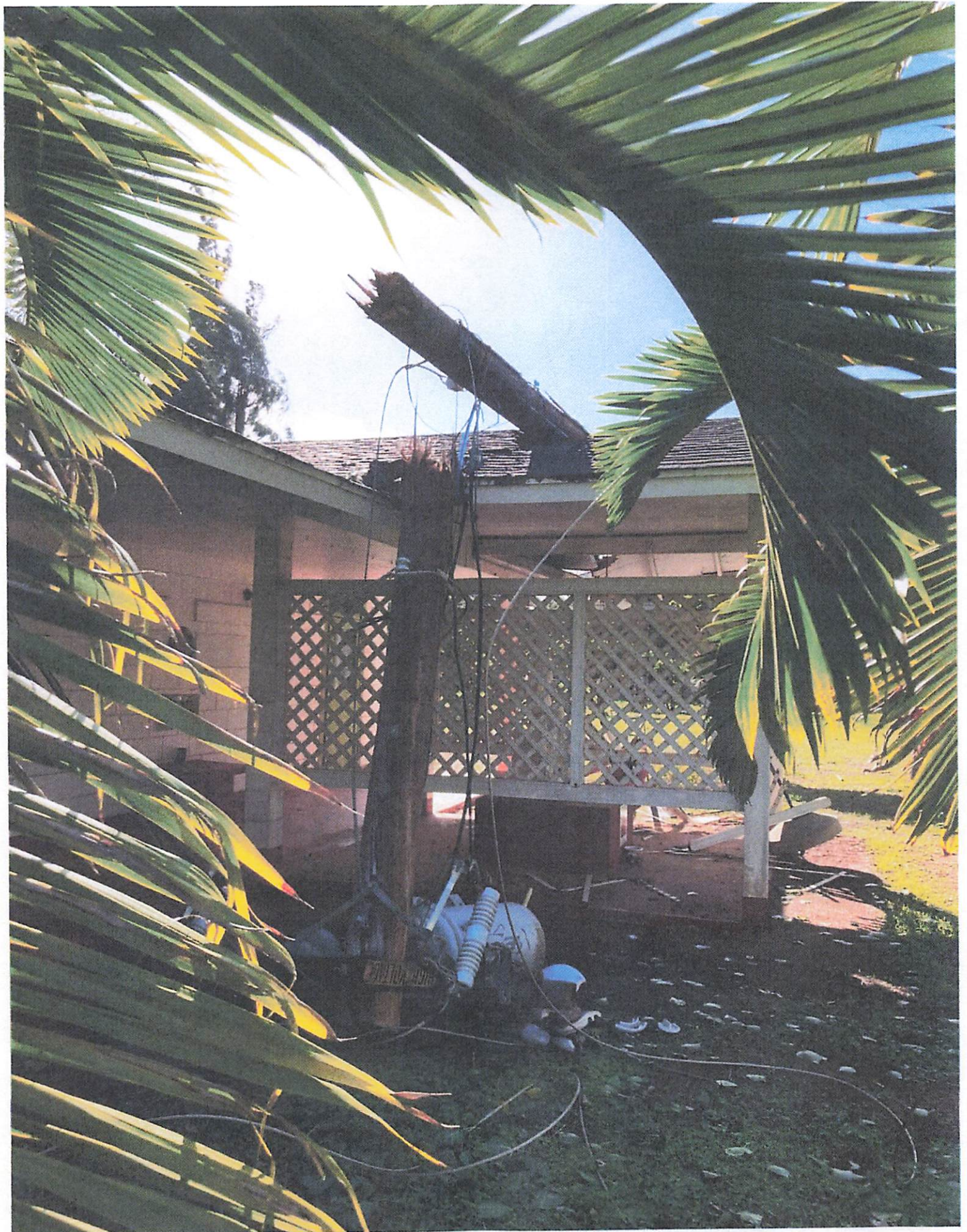


Columbarium Damage caused by fallen Ironwood tree from Baldwin Park that brought down power lines + cable lines, in turn brought down a power pole. 12-20-2022











Byro Builders Inc.

P.O. Box 1589 BC-34426
 Wailuku, Maui, HI 96793
 E-mail: info@byrobuilders.com
 Phone: 808-344-3278

/

PROPOSAL

30223

CLIENT:
 Rinzai Zen Mission Church
 Attn: Mr. Alan Nago
 PO Box 791586
 Paia, HI 96779
 Ph: 808-281-7181

PROJECT:
 120 Alawai Road
 Columbarium Shrine Roof Repairs

SCOPE OF WORK	
Columbarium shrine roof repairs as described below to include materials	
LABOR AND MATERIALS	AMOUNT
Carpentry: See attachment #1 for details.	11,152.71
Roofing: See attachment #1 for details.	8,434.19
Masonry: See attachment #1 for details.	5,175.56
Electrical: See attachment #1 for details.	1,591.44
Painting: See attachment #1 for details.	3,850.00
<p>ck# 3025 down payment = \$19,000.00 - 4-4-2023 ^{Deposit}</p> <p>3039 Balance = \$17,584.31 - 6-20-2023 ^{Paid}</p> <p>Total paid \$36,584.31 we are seeking reimbursement of this amount, please make a check out to Rinzai Zen Mission.</p> <p>Thank you for your consideration.</p> <p>Alan Nago President Rinza Zen Mission</p>	
Direct Cost	\$30,203.90
Overhead Cost	3,020.39
Profit	1,896.53
Sub-total	35,120.82
Hawaii GET	1,463.48
Payment schedule as follows:	
1) Deposit of \$30,000.00 to commence work.	
2) Final invoice @ \$6,584.30 @ Net 10 Days	
TOTAL ESTIMATED JOB COST	
\$36,584.30	

DESCRIPTION OF SERVICES
Byro Builders Inc. will provide to Client services (collectively, the "Services") as described herein proposal as "Scope of Work".
SCOPE OF WORK
Byro Builders Inc. will provide all Services, materials and labor for the construction of as described above. This includes unless specified herein "Exclusions", specified building and construction materials, all required tools and machinery needed for completion of construction. It does not include unforeseen price increases or additional labor and materials which may be required should problems arise due to prior inferior work or hidden damages. Any alteration or deviation from above described scope of work involving extra cost, will be executed only upon written orders, and will become extra charge over and above the proposal.
COMPLIANCE WITH LAWS, REGULATIONS & CODES
Byro Builders Inc. shall provide the Services in a workmanlike manner according to industry standards and in compliance with Maui County Building Codes, all applicable OSHA, HIOSH regulations and laws, including, but not limited to all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act and the Federal Family and Medical Leave Act.
INSURANCE
Before work begins under this Agreement, Byro Builders Inc. shall placed in force valid insurance covering its full liability under the Workers' Compensation laws of the State of Hawaii and shall furnish and maintain general liability insurance. Client is required to purchase their own liability insurance and shall maintain insurance against loss or damage by fire, theft, and vandalism including extended coverage during the term of the work
FORCE MAJEURE
If performance of this Agreement or any obligation thereunder is prevented, restricted, or interfered with by causes beyond Byro Builders Inc. reasonable control ("Force Majeure"), and if Byro Builders Inc. unable to carry out its obligations gives the Client written notice of such event, then the obligations of Byro Builders Inc. invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, but not be limited to, acts of God, fire, explosion, vandalism, storm, casualty, illness, injury, general unavailability of materials or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or other labor disputes, or supplier failures. Byro Builders Inc. shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.
PLANS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS
Client will make available to Byro Builders Inc. all plans, specifications, drawings, blueprints, and similar construction documents necessary for Byro Builders Inc. to provide the Services described herein. Any such materials shall remain the property of Client. Byro Builders will promptly return all such material to Client upon completion of the Services.
WORK SITE
Client warrants that Client owns the property herein described and is authorized to enter into this Agreement. Prior to the start of construction, Client shall provide an easily accessible building site.
UTILITIES
Client shall provide and maintain water and electrical service. Client shall permit Byro Builders Inc. to use, at no cost, any electrical power and water use necessary to carry out and complete the work.
WARRANTY
Byro Builders Inc. warrants to be free of all defects in material and workmanship for (1) year from the date of completion. This warranty does not apply to any costs, repairs, or services for the following: a) Damages due to ordinary wear and tear or abuse. b) Defects that are results of characteristics common to the materials that are used. c) Loss or injury caused in any way by elements. d) Work performed by other individuals or companies not within the scope of work of Byro Builders Inc. e) Conditions resulting from condensation on or expansion or contraction of materials. The Client must notify Byro Builders Inc. in writing of any defect, malfunction, or nonconformity promptly upon discovery.

Byro Builders Inc. BC-34426

P.O. Box 1589
 Wailuku, Maui, Hawaii 96793
 Ph: 808-344-3278
 Email: info@byrobuilders.com

Invoice

Date	Invoice #
4/4/2023	346

PAID
 04/04/2023

Bill To
Rinzai Zen Mission Church PO Box 791586 Paia, HI 96779

Proposal #	P.O. No.	Terms	Project		
30223	30223	Due on receipt	2023 - Columbarium Shire Roof Repairs		
Description		Qty	Rate	Amount	
Scope of work as specified in proposal #30223 dated March 02, 2023		1	18,239.94	18,239.94	
Deposit invoice for proposal #30223 Please refer to proposal for payment schedule					
Please remit payment to above address. Mahalo!			Subtotal	\$18,239.94	

Deposit for Columbarium Repairs

Sales Tax (4.167%)	\$760.06
Total	\$19,000.00
Payments/Credits	-\$19,000.00
Balance Due	\$0.00

PAYMENT

Payment shall be made to Byro Builders Inc., P.O. Box 1559, Wahiuku, Hawaii 96793. Client agrees to pay Byro Builders Inc. as described herein proposal. If any invoice is not paid when due, interest will be added to and payable on all overdue amounts at 1% per month, or the maximum percentage allowed under applicable laws, whichever is less. Client shall pay all costs of collection, including without limitation, reasonable attorney fees. In addition to any other right or remedy provided by law, if Client fails to pay for the Services when due, Byro Builders Inc. has the option to treat such failure to pay as a material breach of this Agreement, and may cancel this Agreement and/or seek legal remedies.

MECHANIC'S LIEN

If Client fails to make scheduled payment when due and Byro Builders Inc. files an Application for Mechanic and Material man's Lien, Byro Builders Inc. shall be entitled to an award of Attorney's fees and costs regarding the Application for Mechanic and Material man's Lien as well as Attorney's fees and costs accrued in the collection of all amounts due hereunder.

GOVERNING LAW

This Agreement shall be construed in accordance with, and governed by the laws of the State of Hawaii, without regard to any choice of law provisions of Hawaii or any other jurisdiction.

CHAPTER 672E

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGEDLY ARE DEFECTIVE UNDER THE LAW. THE CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECT. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINE PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

Herein proposal is valid for 30 days from dated proposal.

Byron Nakasone

Byron Nakasone, President
Byro Builders Inc.

02/01/2023
DATE

Acceptance of Proposal - The above prices, specifications, conditions and payment schedules are satisfactory and are hereby accepted. You are authorized to do the work and accept the terms of the proposal as it constitutes a legal contract.

~~Alan H. Mayo, President~~

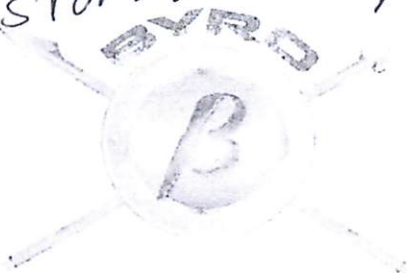
~~Rinzai Zen Mission Church~~

3-23-23

Client

DATE

\$19,000.00
Deposit for storm Damage 12-20-22
3-26-23
ck # 3025



frannago@live.com

From: Byron Nakasone <info@byrobuilters.com>
Sent: Monday, June 19, 2023 1:57 PM
To: frannago@live.com
Subject: Invoice 354 from Byro Builders Inc.
Attachments: Inv_354_from_Byro_Builders_Inc_19772.pdf

Byro Builders Inc.

Invoice

354

Amount Due: \$17,584.31

pdf
6-20-2023
ck # 3039

Dear Alan Nago:

Your Final invoice-354 for 17,584.31 is attached. Please remit payment at your earliest convenience.

Thank you for your business - we appreciate it very much.

Sincerely,
Byro Builders Inc.

808-344-3278

RINZAI ZEN MISSION GOJI KAI
PO BOX 791688
PAIA, HI 96779

3039

DATE 6-20-2023 59-102,1213 350

PAY TO THE ORDER OF

Byro Builders Inc. \$17,584.31
Seventeen thousand Five Hundred eight four and 3/100

Bank of Hawaii Columbarium

FOR INV # 354 repairs - Alan H. Nago

0065 01888 3039

Hawaii State

~~Balance of Columbarium Repairs~~



REPAIRS TO COLUMBARIUM ROOF - ESTIMATE
Rinzai Zen Mission
120 Alawai Road
Paia, HI 96779

2

SCOPE OF WORK	COST
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CARPENTRY	
------------------	--

- Remove damaged plywood roof sheathing as needed
- Remove damaged rafters and fascia to include trims as needed
- Install new farmers and fascia to include trims as needed
- Install new plywood roof sheathing as needed.
- Remove damaged lattice panels to include trims as needed.
- Install new lattice panels to include trim as needed.

ROOFING	
----------------	--

- Remove existing asphalt shingle
- Install Solarhide reflective underlayment
- Install aluminium edge flashing around perimeter of roof
- Install Landmark Pro 50yr. shingles with stainless steel nails
- Install ridge vents

MASONRY	
----------------	--

- Remove (1) plywood ceiling panel to access column support member
- Install shoring support @ repair location
- Demo (1) 8" column @ 7"- 10"
- Construct (1) 8" column @ 7"-10" to include steel work and grout
- Re-install (1) plywood ceiling panel

ELECTRICAL	
-------------------	--

SCOPE OF WORK**COST**

Remove attached conduits and junction box from CMU column to be repaired

Install new conduits and junction box to repaired CMU column

PAINTING

Mildew treatment and pressure wash surfaces to be painted

Putty and caulk as needed

Apply (1) coat primer

Apply (2) coats finish to match existing

TOTAL

Sub Total A

Contractor Overheads & Profit @ 10%

Contingencies @ 5%

Sub Total B

GET TAX

4.167%

Contract Total

\$41,666.80

Please be aware this is an estimate only. Estimate valid for 30 days. Costs are subject to change.
Please contact us for further information if required.

WEBB & CO

w. webbandcobuild.com
e. sid@webbandcobuild.com
t. 808-283-4441

BC 37358
1807 Haiku Rd. Maui, Hawaii 96708



3

BG INCORPORATED dba BG EQUIPMENT RENTAL & LEASING
 900 EHA STREET #108 WAILUKU, HI 96793 LICENSE# AC-21129

Proposal Submitted To:		Phone/Email:	Date:
Rinzai Mission Church	Attn: Alan Nago	Email	3/8/2023
Street		Job Name:	
City, State and Zip Code		Renovations	
Architect:		Job Location:	
Date of Plans:		Paia, Maui, Hawaii	Proposal #
Onsite Visit			E12724.1

We hereby submit specifications and estimates for:

- Includes: 1) See attached detail sheet
 2) GET

\$43,900.14

Notes:

- 1) Excludes water for dust control
- 2) Excludes traffic/safety control
- 3) Excludes permits, bonds, compactions & soil testing, trash services, toilet services and the fees
- 4) Rock Clause
 - a) TXC225 w/ Hammer- \$325.00/hr plus mobe
 - b) TXC140 w/ Hammer- \$275.00/hr plus mobe
 - c) Backhoe w/Hammer- \$200.00/hr plus mobe

Payment to be made as follows:

50% Deposit, Balance upon completion

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature: _____

For: Bryan Funai

Note: this proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of proposal- The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the terms of this proposal, regardless if signature is present.

Signature: _____

Date of Acceptance: _____

Signature: _____

E12724.1

Carpentry:

- 1) Remove damaged plywood roof sheathing as needed.
- 2) Remove damaged rafters and fascia to include trims as needed.
- 3) Install new rafters and fascia to include trims as needed.
- 4) Install new plywood roof sheathing as needed.
- 5) Remove damaged lattice panels to include trims as needed.
- 6) Install new lattice panels to include trims as needed.

Roofing:

- 1) Remove existing asphalt shingle.
- 2) Install Solarhide reflective underlayment.
- 3) Install aluminum edge flashing around perimeter of roof.
- 4) Install Landmark Pro 50yr. shingles with stainless steel nails.
- 5) Install ridge vents.

Masonry:

- 1) Remove (1) plywood ceiling panel to access column support member.
- 2) Install shoring support @ repair location.
- 3) Demo (1) 8" column @ 7'-10".
- 4) Construct (1) 8" column @ 7'-10" to include steel work and grout.
- 5) Re-install (1) plywood ceiling panel.

Electrical:

- 1) Remove attached conduits and junction box from CMU column to be repaired.
- 2) Install new conduits and junction box to repaired CMU column.

Painting:

- 1) Mildew treatment and pressure wash surfaces to be painted.
- 2) Putty and caulk as needed.
- 3) Apply (1) coat primer.
- 4) Apply (2) coats finish to match existing.

E12724.112