

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

May 25, 2012

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

Hawaii

Consent to Assign General Lease No. S-3619, Mauna Kea Electric, Inc., Assignor, to Mattos Electric, LLC, Assignee; Amendment of the Terms and Conditions Regarding Allowed Use, Assignments, Subleases, Insurance and Bond Requirements for General Lease No. S-3619; Lot 39 Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii; TMK: 3rd/ 2-2-49:13.

APPLICANT:

Mauna Kea Electric, Inc., Assignor, to Mattos Electric, LLC, a limited liability company, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/ 2-2-49:13, as shown on the attached map labeled Exhibit A.

AREA:

Parcel area: 13,975 square feet, more or less.
Sublease Area: 4,500 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Auto trimming purposes (current character of use in lease).

TERM OF LEASE:

55 years, commencing on February 6, 1961 and expiring on February 5, 2016. Last rental reopening occurred on February 6, 2011; no further rental reopenings are presently scheduled.

ANNUAL RENTAL:

\$15,120.

CONSIDERATION FOR ASSIGNMENT:

\$5,000.

RECOMMENDED PREMIUM (FOR ASSIGNMENT):

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Good standing confirmed:	YES <u>X</u>	NO ___

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Good standing confirmed:	YES <u>X</u>	NO ___

REMARKS:

Assignment and Amendment

General Lease No. S-3619 was originally issued to Gordon M. Ishii dba No-D-Lay Top Shop on February 6, 1961 pursuant to Act 4, Session Laws of Hawaii (First Special Session 1960), which provided for the direct issuance of leases to victims of natural disaster who were affected by the 1960 tsunami that struck Hilo and other areas of the State. One of the conditions of the lease was that the lessee

use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided however, that the Lessee may devote or place said demised premises to a use or uses other than auto trimming in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld....

The property is improved with a warehouse and office space constructed in 1961. The warehouse occupies approximately 1,920 square feet, leaving approximately 12,055 square feet of the remaining area of the parcel for parking, driveway and landscaping.

By mesne assignments with consent of the Board of Land and Natural Resources, the lease was assigned to Mauna Kea Electric, Inc. (MKE or Assignor) by assignment dated October 27, 1970. The Board's consent thereto dated December 31, 1970 was executed pursuant to the Board's approval of the assignment at its meeting of November 20, 1970. However, the character of use provision in the lease was never amended to reflect the electrical contracting and supply use to which MKE put the premises.

A rental reopening scheduled under the lease increased the rent from \$9,660 per year to \$15,120 per year for the period from February 6, 2011 to February 5, 2016. The lease requires MKE to post a performance bond with the State equal to two times the annual rent. As a result of the rent increase, the performance bond obligation increased from \$19,320 to \$30,240 for the same period.

Due to the downturn in the economy, MKE has experienced difficulty meeting its rent, insurance and performance bond obligations and it has decided to cease business operations and assign the lease to Mattos Electric, LLC. Mattos Electric intends to use the lease premises as an electrical contracting business and parts distribution facility. The proposed use is consistent with the County of Hawaii limited industrial zoning for the property (ML-20). Mr. Ernest Mattos, owner of Mattos Electric, LLC has owned and operated this business for twenty-eight years and appears qualified to be a lessee under the lease. Mattos Electric, LLC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff reviewed the file and can report the lease rent is current. A performance bond in the amount \$19,320 expired on January 31, 2011, and there is currently no bond in place. MKE is financially unable to post the performance bond. However, Mattos Electric, LLC is prepared to post the required bond in full if the Board approves the assignment. The liability and fire insurance expired on February 15, 2012. Mattos Electric will provide insurance coverage upon execution of the assignment of lease. There are no compliance issues with the exception of the character of use, insurance and the lack of the performance bond. MKE operated an electrical contracting and supply business on the premises, while the lease character of use was for auto trimming.

In the past three years, MKE was issued the following notices of default:

- 9/10/09 - Failure to keep lease rental payments current
- 2/26/10 - Failure to keep lease rental payments current and post required performance bond
- 6/04/10 - Failure to post required liability insurance
- 9/10/10 - Failure to keep lease rental payments current
- 2/28/11 - Failure to keep lease rental payments current
- 3/31/11 - Failure to post required performance bond
- 2/24/12 - Failure to post required liability and fire insurance
- 4/19/12 - Failure to keep lease rental payments current

The defaults were all cured, with the exception of the 3/31/11 default regarding the performance bond and the 2/24/12 default for liability and fire insurance, which remains outstanding.

Because the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to change the character of use provision and make other amendments.

A change in the character of use from "auto trimming" to the proposed uses allowed under the County of Hawaii zoning code, ML-20, limited industrial, would benefit the State by allowing a wider range of uses and thereby making the property more appealing for future leasing.¹ Staff is requesting that the sections of the lease relating to the bond, liability insurance and fire insurance be amended and replaced with the current lease language used for such provisions. Also, the lease as presently drafted contains language that allows the lessee to sublease portions of the building without Board approval. Staff believes that the better practice is to require prior Board consent for all subleases. Staff is therefore recommending that the assignment/sublease provision in the lease amended to reflect the current language for subleases and assignments.

Accordingly staff is recommending that the Board consent to the assignment of the lease to Mattos Electric, LLC on the condition that Mattos Electric, LLC posts the full performance bond under the lease within 30 days of the execution of the consent to assignment instrument, and that the Board further authorize the amendment of the lease (i) to change the character of use provision to the allowable uses under the current County of Hawaii zoning code, ML-20, limited industrial, and (ii) to update the lease provisions titled "Assignments, etc." (section 22 of the lease), "Bond" (section 25), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General.

The last rental reopening occurred on February 6, 2011. There are no further rental reopenings presently scheduled. There are no outstanding rental reopening issues.

RECOMMENDATION: That the Board:

- A. Consent to the assignment of General Lease No. S-3619 from Mauna Kea Electric, Inc., as Assignor, to Mattos Electric, LLC, as Assignee, subject to the following:
 1. Mattos Electric, LLC shall post the full performance bond required under the lease in the current amount of \$30,240 within 30 days of the execution of the consent to assignment;
 2. Provide liability and fire insurance within 10 days of the execution of the consent to assignment;
 3. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 4. Review and approval by the Department of the Attorney General; and

¹ The expiration date of the lease is February 5, 2016. However, pursuant to Act 207 (Session Laws 2011), the lease may be eligible for a ten-year extension under some circumstances.

5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the amendment of General Lease No. S-3619 to change the character of use from "auto trimming" to uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial, and to update the lease provisions titled "Assignments, etc." (section 22 of the lease), "Bond" (section 25), "Liability insurance" (section 31), and "Fire insurance" (section 32) with the current language for such provisions used by the Department of the Attorney General. The amendment of the lease shall further be subject to the following:
1. The standard terms and conditions of the most current consent to change in character of use and amendment of lease document forms, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

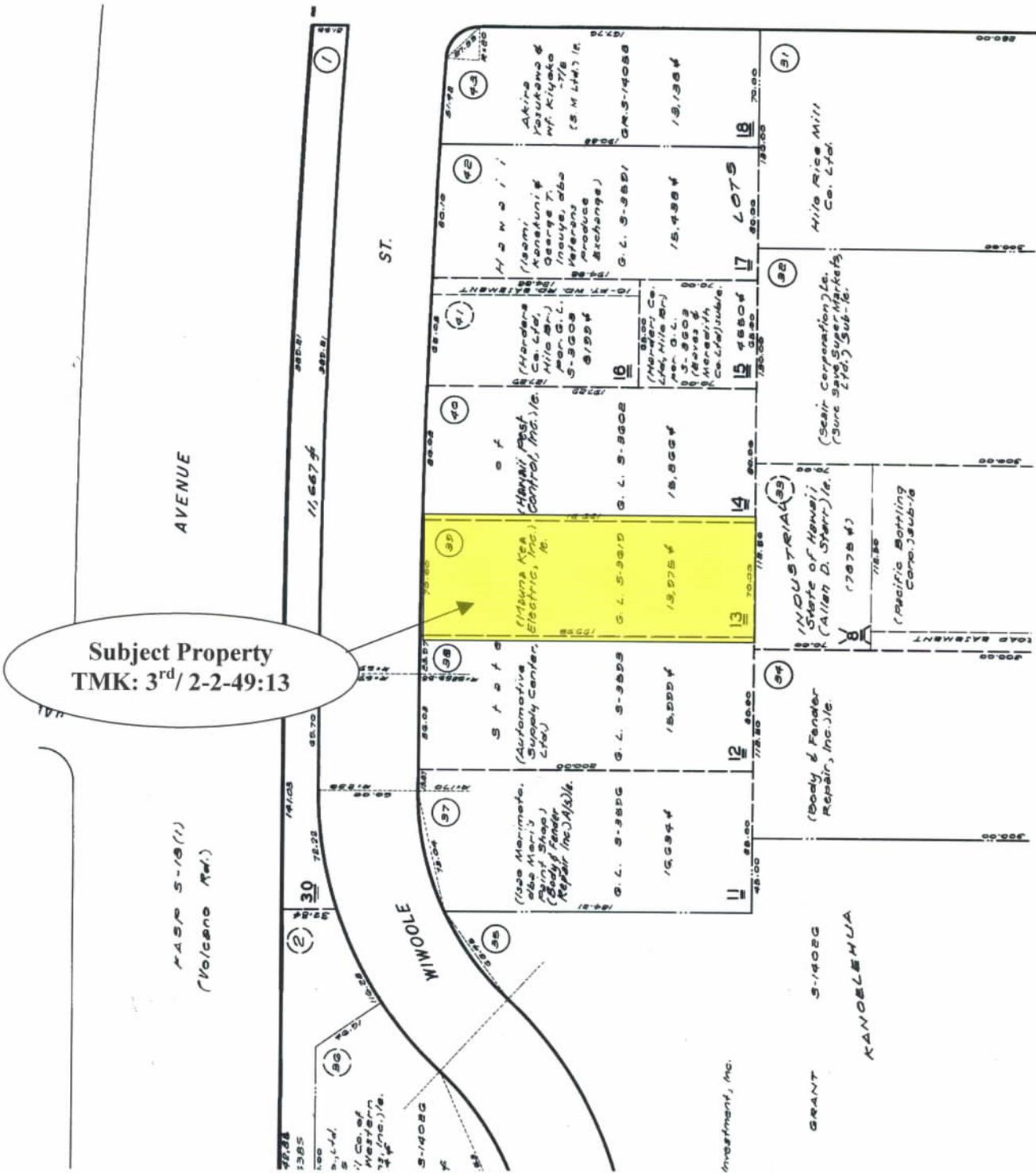


EXHIBIT A