

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

July 28, 2023

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Kaua'i

SUBJECT: Request for Approval to Amend SP0059 Water Sharing Agreement between the Department of Land and Natural Resources and Pioneer Hi-Bred International, Inc. (Pioneer) at Pā'ula'ula State Historic Site, formerly known as Russian Fort Elizabeth State Historical Park, TMK: (4) 1-7-005:003.

Pioneer Hi-Bred International, Inc. (Pioneer) is a seed company with a research center located near Pa'ula'ula State Historical Site, formerly known as (fka) Russian Fort Elizabeth State Historical Park (the Site) in Waimea, Kauai, State of Hawai'i. The research center has no potable water. Pursuant to the Water Sharing Agreement between DLNR-State Parks and Waimea Research Center effective November 8, 2007, (the Water Agreement), Pioneer tapped into the water main at the Site for potable water for their facility, and reciprocally provides irrigation water (non-potable) for the Site, all at no expense to the State of Hawai'i (State).

Currently, the irrigation system at the Site is connected to Pioneer's non-potable water for irrigation which is a sustainable use of limited water supplies.

Pioneer will continue to use the potable water for faucets, ice machines, urinals, and toilets only. There will be no use of potable water for irrigation or washing farm equipment. The water will be sub-metered, and Pioneer will reimburse the State for the water used at a fixed rate \$300 per month. A copy of the Water Agreement, which was approved by the Board of Land and Natural Resources at its meeting held on July 27, 2007, as Item E-2, is attached as Exhibit A. The (Proposed) First Amendment to the Water Agreement is also attached as Exhibit B.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1-15, HAR, this project will probably have minimum or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

ITEM E-3

July 28, 2023

2. Approve the first amendment to the Water Agreement with Pioneer Hi-Bred International, Inc., for water use at the Site and a volume of irrigation water with a limit of a maximum of 5,000 gallons per day from Pioneer to DLNR, at no cost or expense to the State, subject to the approval of by the Attorney General.
3. Authorize the Chairperson to approve the conditions and sign the First Amendment to the Water Agreement with Pioneer Hi-Bred International, Inc. (Exhibit B).
4. Authorize the Chairperson to amend or propose such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



CURT A. COTTRELL
Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

Attachment: Exhibit A - Water Sharing Agreement Russian Fort Elizabeth State
Historical Park and Waimea Research Center
Exhibit B – First Amendment to the Water Sharing Agreement

**WATER SHARING AGREEMENT
RUSSIAN FORT ELIZABETH STATE HISTORICAL PARK AND WAIMEA
RESEARCH CENTER**

This letter documents the understanding between the Department of Land and Natural Resources (DLNR) and Pioneer Hi-Bred International, Inc. (Pioneer) regarding a water sharing agreement. This letter of understanding shall commence on the 8th day of November, 2007 and shall remain in effect ~~so long~~ as Pioneer operates its Waimea research location or until either party exercises the cancellation provisions enumerated below, whichever shall first occur.

Pioneer desires to tap on to the water main, which ends in or near the Russian Fort Elizabeth State Historical Park (Park) for the purposes of obtaining water for human consumption only and for no other use. Specifically, Pioneer will only use the water for faucets, ice machines, urinals and toilets. The water will not be used for irrigation or washing farm equipment.

Pioneer will pay for all costs of permitting, engineering, installation and maintenance of the water main extension and associated meters and necessary back-flow preventers as determined by a Hawaii-registered Professional Engineer. Pioneer shall have the right to enter the Park for the purposes of installing or repairing the water main and associated pipes at its own risk. There will be no cost to the DLNR.

Pioneer will read the meter monthly and calculate its water usage. Pioneer will reimburse the DLNR for Pioneer water usage at the Kauai County Water Department rates in effect at the time plus any additional fees or charges associated with Pioneer's usage plus \$300 per month.

The meter shall be placed in a mutually accessible location so that either party may read the meter at any time.

Pioneer will provide the Park with non-potable water to be used only for irrigation at no charge. Pioneer will install this water line to the sprinkler system head at the Park at no cost to the DLNR. Pioneer will provide irrigation water year round to the Park on mutually agreeable days and times. Additionally, Pioneer will provide immediate assistance in the form of labor, materials and equipment to the DLNR for the purposes of installing boulders to demise parking areas within the Park at no cost to the DLNR.

The DLNR will cooperate with Pioneer in obtaining any and all necessary approvals, if any are required. Pioneer will reimburse the DLNR for all out-of-pocket expenses pertaining to this letter of agreement.

EXHIBIT A

For the purposes of this agreement the term "Premises" is defined as the specific area in which the water main is located and the access routes used by Pioneer employees or its representatives to access the water main location in the park.

Pioneer shall indemnify, defend, and hold the State of Hawaii, DLNR, Division of State Parks harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of or resulting from: 1) any act or omission on the part of or relating to Pioneer's use, occupancy, maintenance, or enjoyment of the Premises or operation of the water main extension and associated meters and back-flow prevention valves; 2) any failure on the part of Pioneer to maintain the above, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Pioneer to maintain the Premises in a safe condition; 3) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of Pioneer's non-observance or non-performance of any of the terms, covenants and conditions of this letter of understanding, or the rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

Both parties agree that neither party can guarantee the quality of the water provided by the other party and shall hold each other harmless in that regard.

Pioneer, at its own cost and expense, shall procure and maintain during the term of this letter of understanding, including any holdover period, a policy or policies of comprehensive general liability insurance, in an amount of at least \$1,000,000 per person and \$2,000,000 per incident, insuring the State of Hawaii, DLNR, Division of State Parks and Pioneer against all claims for personal injury or death, and in an amount of at least \$50,000 for property damage. The policy or policies shall cover the Premises defined above. Prior to entry upon the Premises, Pioneer shall furnish the Division of State Parks with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Division of State Parks of any intention to cancel the policy prior to actual cancellation. The notice to cancel shall be sent to the Division of State Parks no less than sixty (60) days prior to the date of cancellation.

The Division of State Parks reserves the right, in its sole discretion, to interrupt or cancel operation or close any part or the entirety of the Park. If the Division of State Parks exercises this right, Pioneer shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against the State of Hawaii, DLNR, Division of State Parks.

Both parties agree that time is of the essence and shall diligently work to the successful installation of the water system.

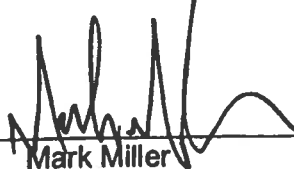
Both parties agree that either party may unilaterally cancel this letter of understanding with 180 days written notice.

Please indicate your agreement by signing below.

PIONEER HI-BRED
INTERNATIONAL, INC.

PIONEER WAIMEA RESEARCH CENTER

By



Mark Miller

Director of Corporate Services

By




Steve Lupkes

Research and Administration Coordinator

We accept the terms of the agreement outlined above.

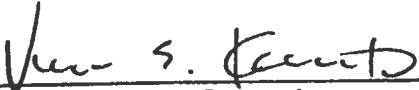
Signed



State of Hawaii

Department of Land and Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General

Dated: 11/1/07

**FIRST AMENDMENT TO
WATER SHARING AGREEMENT
RUSSIAN FORT ELIZABETH STATE HISTORICAL PARK (NOW
KNOWN AS PĀ'ULA'ULA STATE HISTORIC SITE) AND
WAIMEA RESEARCH CENTER**

This First Amendment to Water Sharing Agreement (this "Amendment") is dated as of this _____ day of _____ 2023, by and among the State of Hawaii, Department of Land and Natural Resources ("DLNR"), whose address is c/o Division of State Parks, 1151 Punchbowl Street, Room 310, Honolulu, Hawai'i 96813, and Pioneer Hi-Bred International, Inc., an Iowa corporation, whose address is P.O. Box 1039, Wilmington, Delaware 19899 (Pioneer).

RECITALS

A. DLNR and Pioneer are parties to a Water Sharing Agreement, Russian Fort Elizabeth State Historical Park and Waimea Research Center dated November 8, 2007 (hereafter "Water Sharing Agreement"), whereby DLNR has allowed Pioneer to take potable water for domestic, non-agricultural uses via the water main, which ends in or near the Russian Fort Elizabeth State Historical Park now known as Pā'ula'ula State Historic Site (Site), and among other things, Pioneer provides the Site with non-potable water to be used only for irrigation at no charge, which water originates from Pioneer's leasehold interest in real estate, governed by the terms of an unrecorded Land Lease Agreement dated August 10, 1998 between Pioneer, Robinson Family Partners, a Hawaii general partnership, and Gay & Robinson, Inc., a Hawaii corporation (hereafter "Research Station Lease").

B. DLNR and Pioneer agree that in order to properly plan for and address the future water needs for the Site and the Research Station Lease, the volume of irrigation water supplied to the Site by Pioneer shall be limited to a maximum of 5,000 gallons per day, as measured by Pioneer according to a water meter installed pursuant to the Land Lease Agreement for the Research Station Lease. Pioneer and DLNR agree that any modification to these provisions, including the expansion of the volume of irrigation water above the amount set forth in this paragraph will be subject to approval in writing by the parties, with the written consent of Robinson Family Partners and Gay & Robinson, Inc.

C. Pioneer will continue to use potable water for faucets, ice machines, urinals, and toilets only. There will be no use of potable water for irrigation or washing farm equipment. The water will be sub-metered, and Pioneer will fully reimburse the DLNR for the water used at \$300 per month payable to the Division of State Parks, 1151 Punchbowl Street, Room 310, Honolulu, Hawai'i 96813, payable in advance, without notice or demand.

D. In the event of any disagreement, discrepancy or inconsistency between the Water Sharing Agreement and this First Amendment, the First Amendment shall control. All other requirements set forth in the Water Sharing Agreement shall remain in full force and effect.

This Amendment contains all the agreements of the parties and cannot be amended or modified except by a written agreement. This Amendment may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same Amendment, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Amendment, duplicate unexecuted and

EXHIBIT B

unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

Pioneer and DLNR hereby indicate their agreement to these provisions by signing below.

PIONEER HI-BRED
INTERNATIONAL, INC., an Iowa corporation

By _____
GINGER MINEAR, Global Real Estate Manager

State of Hawaii
Department of Land and Natural Resources

By _____
DAWN N. S. CHANG
Chairperson of the Board of
Land and Natural Resources

APPROVED AS TO FORM:

By _____
MELISSA D. GOLDMAN
Deputy Attorney General

Approved by the Board of Land and
Natural Resources at its meeting held on
_____, Item ____.

STATE OF _____)
) SS.

EXHIBIT B

COUNTY OF _____)

On this ____ day of _____, 20____, before me personally appeared GINGER MINEAR, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of _____

My commission expires: _____