

**State of Hawaii**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Division of State**  
**Honolulu, Hawaii**

July 27, 2007

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

**SUBJECT:** Request for Approval to Enter Into an Agreement with Pioneer Hi-bred International, Inc. for Water Sharing at Russian Fort Elizabeth State Historical Park, Waimea, Kauai

Pioneer Hi-Bred International, Inc. (Pioneer) is a seed company with a research center located near Russian Fort Elizabeth State Historical Park (Russian Fort) in Waimea. Their facility has no potable water. Pioneer has made a proposal to tap into the water main at Russian Fort for potable water for their facility, and to provide irrigation water for Russian Fort, all at no expense to the State.

Currently, the irrigation system at Russian Fort is connected to the municipal potable water supply. Switching to non-potable water for irrigation will be a more sustainable use of limited water supplies. Pioneer has also committed to extend the non-potable water line to the park and making the connection.

Pioneer will be using the potable water for faucets, ice machines, urinals and toilets only. There will be no use for irrigation or washing farm equipment. The water will be sub-metered, and Pioneer will reimburse the State for the water used plus \$300 per month. A copy of the draft Water Sharing Agreement is attached.

**ITEM E-2**

RECOMMENDATION:

That the Board:

- 1) Grant approval to enter into an Agreement with Pioneer Hi-Bred International, Inc. for water use at Russian Fort Elizabeth subject to approval by the Attorney General.
- 2) Authorize the Chairperson to approve the conditions of the final Agreement.

Respectfully submitted,



DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



ALLAN A. SMITH  
Interim Chairperson

Att

# DRAFT

## WATER SHARING AGREEMENT RUSSIAN FORT 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 \_\_\_\_ day of \_\_\_\_\_, 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 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.

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: \_\_\_\_\_