

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 9, 2024

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:23KD-054

Kauai

Amend Prior Board Action of August 25, 2023, Item D-1, Amend Prior Board Action of July 28, 2023, Item D-4, Issuance of Direct Lease to The Gas Company, LLC for Storage Site and Tank Farm, Operating Yard, Related Activities and Appurtenant Pipelines to Said Tanks, Nawiliwili, Lihue, Kauai Tax Map Key: (4) 3-2-003:030.

The purpose of the prior amendment was to issue a one (1) year holdover of General Lease S-4250.

The purpose of the current amendment is to include a decommissioning bond requirement in the new lease for the removal of all trade fixtures and other equipment on the property at lease expiration or earlier termination.

BACKGROUND:

At its meeting of July 28, 2023, Item D-4, the Board of Land and Natural Resources (Board) approved the issuance of a direct lease to The Gas Company, LLC (TGC) for storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks, Nawiliwili, Lihue, Kauai.

At its meeting of August 25, 2023, under agenda Item D-1, the Board amended its prior action approving a one-year holdover. The Board also included a recommendation for staff to research what a decommissioning bond would cost for the removal of all trade fixtures and other equipment on the property and to return to the Board at a later date with a recommendation on including a removal bond requirement in the new lease to TGC.

As directed, staff returned to the Board at its meeting of December 7, 2023, under agenda item D-1, with a recommendation to require the posting of a removal bond in the initial amount of \$810,000.00 for the first year with an annual increase of 5% (compounded) as shown in the attached Exhibit A. TGC had proposed a bond amount of \$745,000.00 (Exhibit B), but Land Division recommended the higher amount based on review and comment by the Engineering Division. The \$810,000.00 removal bond would be in

addition to the required lease performance bond (security deposit). At the Board meeting, TGC objected to the proposed initial amount of the bond and the annual increase. The Board asked staff to work with TGC and return in sixty (60) days. The Board seeks a recommendation on the removal of improvements at the end term or early termination of the lease, specifically providing the Board with access to a fund, bond or other financial instrument that would pay for the removal of the improvements if so desired by the Board.

REMARKS:

As explained at the December 7, 2023 Board meeting, a removal bond requirement is not a standard provision in lease forms used by the Department of the Attorney General (AG). Following the December 7, 2023 meeting, Land Division consulted with the AG and additionally met with representatives of TGC to come up with a solution that would address the State's concerns while avoiding an undue financial hardship on TGC. to the parties ultimately agreed on the following verbiage to include in the new lease:

“Lessor may require Lessee to provide and maintain a decommissioning bond or other form of acceptable security (“Decommissioning Bond”) to Lessor to ensure the removal of improvements on the premises and restoration of the premises to its original and natural condition upon the expiration or early termination of the lease if: (a) rent remains unpaid for more than (30) days after written notice from Lessor; (b) Lessee provides its required notice to the State of Hawaii Public Utilities Commission (HPUC), with copy to Lessor, that it is in material default under the terms and conditions of Lessee's financing agreements monitored and approved by the HPUC; or (3) at any time within the last ten (10) years of the lease term.

The Decommissioning Bond shall be in an amount equal to the estimated removal and restoration costs. Lessor may reassess the removal and restoration costs every ten (10) years of the lease term thereafter and require the value of the Decommissioning Bond to be increased (or decreased) accordingly.”

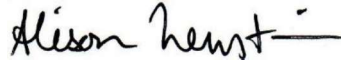
As indicated by this language, TGC is regulated by the Public Utilities Commission and is required to notify the Commission of any material default under the terms and conditions of TGC's financing agreements. In event of such notification, or a rent default lasting more than 30 days, the removal bond requirement will be triggered. The state may also require the posting of a removal bond within the last 10 years of the lease even if TGC is not in material default of any of its financing agreements. Staff believes this proposed lease provision will protect the State's interests in this case.¹

¹ Alternate language may need to be developed if the Board were to require a removal bond in a lease to a lessee who is not regulated by the Public Utilities Commission.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of August 25, 2023, under agenda Item D-1, as set forth above;
2. Incorporate verbiage as stated above in the new general lease; and
3. Affirm that, except as amended hereby, all terms and conditions listed in its August 25, 2023 approval shall remain the same.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

Tasks	Notes	Cost
13 - 3000 gallon tank removal	5 days - crane, rigging. \$75k Transportation to YB \$10k	\$110,000
13 pedestal demolition & removal	3 days	\$60,000
Sphere pedestal removal	2 days	\$30,000
Surface pipe removal	2 days - Cutting, dissemble, disposal	\$20,000
Underground pipe removal	5 days	\$100,000
Walkway removal	1 days	\$15,000
Sphere Disassembly	8 days - Cutting, Welding, Crane & operator, transport	\$150,000
Electrical Equipment removal	3 days - boxes, cameras, fixtures	\$60,000
Office demolition & removal	5 days -	\$100,000
Land remediation and dirt fill	3 days	\$100,000
		\$0
		\$745,000

EXHIBIT A

5% Compounded Interest (rounded up)

Year 1.	\$810,000.00
Year 2.	\$850,500.00
Year 3.	\$893,025.00
Year 4.	\$937,676.00
Year 5.	\$984,560.00
Year 6.	\$1,033,788.00
Year 7.	\$1,085,477.00
Year 8.	\$1,139,751.0
Year 9.	\$1,196,739.00
Year 10.	\$1,256,576.00
Year 11.	\$1,319,405.00
Year 12.	\$1,385,375.00
Year 13.	\$1,454,644.00
Year 14.	\$1,603,745.00
Year 15.	\$1,683,932.00
Year 16.	\$1,768,128.00
Year 17.	\$1,856,535.00
Year 18.	\$1,949,362.00
Year 19.	\$2,046,830.00
Year 20.	\$2,149,171.00
Year 21.	\$2,256,630.00
Year 22.	\$2,369,461.00
Year 23.	\$2,487,934.00
Year 24.	\$2,612,331.00
Year 25.	\$2,742,948.00
Year 26.	\$2,880,095.00
Year 27.	\$3,024,100.00
Year 28.	\$3,175,305.00
Year 29.	\$3,334,070.00
Year 30.	\$3,500,773.00
Year 31.	\$3,675,812.00
Year 32.	\$3,859,603.00
Year 33.	\$4,052,583.00
Year 34.	\$4,255,212.00
Year 35.	\$4,467,972.00
Year 36.	\$4,691,371.00
Year 37.	\$4,925,940.00
Year 38.	\$5,172,237.00
Year 39.	\$5,430,848.00
Year 40.	\$5,702,391.00

EXHIBIT B

Year 41.	\$5,987,510.00
Year 42.	\$6,286,886.00
Year 43.	\$6,601,230.00
Year 44.	\$6,931,292.00
Year 45.	\$7,277,856.00
Year 46.	\$7,641,749.00
Year 47.	\$8,023,837.00
Year 48.	\$8,425,028.00
Year 49.	\$8,846,280.00
Year 50.	\$9,288,594.00
Year 51.	\$9,753,024.00
Year 52.	\$10,240,675.00
Year 53.	\$10,752,708.00
Year 54.	\$11,290,344.00
Year 55.	\$11,854,861.00

EXHIBIT B