

ORDINANCE NO. _____

BILL NO. 79 (2023)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF
MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE
DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The Department of Transportation, State of Hawaii (“Agency”), and the County of Maui (“County”) wish to enter into a mutually-beneficial agreement permitting Agency to, from time to time, access a portion of County owned property for the purpose of operating and maintaining traffic signal hardware and other electrical equipment located at the intersection of Main Street and Church Street in Wailuku (the “Agreement”), as more fully described in Exhibit “1” attached hereto and incorporated herein.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Michael J. Hopper
MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LF2021-1042
2023-06-13 Ord Auth DOT IGA (WCC)

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee", written over a horizontal line.

ALICE L. LEE

Upon the request of the Mayor.

Exhibit "1"

MAINTENANCE AGREEMENT

BY THIS MAINTENANCE AGREEMENT ("AGREEMENT") made this _____ day of _____, 20____, COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (hereinafter called the "County"), agrees to the terms stated below along with the STATE OF HAWAII, through its DEPARTMENT OF TRANSPORTATION whose place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii 96813-5097, and its agents, employees, contractors and representatives, (hereinafter called the "State"), to allow the State to maintain certain traffic signal hardware on County property subject to the following terms and conditions:

1. **Maintenance Agreement.** County hereby agrees to allow the State to enter upon the Premises (defined below) from time to time for the purpose of operating and maintaining traffic signal hardware and other electrical equipment installed as part of County's project: Wailuku Civic Complex, Phase 1A (Project No. PL 17-01) referred to as the "Equipment".

2. **Location.** This Agreement shall pertain to a portion of property located at the intersection of Main Street (Hwy 32) and Church Street in Wailuku, Maui, Hawaii, a roadway lot, and shown on the area on the map attached as Exhibit "A", designated as the "Premises".

3. **Terms and Duration.** The State's maintenance responsibilities shall commence effective as of the date of this Agreement. If State fails to comply with all terms and conditions of the Agreement, County may take legal action to require the State to comply with the Agreement.

4. **Approval of Improvements.** State shall not place on the Premises any improvements except in accordance with plans and specifications which are first approved in writing by County, which approval shall not be unreasonably withheld.

5. **Repair and Maintenance.** The State will, at State's own expense, at all times during the term of this Agreement and in connection with the entries on the Premises hereunder, keep the Premises and the Equipment to be constructed thereon in good order, condition, maintenance, operability and repair and of a reasonably clean and orderly appearance to the reasonable satisfaction of the County.

6. **Due Care and Diligence/No Construction.** State will use due care and diligence in entering upon the Premises. State agrees that under no circumstances will it grade, cut, or otherwise alter the land except as is necessary in connection with the maintenance of the Equipment and as approved in writing by the County.

7. **Responsibility for Damage Claims.** State agrees to assume all responsibility with respect to the operation and maintenance of the traffic signal and the Equipment, for injury or damage caused by the State's officers and employees in the course and scope of their employment to the extent that the State's liability for such injury or damage has been determined

by a court or otherwise agreed to by the State. The State shall pay for such injury or damage to the extent permitted by law provided that an appropriation is enacted for that purpose.

8. **Condition of Premises/Assumption of Risk.** State hereby agrees and acknowledges that County has not made and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing upon the Premises, whether or not such conditions are known to County or reasonably discoverable by State. State accepts each entry upon the Premises with full assumption of the risks, and consequences thereof, of said conditions. State agrees that all property, vehicles, approved improvements and equipment of State kept or stored on the Premises shall be so kept or stored at the sole risk of State.

9. **Compliance with Laws and Regulations.** State shall, at all times during the term hereof, comply with all applicable laws, rules and regulations, whether state, county or federal, including but not limited to, the laws applicable to the use of the Premises.

10. **Cooperation.** State agrees to coordinate its activities with County to minimize any impairment of access by tenants, customers or business invitees of County or County's tenants to the Premises and any inconvenience to or disruption of County's or County's tenants' business on the Premises.

11. **Permits.** State, at no cost or expense to County, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any work or activities on the Premises.

12. **Liens and Claims.** State will not permit any mechanics', materialmen's, or other similar liens or claims to stand against the Premises for labor or material furnished in connection with any work performed by State with respect to the Premises.

13. **Nonexclusive Rights.** The rights granted to State hereunder are nonexclusive and notwithstanding anything to the contrary contained herein, County shall have the right to grant similar use of the Premises to other persons or corporations.

14. **Restoration of Premises.** After performing ongoing operation and maintenance, State will remove any and all debris and litter that resulted from such use, and if the agreement is terminated, will refill excavated areas, restore the surface to the condition as close as reasonably possible to that which existed prior to excavation and place the Premises in a safe and stable condition, reasonably satisfactory to County.

15. **Assignment.** State may not assign any of its rights or obligations hereunder without the prior written consent of County.

16. **Hazardous Materials.** In connection with its entries on the Premises, the State shall at all times keep the Premises (and improvements thereon) free of any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals now known to cause cancer or reproductive toxicity, pollutants, contami-

nants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, "Hazardous Materials") under any federal, state or local laws, ordinances or regulations relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Premises and improvements thereon, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, the Environmental Response Law, Hawaii Revised Statutes Chapter 128-D and any other federal, state and local laws and ordinances and the regulations adopted, published and/or promulgated with respect to Hazardous Materials (collectively, the "Hazardous Materials Laws"). The State shall, in connection with its entries on the Premises, keep and maintain the Premises and all improvements thereon, including, without limitation, the groundwater on or under the Premises, in compliance with, and shall not cause or permit the Premises and improvements thereon to be in violation of, any Hazardous Materials Laws. The State shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the Premises and improvements thereon, any Hazardous Materials.

The State shall immediately advise the County in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises or improvements thereon, (b) all known claims made or threatened by any third party against the State, the County or the Premises or improvements thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials or violation of or compliance with any Hazardous Materials Laws, and (c) the State's discovery of any occurrence or condition on the Premises or improvements thereon or any real property adjoining or in the vicinity of the Premises which could subject the County, the State or the Premises or improvements thereon to any restrictions on ownership, occupancy, transferability or use of the Premises or improvements thereon under any Hazardous Materials Laws.

Prior to the surrender, expiration or termination of this Agreement, the State, at its expense, shall remediate and clean-up any contamination, spills or leakages upon the Premises or any improvements thereon for which State is responsible so as to render the Premises and improvements in compliance with all applicable Hazardous Materials Laws, and provide the County with a written certification (dated no earlier than the date the State fully vacates the Premises) from an independent licensed engineer or other environmental expert approved by the County that the remediation has been completed and that there exists no violation of any Hazardous Materials Laws pertaining to the Premises or any improvements thereon.

All of the agreements and obligations of the State under this Section shall survive, and shall continue to be binding upon the State, notwithstanding the termination, expiration or surrender of this Agreement.

17. **Notices.** All notices, requests or other communications required or permitted to be given or made under this Agreement by either party hereto shall be in writing and shall be deemed to have been duly given or served if delivered personally to or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the party intended to receive such notice, at the addresses set forth above.

In the case of a mailed notice, the registration or certification slip, and not the return slip, shall be conclusive as evidence of the mailing date of any such notice. All mailed notices are deemed delivered 72 hours after deposit in a regularly maintained United States post office mailbox or upon personal delivery.

18. **Successor and Assigns.** The rights and obligations hereunder shall bind and inure to the benefit of County and its successors and assigns and State and its successors and permitted assigns.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, and all of the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

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IN WITNESS WHEREOF, County and State have caused this Agreement to be executed as of the day and year first above written.

STATE:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By *Ed H.*
EDWIN H. SNIFFEN
Its DIRECTOR OF TRANSPORTATION



APPROVED AS TO FORM

Gvonne Skinnura
Deputy Attorney General
State of Hawaii

By _____
Its _____

APPROVAL RECOMMENDED

By *Jordan Molina*
JORDAN MOLINA
Its Director of Public Works

Digitally signed by Jordan Molina, Director of Public Works
Date: 2023.06.07 17:31:05
+10'00'

COUNTY:

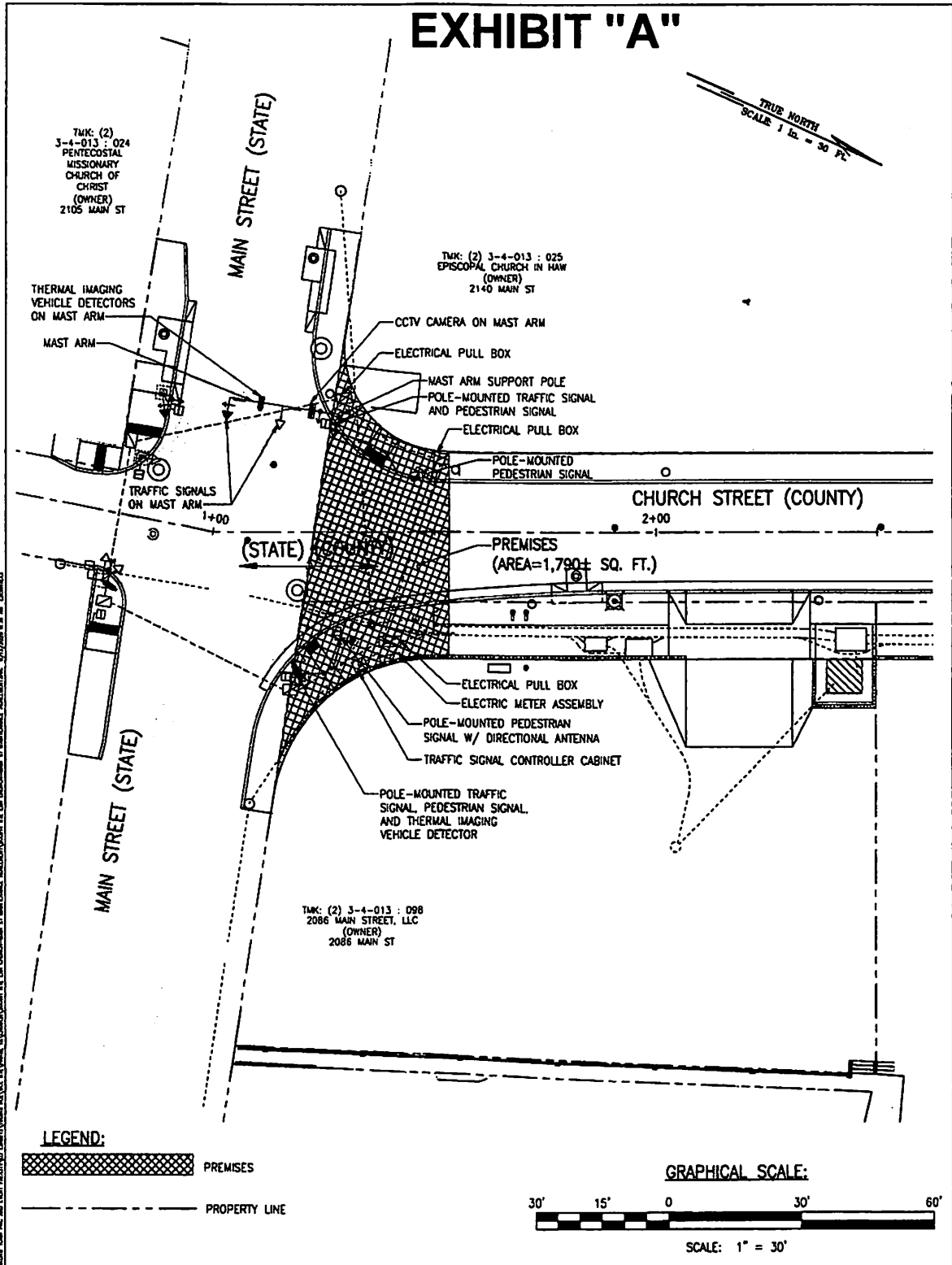
COUNTY OF MAUI

By _____
RICHARD T. BISSEN, JR.
Its Mayor

APPROVED AS TO FORM
AND LEGALITY

/s/ Michael J. Hopper
MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

EXHIBIT "A"



SSFM
INTERNATIONAL

SSFM International, Inc.
501 Summer Street, Suite 620
Honolulu, Hawaii 96817

WAIUKU CMIC COMPLEX PHASE 1A
RIGHT-TO-ENTER PLAN

FIGURE

01

SCALE: 1" = 30' DATE: 09/14/2020

PRINTED: 9/15/20

DIGEST

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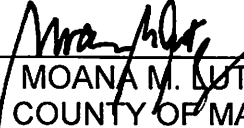
This bill proposes to authorize the Mayor to enter into an intergovernmental agreement with the Department of Transportation, State of Hawaii, for the purpose of operating and maintaining traffic signal hardware and other electrical equipment located at the intersection of Main Street and Church Street in Wailuku.

I, MOANA M. LUTEY, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 79 (2023) was passed on First Reading
by the Council of the County of Maui, State of Hawaii, on the 22nd day of August, 2023,
by the following vote:

AYES: Councilmembers Tom Cook, Gabriel Johnson, Natalie A. Kama,
Tamara A. M. Paltin, Keani N. W. Rawlins-Fernandez, Shane M.
Sinenci, Yuki Lei K. Sugimura, Nohelani U'u-Hodgins, and
Chair Alice L. Lee.

NOES: None.

DATED at Wailuku, Maui, Hawaii, this 23rd of August, 2023.



MOANA M. LUTEY, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,
County of Maui, for use and examination by the public.