

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OU LU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

Meeting of the ADC Board of Directors

Held via Teleconference

January 25, 2023
9:00 a.m.

Pursuant to section 92-3.7, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/88956469967>

Telephone: (669) 900-6833, Webinar ID: 889 5646 9967

In-Person: *at the meeting location indicated below*

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

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Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Room 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII, ON AND AFTER JANUARY 19, 2023

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation’s non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
dbedt.adc.titlevi@hawaii.gov

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board Meeting Minutes, November 2, 2022
2. Executive Session Minutes, November 2, 2022
3. Board Meeting Minutes, November 16, 2022
4. Executive Session Minutes, November 16, 2022

D. New Business

1. Board Discussion and Approval of Board Meeting Schedule for CY 2023
2. Request for Approval for the Assignment of License Agreement No. LI-K1502, Issued to Andros Engineering Corporation, to Kekaha Agriculture Association, Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
3. Request for Approval to Amend License Agreement No. LI-K1902 Issued to Kokee Farms LLC, Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
4. Request for Approval to Authorize the Executive Director to Execute the *Department of Health – Wastewater Branch Individual Wastewater System (IWS) Owner's Certification Form*
5. Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
6. Request for Approval of the Transfer of Water Use Permit No. 808 from Pioneer Hi-Bred International, Inc. to Aloun Farm, Inc.
7. Presentation by Deputy Attorney General Delanie Prescott-Tate on Changes to Chapter 163D, Hawaii Revised Statutes
8. Request for Approval to Establish an Ad Hoc "Committee to Evaluate the FY2021-2022 Annual Performance of the Executive Director"; Appointment of Members thereto

9. Request for Approval to Adopt the RFP-2022 Evaluation Committee's Recommendations to Establish a Permitted Interaction Group of Board Members and Project Professionals to Assess and Evaluate the Offeror's Proposal

The Board may go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

E. Old Business

1. Complaint Referral from the Department of Budget & Finance

The Board may go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

2. Update Regarding Ohana Best v. State of Hawaii, et al., Civ. No. 19-1-1640-10

The Board may go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session on any agenda item pursuant to the exceptions under §92-5, Hawaii Revised Statutes.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 2, 2022

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
Morris Atta (designated attendee for HBOA, Ex-Officio Member Ms. Shimabukuro-Geiser until her attendance) (Mr. Atta)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Glenn Hong, Member-At-Large (Mr. Hong)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Karen Seddon, Member-At-Large (Ms. Seddon)
Katie Roth, Designated Representative, DLNR for Ex-Officio Member Kaleo Manuel (Ms. Roth)

Members Excused:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lance Tashima, Administrative Services Officer
Lynette Marushige, Executive Secretary

Guests Present, virtually:

Mike Dahilig
Ford Fuchigami
Mark Ishmael
David Cho
Colin Peros
Loan Lovan, Scott & Rudy Ing
Sandi Kato-Klutke (Sandi)
Allison Fraley
KITV 4 News
Margaret Bush
Scott Ishikawa
18082

Guests Present, physical location: None.

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A. Call to Order

Chair called the virtual meeting to order at 9:02 a.m.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Ms. Evans, Mr. Hong, Ms. Roth, Ms. Seddon, Mr. Atta, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present.

Chair stated that he wanted to apologize for the abrupt cancellation of the October 19, 2022 meeting. Moments before the meeting was scheduled to begin a couple of the members that had previously confirmed their attendance notified him that they were not able to attend. This caused a loss of quorum. It was unfortunate but they will try to do better in the future.

C. Approval of Minutes

1. Board of Directors Meeting, September 21, 2022

Chair asked for a motion to approve the September 21, 2022 Minutes: Mr. Tabata; Second: Mr. Watanabe

Chair asked if there was anything from the staff. There was none.

Chair asked if there was anyone from the public wishing to give testimony. There was none.

Chair asked if there was any Board discussion. There was none.

Chair called for the vote. Ms. Roth and Ms. Seddon abstained from voting because they were not present at the September 21, 2022 meeting. Hearing no objections, the motion was approved.

Motion approved: 6-0 (Ms. Roth and Ms. Seddon abstained.)

2. Executive Session, September 21, 2022

Chair stated that this agenda item will be taken out of order and considered by the Board during executive session prior to agenda Item E-2, pursuant to HRS section 92-5(a)(2), to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

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D. New Business

1. Request for Approval to Amend License Agreement No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Remove Field 207 (por.) from the License Agreement; Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.)

Chair asked for a motion to approve: Ms. Evans; Second: Mr. Hong.

Chair asked for Staff presentation.

Mr. Nakatani said it was pretty straight forward. Mr. Johnson wanted to return approximately forty acres and he asks the Board for approval. ADC will be coming back to the Board when they find a replacement tenant for that parcel. If there are any questions he would be happy to answer them.

Chair asked if there was anyone from the public that wanted to give testimony. There was none.

Chair asked if there was any Board discussion.

Mr. Atta stated that when you withdraw land from a disposition it would normally be done for a fairly good economic reason. He doesn't see any reason here for returning the acreage. When running property operations, normally you don't want disruptive withdrawals and additions, without knowing the reasons behind it. If there are reasons, there's no problem. He just didn't see any reason why the return was requested.

Mr. Nakatani responded that the submittal shows that Mr. Johnson had previously requested different parcels of land. He was more satisfied with one parcel and now wants to return land that is less feasible for him. It's a matter of economics for Mr. Johnson. In Kekaha there's a lot of land and this was just his preference and so he just wanted to return this portion. He has enough land for his purposes. Mr. Johnson's operation has changed quite a bit. There was forty acres for tobacco; it was an experiment he was contracted to do. That deal went away so now he's returning the land because it is no longer feasible for him. ADC will be offering to help Mr. Johnson find another assignee for that parcel of land.

Mr. Atta said that he did see the safeguard of finding a suitable assignee. He was just wondering what the rationale was.

Mr. Nakatani said that's the practice in Kekaha. They have people coming in and taking large pieces of land. The last transaction was the BASF land and ADC held them. Well actually it was the Beck's property that they took the lease and they're on the hook for that amount of rental unless they find somebody to take over the lease or license rather, and Hartung stepped up and took that piece of property. That's the rationale and they're trying to be consistent. If at a later date there's hardships they'll come back to the board and the board can make a policy decision if need be.

Mr. Tabata said he spoke to the folks on the West side and they had some questions. He understands the situation and just for the forty-acres it might be hard to find an assignee for this property because, as he understands, it floods when there is a big storm. He wanted to make sure that in the process of finding a new licensee, it's somebody who is suitable and can meet all the qualifications. Forty-acres is a bit small. The other question he had was would reducing the term help some of these situations of something like this happening. Those are some questions that were posed to him by the community.

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Mr. Nakatani said he's not sure who's asking these questions but if they put it in writing and come to the board; it's really a board policy. The parcel is small. What they're finding out, and Chair will agree with him, is the tendency to have smaller lots for smaller farmers. They don't like the big lots. We have an example of a tenant that took almost two hundred acres and they reduced it to ninety and they're still having a hard time. But you know that remains to be seen. He talked to Josh, that's good farming land for diversified agriculture. It's a bit overgrown, that might be the issue. If people have questions they should send him the questions and he can answer them.

Mr. Tabata said he'll get it in writing.

Mr. Nakatani said overall, it's the smaller parcels that are attractive to the smaller farmers. While forty acres might seem small, depending on what you farm, forty acres is pretty good size.

Ms. Evans asked Mr. Nakatani if the withdrawal was approved would it be contingent on inspection for hazardous materials or clean up of abandoned equipment or any of the other things we would want to have the current licensee do before the withdrawal becomes firm.

Mr. Nakatani said he thinks they did the inspection and he doesn't think there's any equipment or hazardous material. All of the so-called legacy chemicals have been gone for a long time. He doesn't believe that Mr. Johnson used anything toxic or anything like that. The biggest problem is the area is overgrown. They can check again. He's pretty sure there's no equipment or anything like that. In the past they have been pretty strict about people leaving stuff, but not now. He thinks Mr. Johnson is ok.

Chair said he met with Mr. Johnson a while back. He's a good farmer but he's not using large parcels. He's doing some greenhouse growing of mangos and melons, and the nine acres that he took over was much more conducive to this type of farming. The forty acres is really, really overgrown and just clearing it was a burden for him. He's a smaller farmer, he's a good farmer, and he's productive.

Mr. Hong said in reading the recommendation that ADC is still holding Mr. Johnson responsible for payment under the license until we can get some final resolution, either some kind of additional tenant or renegotiation or something like that. Is Sandi representing him? Why didn't he just make his request directly to the Board?

Mr. Nakatani responded that including Sandi's email in the submittal was an oversight. She's not involved in the decision making. She might be a consultant to him but he's not sure about that.

Mr. Hong said his only point was that the licensee should be making the communications.

Mr. Nakatani said he did.

Chair asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

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2. Request for Approval to Issue License Agreement to Lovan Taro Farm LLC for 60 Acres, More or Less, in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-001:056 (por.)

Chair asked for motion to approve: Ms. Evans; Second: Mr. Watanabe.

Chair asked for staff presentation.

Mr. Nakatani said this was a carryover from the land that ADC purchased. Lovan's Taro Farm has a Revocable Permit and now they want to have a ten year license. One thing he wanted to point out is the soil conservation plan. He's assuming the Board is going to approve the Land Management Policy and Procedures Manual, and it states that the applicant shall have paperwork submitted within one year of the execution of the license amendment (Policies and Procedures Manual, 5.3 Soil Conservation Plan). He thinks they're in the process of getting a conservation plan and from all indications applicant has cleaned up his act. The farm looks pretty good and he recommends approval.

Chair asked if there was anyone from the public who wanted to provide testimony. There was none.

Chair asked for Board discussion.

Ms. Roth said she was looking at the submittal under the section on source of water and it says that the permittee currently accesses irrigation water via an agreement with Dole. Since she is new to this group, she's curious if more information can be provided about the Dole permit. She assumes Dole has a water use permit with the Commission on Water Resource Management (CWRM). She's just trying to get a better understanding about their end uses.

Mr. Nakatani said he doesn't believe it's a water permit from Dole; that's overstated. Lovan's Taro Farm has permission, he's taking water from Dole irrigation system. So, it's not a permit that each individual has; he's taking it from the ditch.

Ms. Roth said but Dole has a permit correct?

Mr. Nakatani said yes.

Ms. Roth said she was just wondering if the Dole permit is something that could be provided in these submittals. At CWRM they are trying to understand about the end uses associated with all the different permits.

Mr. Nakatani said he can provide that to her but they are taking water from the ditch, which ADC has no control over. Dole's providing the water; it's a separate agreement. ADC is not asking Dole, it's the farmer themselves asking Dole. Hopefully, in the future we'll resolve that issue with Dole.

Ms. Roth said she understood.

Ms. Evans asked Ms. Roth if CWRM could ask Dole directly for information in regard to its water end usage.

Ms. Roth said they could but she was just wondering if as part of the submittals that is something that could be provided or more detail could be provided because it's pretty vague when the

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submittal lists a source of water. She was just curious if that was something that is normally provided or not or if its something they have to investigate themselves.

Chair thanked Ms. Roth and Ms. Evans and remarked that it's a good point and he thinks it is something they should look into.

Chair asked if there was any other discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

3. Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

Chair asked for motion to approve: Ms. Seddon; Second, Mr. Tabata.

Chair asked for Staff presentation.

Mr. Nakatani said it was more of a housekeeping issue. The request was to put two parcels together on one lease to make it cleaner on paper. Hopefully the map is cleaner, showing where the farm really is. Basically, it's really just to clarify her license with ADC.

Chair asked if there was any public testimony. There was none.

Chair asked for Board discussion.

Mr. Atta said the request seems to be a housekeeping consolidation of two dispositions. He was curious about the note before the recommendation stating, "Approval of this Land Request represents an annual increase of \$26,300 to ADC in rental income." If it's only a consolidation of two pre-existing licenses, somehow this comment doesn't jive. With an increase in revenue he's not sure how that's occurring unless they're now being charged a higher rate. He just wanted to hear what the source of that comment was from.

Mr. Nakatani said that since we do licenses, not leases and if you look at the map some of it is not farmable. So, he thinks Lyle Roe (Mr. Roe) had discussion with the tenant and came to some agreement that this is what it is so it's being brought to the board.

Mr. Atta said his question was that he wasn't clear on where the additional revenue was coming from.

Mr. Nakatani said he would suspect that the amount of land or the demarcation of the property that's where it is. The write up is a little bit confusing because he thinks that they added some parcels that were not supposed to be a part of this map but part of the agreement that's not there. He can get the answer for him from Mr. Roe. He just wanted to make sure that it was consolidated and move ahead.

Mr. Atta said having additional revenue is good news, he was just puzzled about how it got there.

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Mr. Nakatani said, maybe it wasn't additional revenue, maybe it's revenue we're supposed to be collecting and it was stated incorrectly.

Chair asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objections to the motion was approved.

Vote approved: 8-0

4. Request for Approval to Grant a Right-of-Entry to County of Kauai to Investigate Potential New Sites for a County Municipal Solid-Waste Landfill in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair asked for motion to approve: Ms. Evans; Second, Mr. Hong.

Chair asked for Staff presentation.

Mr. Nakatani said this was a right of entry for the County of Kauai to do due diligence on the landfill that they're looking for, a new one. He just wanted to point out that in the recommendation it says that "staff recommends that the Board approve the land request." It's not a land request, it's a right of entry. There may be people from Kauai calling in if the Board has any questions about the land fill, but it's just exploratory at this point.

Chair asked if there was anyone from the public wishing to give testimony.

Mr. Nakamoto said there is one hand raised. Mr. Dahilig entered the virtual meeting.

Mr. Dahilig introduced himself. He is planning director for the County of Kauai. He thanked staff for assisting with this and said he was available if the Board had any questions.

Chair asked if there were any questions from the board for Mr. Dahilig. There was none.

Chair asked if DHHL had to be informed or can they just go ahead and do this?

Ms. Prescott-Tate asked why DHHL would have to be informed?

Chair said because of the 30% entitlement.

Ms. Prescott-Tate said that would be addressed in the future. Right now, this is just a right of entry for the County of Kauai to do their due diligence, investigate the site. No money is changing hands.

Mr. Nakatani said if they proceed, they will do the Environmental Assessment, which requires everyone to be informed about the project. So, just an FYI everyone will be informed.

Chair said that we should support the project and asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

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5. Request for Approval to Amend License Agreement No. LI-PU1807 Issued to George Rapoza dba JRs Ranch LLC and Margaret M. Bush to Remove George Rapoza dba JRs Ranch LLC as Licensee for Property in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-005:009 (por.)

Chair asked for a motion to approve: Ms. Evans; Second: Ms. Seddon.

Chair asked for Staff presentation.

Mr. Nakamoto explained that Mr. Rapoza is retiring from this area, slowly phasing out. So, the request is to remove him from the license and the applicant is available for any questions.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

E. Old Business

1. Request for Approval to Adopt the “Land Management Policy & Procedure Manual” as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from September 21, 2022, Item E-1)

Chair asked for a motion to approve: Ms. Evans; Second: Mr. Hong.

Chair asked Ms. Evans who headed the committee to conduct the discussion.

Ms. Evans said on behalf of the committee that spent about a year looking at the State auditor’s recommendation and the House Investigative Committee’s further recommendation that ADC adopt written policies and procedures regarding land management. The committee worked with staff, Mr. Nakatani, Mr. Roe, Mr. Nakamoto, and Mr. Takemoto to develop these draft policies and procedures into a manual that will provide guidance going forward. It can be amended by the Board at any time should conditions change. The committee had a full discussion in August and September in response to Mr. Manuel’s very helpful questions. The committee developed a written response to those questions that was included in the Board packet. Should there be any follow-up questions, she and the committee would be happy to address them.

Chair thanked Ms. Evans and asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for Board discussion.

Mr. Atta said he knows that the policy manual was designed to be changed or amended subject to Board discretion and need. Was there any discussion on targeted, periodic reviews to assess whether or not those changes would be appropriate or not. A lot of these frameworks have a tendency to be reviewed periodically, whether it’s 5, 10, 15 years. He was just wondering whether or not that entered the thought process.

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Ms. Evans said she doesn't recall there being a discussion on a periodic review. There was a very thorough discussion on the use of policies and procedures because it allows the Board at anytime in the future to undertake revisions based on staff recommendations or changed conditions; especially changes in business conditions or land or climate conditions that might warrant some flexibility. But they didn't talk about setting any kind of periodic deadline for making revisions.

Mr. Atta said that's fine. He was just curious because the main point being that the manual could be changed at anytime based on need and that's the key to keeping it flexible. He's happy to see that.

Chair asked if there were any other comments. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

2. Annual Performance Review of the Executive Director (continued from September 21, 2022, Item E-3)

Chair stated this matter will be heard in Executive Session pursuant to HRS section 92-4, which allows the board to hold an executive meeting closed to the public.

The Board may go into executive session for three purposes: 1) pursuant to HRS section 92-5(a)(2), to consider the evaluation of employees where consideration of matters affecting privacy will be involved; 2) pursuant to HRS section 92-5(a)(4), to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities; and, 3) pursuant to HRS section 92-5(a)(8), to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law.

Chair asked, before we go into executive session, is there any public testimony? There was none.

Chair asked for a motion to go into executive session: Ms. Evans; Second: Ms. Seddon.

Chair asked if there was any discussion.

Ms. Roth said that CWRM needs to recuse themselves from this. She doesn't know the details but was told she will not be voting on this item.

Ms. Prescott-Tate said she can vote on the motion to go into executive session and then recuse herself from voting on the issue later.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

The Board entered executive session 9:40 a.m.

Board returned from Executive Session at 10:02 a.m.

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Chair asked for a motion to accept and approve the updated October 12, 2022 annual performance evaluation of the ADC Executive Director James Nakatani: Mr. Watanabe; Second: Ms. Seddon.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for board discussion. Ms. Roth said she will be recusing herself from voting.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 7-0 (Ms. Roth abstained)

F. Executive Director's Report

Mr. Nakatani stated that Chair requested an update on the outstanding Galbraith parcels of lands that we're trying to license. By the next board meeting there should be two submittals, one for Ohana Hui Ventures and one for the Laws. The rest of the approved tenants have been doing their due diligence and hopefully they will be coming to the board for licensing shortly.

There is also a CIP request to the legislature. It's quite ambitious and he wanted to point out the two critical ones. The Aahoaka Reservoir on Kauai for \$1.1 million. The other critical one is the clean up of the soil at Galbraith and they're hoping it's around \$500,000 and hopefully they will get the appropriation to clean up the soil. The big one is the Wastewater Reclamation Irrigation Plan, it's a \$124 million. It seems like a lot but actually for that kind of project that's pretty small. The rest is self-explanatory. Number 7, Agricultural lands, Oahu, \$3 million, they had the appropriation a while back but they didn't have clear title so the funding lapsed. He was informed earlier that the lands have cleared title and they will see if they can purchase that property.

Chair asked if Hawaii Sustainable Agricultural Products had submitted their approved conservation plan. He thought they were one of the five tenants that had submitted their conservation plan. Are they moving ahead?

Mr. Nakamoto responded they have submitted their approved conservation plan and the next step is to look at their water situation and come back to the board to issue a license.

Chair asked if the tenants the board will be looking at approving their licenses at the next meeting are the Laws and Ohana Hui?

Mr. Nakamoto responded yes.

Chair said ok, he just wanted to clarify, so three out of five have submitted their conservation plans so he thinks they are moving ahead very well on this.

Ms. Roth said she had a question on the land acquisition request on the CIP form. Does ADC ever seek out, outside funding through grant? That's something that DLNR does regularly when trying to acquire lands and so she was just curious if that's something that ADC also looks into so that they can source money from other non-State partners.

Mr. Nakatani said they looked at it before but there's a caveat that if you charge lease rent that you have to pay that amount and it goes on forever. So, they elected not to enter that program. He said he thinks the first program they looked at was up in Whitmore, which would be a good plan if it stayed in

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conservation but in this case it would be for commercial use and it didn't fit that requirement so they elected not to do it. He thanked her for the question.

G. Adjourn

Chair asked if there were any other questions. There was none.

Chair asked for a motion to adjourn: Mr. Tabata; Second: Mr. Watanabe.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

Meeting was adjourned at 10:20 a.m.

Respectfully submitted,

Lynette Marushige
Secretary

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Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 South Beretania St., Room 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
 Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
 (joined the meeting at 9:07 a.m.)
 Brian Kau (designated attendee for Ms. Shimabukuro-Geiser until her attendance) (Mr. Kau)
 Warren Watanabe, Member-At-Large (Mr. Watanabe)
 Glenn Hong, Member-At-Large (Mr. Hong)
 Lyle Tabata, Kauai County Member (Mr. Tabata)
 Karen Seddon, Member-At-Large (Ms. Seddon)
 Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)

Members Excused:

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)
 Jayson Watts, Maui County Member

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
 Ken Nakamoto, Project Manager (Mr. Nakamoto)
 Lyle Roe, Property Manager (Mr. Roe)
 Mark Takemoto, Executive Assistant (Mr. Takemoto)
 Lance Tashima, Administrative Services Officer
 Lynette Marushige, Executive Secretary

Guests Present, virtually:

Ford Fuchigami
 Scooter
 T J
 KITV Island News
 Mark L

Guests Present, physical location: None.

A. Call to Order

Chair called the virtual meeting to order at 9:03 a.m.

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B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Mr. Hong, Mr. Manuel, Ms. Seddon, Mr. Kau, Mr. Tabata and Mr. Watanabe acknowledged attendance with no guests present. Ms. Evans joined the meeting at 9:07 a.m.

C. Approval of Minutes

None.

D. New Business

1. Request for Approval to Issue License Agreement to Law Tieng’s Farm LLC for 87.13 Acres, More or Less, of Lot 16 in Wahiawa, Oahu, Hawaii, Tax Map Key No. (1) 7-1-001:005 (por.)

Chair asked for a motion to approve: Mr. Watanabe, Seconded: Mr. Hong.

Chair asked for staff presentation.

Mr. Roe stated he did not have a presentation but was available to answer any questions.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Nakamoto called upon “T J” to enter the virtual meeting.

T J asked if there was a cap on the rent credits for this tenant and also the next agenda item.

Mr. Roe said that would be up to the board. It really depends on what the tenants put into it. The rent credits would not be unfettered.

T J also asked for the percentage or portion of their produce that would be earmarked for local consumption and what portion would be for non-local use.

Mr. Roe responded that was unknown.

Chair added for clarification that the Board will be requesting the tenants to provide data on what is being produced and where it is being sold. We’re working on that. Hopefully next year we’ll have that in place.

T J continued with one more question. Will the remediation plan that’s being worked on now be available for the public to view and comment?

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Mr. Roe responded that he was unsure. Mr. Nakamoto has been working on that so I'm not certain what the process is going to be. The plan will be reviewed by the Department of Health (DOH) but I'm not sure whether that's going to be available for public comment.

T J concluded her testimony by thanking the Board.

Chair asked for Board discussion on this motion.

Mr. Manuel asked a few water-related questions. Do we know what type of irrigation was being proposed? Is it drip? Have they submitted an irrigation plan?

Mr. Roe responded that he hadn't seen any irrigation plans but it will be drip.

Mr. Manuel continued that we use 2500 gallons per acre, per day for this type of diversified Ag. That totals a little over 200,000 gallons per day. It says that the Bott Well or the reservoir that's by the Bott Well will be the source of water for this license. I just want to flag for this body that ADC's water-use permit is for two million gallons per day (MGD) from Bott Well. The high use in June was reported at about 1.5 MGD. As we consider these new licenses, there's three proposed today to pull water from Bott Well, ADC may be getting close to the maximum allocation. If there's a desire to increase the allocation, you have to come to the Water Commission to request the modification and then go through that formal process. But, based on the numbers I'm seeing in the water use permit, ADC may be getting close during the dry months of the year. I just wanted to flag that for this body as we're approving these license conditions to be in compliance with the water use permit.

Chair thanked Mr. Manuel and stated he believed this was the only property of the new licenses that will be using the Bott Well. ADC's hoping to secure other wells that will feed some of the other licensees. Mr. Nakamoto, do you want to add anything?

Mr. Nakamoto responded that he really can't disclose information about purchase negotiations, but ADC is searching for alternative water sources. And, just to clarify, two of today's license submittals will be using water from Bott Well.

Mr. Manuel reminded the board that for planning purposes those two licenses add about half a million gallons of use. Add that to June's reported value to the Water Commission, ADC is at two MGD. As we're approving these licenses, ADC needs to be cognizant not to violate or over pump the allocation. Otherwise the fun begins between the Water Commission and ADC. I want to make sure that ADC is in compliance with the water code.

Chair asked for any other discussion and recognized Ms. Evans.

Ms. Evans thanked Mr. Manuel for the very helpful information and asked which aquifer the Bott Well taps into?

Mr. Manuel replied that should be Wahiawa. I can get you the exact aquifer in a second.

Ms. Evans asked if a hydrologist had estimated the sustainable yield from the entire Wahiawa aquifer.

Mr. Manuel explained that the Wahiawa aquifer was basically maxed out so getting new allocations was going to be challenging. Existing use was below sustainable yield, the quantity, but if I'm

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looking at this correctly, it is in the Wahiawa aquifer system area and the sustainable yield for Wahiawa is 23 MGD.

Ms. Evans asked what's the total allocation approved by the Commission.

Mr. Manuel responded, good question, I would have to tally it up, I don't have that data readily available right now but that's something the Water Commission could provide ADC. One of the things I will add for this body to consider is climate change projections and impacts of reduced recharge on the aquifers throughout the state. Based on seven out of eight models, those recharge values are decreasing or show a downward trend. The commission may look at considering reducing sustainable yield throughout the state where appropriate. That's just a reminder for us to not just rely on one water source as a way to provide water to ADC's end users but to start to look at alternative sources like R-1, desalination; other types of non-potable uses, water, for those non-potable uses. I just wanted to flag that for this body cause, Wahiawa is a tricky aquifer to deal with.

Chair asked if there was anyone else.

Mr. Manuel said he had one more question on the 2.5% rent increase, was that a standard inflation factor for rent openings. I'm just curious where that number came from.

Mr. Roe stated that's based on the policies and procedures we approved at the last meeting.

Mr. Manuel thanked Mr. Roe.

Chair asked if there was any other discussion and if not he would call for the vote.

Mr. Nakamoto interrupted saying T J had her hand up. T J entered the virtual meeting.

T J stated that she meant to take her hand down, but the discussion was very interesting and thanked Mr. Manuel for his comments because we do need to keep an eye on our beautiful water in Wahiawa.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

2. Request for Approval to Issue License Agreement to TM Farm LLC for 133.32 Acres, More or Less, of Lot 15 in Wahiawa, Oahu, Hawaii, Tax Map Key No. (1) 7-1-001:005 (por.)

Chair asked for a motion to approve: Mr. Manuel; Seconded: Ms. Evans.

Chair asked for staff presentation.

Mr. Roe stated he did not have a presentation but was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for discussion by the Board on this motion.

Mr. Manuel raised a similar question for Mr. Roe about the style of irrigation. I'm assuming drip here as well.

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Mr. Roe replied, yes, it will be identical.

Mr. Manuel stated, just again, I'm estimating based on how we plan for water use about 333 thousand gallons per day, based on tillable acres. Again, just wanted to repeat my comments to the first item above about being conscious of how we pump Bott Well and how water is managed throughout these parcels. Thank you.

Chair called on Mr. Kau.

Mr. Kau remarked that the submittal identified an 11-acre portion that was not being included. Are those 11-acres, taken out of the 133 gross or is it included in the 16.79 non-tillable.

Mr. Roe responded that it's included in the tillable right now. We're going to include it in the license so that we can let them use it when we get the all clear from DOH, but they won't be charged for it while it's undergoing remediation.

Chair asked if there was any other discussion, if not he'll call for the vote.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

3. Request for Approval to Issue License Agreement to Ohana Hui Ventures, Inc. for 397.3 Acres, More or Less, in Wahiawa, Oahu, Hawaii, Tax Map Keys (1) 7-1-001:012, (1) 7-1-002:041 (por.), :046, :047, (1) 7-1-002:034, :006

Chair asked for a motion to approve: Ms. Seddon; Seconded: Ms. Evans.

Chair asked for staff presentation.

Mr. Nakamoto stated that he stood on the written submittal and was available to answer questions.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for discussion by the Board and called on Mr. Manuel.

Mr. Manuel asked another water related question about TMK 7-1-001-012, the 31.6-acre parcel. That TMK is referenced in the water use permit as a potential end use. Technically that one could be served via the Bott Well, but the remaining TMKs aren't included. So, again, I'm just flagging this to stay in compliance with the water use permit. If there is a desire to use the Bott Well to support any of the other TMKs, you'd have to come to the commission to request a modification to add those end uses to your permit. I did notice that there's a two-inch meter recommended for use from the Department of Water Supply (DWS). If that's in place, is DWS ok with the quantity of use being proposed?

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Mr. Nakamoto responded that the two-inch water meter has been installed and we'll be working closely with building storage as well as other means to conserve and make sure that there's enough water to go around.

Mr. Manuel stated for planning purposes, the quantity is over 600,000 gallons a day at full build out. That's a lot of water from the DWS system and considering some of the shortage issues we're dealing with on this island, I was just interested. Thank you.

Chair called on Mr. Kau.

Mr. Kau asked for clarification, looking at the difference in the rental rate between this parcel and the last two licenses that were just approved. Is the difference strictly because of the character of use, aquaculture vs. diversified Ag? Because diversified Ag is also listed here.

Mr. Nakamoto clarified that it's actually the difference is based on the activities that they're doing with the community. If you notice on the map, this particular parcel abuts a lot of the homes in Whitmore and this Licensee is working with the community. They have done a lot of clean up, picking up a lot of trash in the area, on their dime. They're also doing vocational training. They're trying to uplift the community and ADC is just trying to support that.

Mr. Kau asked if after year ten, the 2.5% increase will be implemented.

Mr. Nakamoto acknowledged that was correct.

Mr. Kau further clarified, so it will be 2.5% on the \$100 per acre, per year?

Mr. Nakamoto acknowledged that was correct.

Chair asked if there was any other discussion and called on Mr. Manuel.

Mr. Manuel said, just one more thing, the submittal states that the conservation plan was approved by the Soil and Water Conservation District. Most of those plans aren't available because it just says, subject to approval of the conservation plan. But since this one was already completed could it be made available to the Board?

Mr. Nakamoto stated that it could be provided to the Board.

Chair asked if there was any other discussion, if not he'll call for the vote.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

4. Complaint Referral from Department of Budget & Finance

Chair stated that new business item D-4 and Old Business item E-1 will be taken in Executive Session pursuant to section 92-5(a)(4), Hawaii Revised Statutes (HRS), which allows the Board to hold an executive meeting closed to the public. The Board may go into executive session for three purposes: 1) The Board may go into executive session, pursuant to HRS section 92-5(a)(2), to consider the evaluation of an officer or employee where consideration of matters affecting privacy

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will be involved; 2) Pursuant to HRS section 92-5(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities; and 3) pursuant to HRS section 92-5(a)(8), to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law. Before we go into Executive Session is there any public testimony? There was none.

Chair asked for a motion to go into Executive Session: Ms. Evans; Seconded: Mr. Manuel.

Chair noted there was no staff presentation and asked if there was any board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

Board entered executive session at 9:30 a.m.

E. Old Business

1. Update Regarding Ohana Best v. State of Hawaii, et al., Civ. No. 19-1-1640-10.
See New Business D-4 – item taken in Executive Session:

The Board returned from executive session at 9:56 a.m.

Chair moved on to the next agenda item and called upon the Executive Director to give his report.

F. Executive Director's Report

Mr. Nakatani greeted the Board and thanked the Chair. Mr. Nakatani stated his report was very short. If you look at his report in the submittal, Christian Crossing, it's not finished but I think we did a lot to improve Christian Crossing Bridge.

Mr. Tabata remarked that it looked good.

Mr. Nakatani continued saying hopefully it's pretty safe but just to reiterate, that bridge is important since at one time the County was looking at that to be an emergency route in case the Wailua Bridge went out. It's a pretty important bridge over there. Secondly, the staff, Mr. Roe and Mr. Takemoto, went out to meet with the U.S. Dept. of Defense Readiness and Environmental Integration Program (REPI) people. The meeting went well and hopefully we can get some funds that can be deposited in a separate account just for the Wahiawa community. Lastly, the draft Agribusiness Development Corporation's Annual Report to the legislature is attached. If you have any comments submit it to us. Shortly after Thanksgiving the report will go to DBEDT and then to the legislature. That's my report, any questions?

Ms. Evans asked if Mr. Nakatani could expand on the Sentinel Landscape Partnership Working Group Site Visit at Galbraith, item 2 on your report, if you can expand a little on that.

Mr. Nakatani stated that Mr. Roe could probably do a better job on that because he was there, but it's REPI, kind of similar to what happened in Kauai; the military trying to discourage encroachment. What the military does is buy an easement and they give you some funds. The issues I had with that is, I wanted the money to be deposited in a special account and not just go into the general fund. I wanted to

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make sure the funds were available to ADC to benefit the community or that area would benefit the most. Scotty Wong from Ohana Hui Ventures was there and did a very good job. The military they're pretty sensitive to the community now, especially Native Hawaiians like that so, that went well.

Ms. Evans asked if ADC property abuts the military property in Wahiawa.

Mr. Nakatani responded yes, that's NCTAMS (Naval Computer and Telecommunications Area Master Station Pacific); I guess it's a communication center and you have other properties around there. That's the reason why they're looking at doing more. They have one easement now, but they want to expand. That's why they're talking to ADC.

Ms. Evans asked what the funds will be used for.

Mr. Nakatani replied that's a board thing. But I'm hoping that if we do have the funds like that we maybe think about this and have a community group or something to give us guidance to spend the money, what would be the best to do. You know try to uplift the whole community, especially Whitmore. There're so many negative things going on over there. I think that Ohana Hui coming in is a great hope for uplifting the community. Hopefully we get some funds and can put back to the community and we'll see what we can do from there.

Ms. Evans asked if it's your impression that it's an annual payment or a one-time payment.

Mr. Nakatani said I'm not sure, I think it's a one-time payment but, either way, put it in that account, and hopefully it doesn't get raided or something like that. You know, that's why I asked for a separate account just for that purpose and for that area. I mean it's not just for Whitmore but the whole Wahiawa area that could benefit from that easement. That's the whole purpose of the whole thing.

Ms. Evans asked, the easement, what are they allowed to do if an easement is given?

Mr. Nakatani replied there are restrictions. Mainly, they don't want buildings of certain heights, trees or something like that. But, it would allow I'd say 99.9% of our agriculture to be there. They just don't want structures coming onto our property, and encroachment; not to have 50-foot trees blocking them right next to the base, they'd probably object to that.

Chair called on Mr. Manuel.

Mr. Manuel asked about the Christian Crossing Bridge repair, was any work done in the stream?

Mr. Nakatani replied no; we separated the contracts because it takes a long time to get the stream permits, so what they did was, they just worked on the top portion.

Mr. Manuel stated I just wanted to make sure that if you are going to go in the stream you have to get a SCAP (Stream Channel Alteration Permit) from the Water Commission.

Mr. Nakatani noted that ADC might be short of funds to do the whole thing.

Mr. Manuel made a request for future boards, if there could be like an annual report, or a discussion on all of the ADC water systems. When we talk about the individual licenses, the water needs and source of water are presented, but as I reviewed the annual report it's pretty robust with a lot of the work that's happening and the budgeting and so forth. As an asset of the agency it would be good to have a better

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understanding of the water sources. For example, a presentation about the Waiahole Water System and how that's operating, and what are some of the plans moving forward. So, we as a board can understand more holistically how management is happening. Like, once a year reporting on those water systems would be good. Just a request.

Mr. Nakatani stated, maybe you weren't on the board at that time, but I think we started off as the Waiahole Water Security plan and then it kind of morphed into a different name but to address what you're talking about, how do you conserve water and not waste water and how to bank it right with reservoirs and everything. That was kind of the plan. And I believe that it might have gotten, and this may be a question for Mr. Kau, the water use permit, the water use utilization plan, that Department of Agriculture has, that's a good start. But, I think that addresses most of the irrigation systems. So, we can provide that to the Board if you want.

Mr. Manuel responded that for the four-years that I've been on, we really haven't talked about Waiahole or there've been no presentations to the Board. I think it would be good because it's one of ADC's primary assets right? And as I look at the expenditures, Waiahole's actually one of the systems to end in the black which is great. It would be good as a presentation.

Mr. Nakatani acknowledged Mr. Manuel's request.

Chair asked if there were any other questions for Mr. Nakatani.

Mr. Nakamoto said there was one question from the public. Mr. Nakamoto called T J to enter the virtual meeting.

T J stated that she appreciated all the updates and had a request as a community member, that the ADC Board schedule a meeting with the community in Whitmore because of some of the comments that have been made by the Executive Director. I know that I speak for a lot of the community; I think it might help the Board to understand where the community is coming from when we continue to bring issues like the homeless on the properties and the vehicles that are continuing to be dumped on the properties. I would implore the board to schedule a time to come out and talk to the community. You know we had a meeting with Ohana Hui Ventures and a lot of us that were in attendance were not satisfied or not happy, and I'm trying to find the right words. We weren't very happy with the conversation that was had that day. I felt that it was a little disrespectful that the executive director wasn't there at the meeting. Not that we give less credit to Mr. Nakamoto, but it would have been nice for the executive director to be in attendance at that meeting. He should be at meetings that are held with tenants or potential tenants or applicants for properties of ADC that are right within Whitmore town. I will put it out there, as a community member, I'm happy to help coordinate something. It's important that you as ADC members see and hear from the community about what ADC is doing in our community. These board meetings are great but not all of us can attend because most of us work. Right now, I just stepped out from my job to say a few words and to listen to the board meeting. But I would implore you and I would humbly request that the ADC board make time and schedule a meeting where you can come out and meet the members of our community that are being affected by what ADC is doing and the fact that ADC is in our community, so you can hear from our community members what our concerns are and how we can come together because we want ADC to succeed. We want an alternative agricultural plan for our community. It's not getting done; it's just not. I think it would be really helpful for the Board to speak with the community to understand why we push for things like better security, better land management, better property management. Not only in Whitmore but out to the North Shore including the area along Kaukunahoa, Hukilau Loop, Kamananui Road, Farrington Highway, out near Waialua High School, where there are still lots and lots of residents that have lived there and see all of the tenants that are coming in to farm on

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Minutes of the Board of Directors Meeting held Virtually on November 16, 2022

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Room 204, Honolulu, HI 96813

agricultural lands now controlled by ADC. I appreciate the board meetings, I appreciate all of your time that you give to this, but from a community member's standpoint, and this I say from a lot of the community members, we really would like for the Board to come out, even if it's only once a year or twice a year. Please come out to the community and meet with the community that is 100% affected by what ADC does and how they manage these beautiful agricultural lands that have supported our families for generations. I remain open for questions. My phone number is REDACTED. I appreciate any discussions, any conversations. We want agriculture to thrive and flourish so that our families can stay home. My two sons live on the mainland right now. My last one just moved in December of last year. We want our community to flourish so that our next generation can stay home and be able to feed and grow and that our families can thrive in this community. I appreciate all of you and I thank you for your time today. Aloha.

G. Adjourn

Chair asked if there was any other discussion, if not he'll ask for a motion to adjourn.

Chair asked for a motion to adjourn: Ms. Seddon; Seconded: Mr. Manuel.

Chair asked if there was any discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

Meeting adjourned at 10:13 a.m.

Respectfully submitted,

Lynette Marushige
Secretary

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-1

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Board Discussion and Approval of Board Meeting Schedule for
CY2023

Proposed Meeting Dates for CY2023

Due to the regularly scheduled time and day of the Governor's cabinet meetings on Wednesday's at 10:00 a.m., staff recommends the following ADC Board meeting dates for calendar year 2023:

Thursday, February 16, 2023; 9:00 a.m.
Thursday, March 16, 2023; 9:00 a.m.
Thursday, April 20, 2023; 9:00 a.m.
Thursday, May 18, 2023; 9:00 a.m.
Thursday, June 15, 2023; 9:00 a.m.
Thursday, July 20, 2023; 9:00 a.m.
Thursday, August 17, 2023; 9:00 a.m.
Thursday, September 21, 2023; 9:00 a.m.
Thursday, October 19, 2023; 9:00 a.m.
Thursday, November 16, 2023; 9:00 a.m.
Thursday, December 21, 2023; 9:00 a.m.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-2

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Request for Approval for the Assignment of License Agreement No. LI-K1502, Issued to Andros Engineering Corporation, to Kekaha Agriculture Association, Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Licensee: Andros Engineering Corporation

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 1.5 acres, more or less

Field No(s): Non-designated

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor's Executive Order No. 4007 to the Agribusiness Development Corporation for Agricultural and Related Purposes as modified by Governor's Executive Order Nos. 4034 and 4165

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ☒ No ☐

Character of Use: Agricultural, Commercial

Land Doc. Type: License

Term: 10 years (currently in year 8)

Rental Rate: \$800.00 per month
Annual Rent: \$9,600.00

BACKGROUND:

Andros Engineering Corporation (Licensee) is a California corporation started in 1996 who specializes in specially designed farming equipment. License Agreement No. LI-K1502 (License), effective January 1, 2015, was approved by the Board of the Agribusiness Development Corporation (ADC) at their meeting on March 19, 2014 for

approximately 1.5 acres of land in the area informally known as the “carpenter shop” (Exhibit A).

Licensee initially set out to design and build custom-designed farm equipment. However they quickly found a niche market on Oahu ¹ and Kauai for field services related to the installation and removal of drip tape, plastic recycling, and other field services. Changes over the last several years have seen the exit of businesses such as Beck’s Superior Hybrids, Inc., as well as the conversion of some farms from contracted to in-house field services. Licensee believes their operations are no longer sustainable given the decreased demand for their services. Licensee has been in discussions with Kekaha Agriculture Association (KAA) to take over some of their operations and assume responsibility for the License.

KAA is an agricultural cooperative of ADC tenants in the Kekaha area and manages ADC infrastructure, including the Kekaha and Kokee ditch systems, interior roads and bridges, water system infrastructure, etc.

ASSIGNMENT REQUEST:

Licensee and KAA request that the License be assigned to KAA for the remaining term of the License (Exhibit B), retroactively effective to January 1, 2023.

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

KAA intends to use the premises as the base yard for their operations. They intend to continue offering the local agricultural community many of the same services that Licensee offered.

CONSERVATION PLAN:

N/A

DISCUSSION:

The License permits any number of extensions by mutual consent ². The effect of this assignment is budget neutral.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Assignment Request for the remaining term from January 1, 2023 to December 31, 2024, subject to the following conditions:

¹ Licensee terminated the revocable permit under which they held their Oahu premises (see Executive Director’s Report of September 21, 2022).

² License (paragraph 1): “1. Term. The term of this License is for ten (10) years, or until such time as the LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided. LICENSOR and LICENSEE also may agree to extend the term of this License any number of times for such period or periods of time as LICENSOR and LICENSEE shall determine.”

January 25, 2023

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1. The executive director shall be authorized to execute an assignment of License Agreement No. LI-K1502 from Andros Engineering Corporation to KAA with the same terms and conditions for the remaining term of the License; and
2. The assignment shall be effective January 1, 2023; and
3. All other terms and conditions of the License shall remain unchanged.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-3

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Request for Approval to Amend License Agreement No. LI-K1902 Issued to Kokee Farms LLC, Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Licensee: Kokee Farms LLC

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 62.29 acres, more or less

Field No(s): 633

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor's Executive Order No. 4007 to the Agribusiness Development Corporation for Agricultural and Related Purposes as modified by Governor's Executive Order Nos. 4034 and 4165

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ☒ No ☐

Character of Use: Agricultural

Land Doc. Type: License

Term: 35 years (currently in year 3)

Rental Rate: \$72.24 per acre per year (in year 3)
Annual Rent: \$4,500

BACKGROUND:

The license was initially approved by the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) on February 20, 2019. The license approval was amended on April 24, 2019 and again on July 22, 2020 to restructure

approved license fees and adjust the licensed entity. License Agreement No. LI-K1902 (License) was issued and effective August 14, 2020 to Kokee Farms LLC (Licensee) for 62.29 acres, more or less, in Kekaha, Kauai (Exhibit A). The principals, Richard Loero and Clint Smith with 20 years farming experience between them, teamed up with forestry experts to develop a perennial-based system of coffee, tea, fruiting trees and forestry that are well adapted to the elevation and environment of the mauka lands. The License was amended on August 26, 2020, to correct the license number.

The business plan was to sell their produce on-farm via a farm stand and a “pick-your-own” mixed agroforest, with any extra produce sold to local restaurants and value-added businesses. The coffee would be harvested and dry processed on site, with green coffee cherry further processed and offered to market through Kauai Roastery, farm stand, and online. To-date, Licensee has planted approximately 10 acres of coffee, the oldest plantings of which are 2.5 years old. At full build out, Licensee anticipates 40 acres of coffee and 10 acres of orchard/diversified crops (citrus and avocado) with farm stand sales (subject to County of Kauai permitting rules). Implementation of the business plan included clearing the overgrown fields and finding and rehabilitating plantation era irrigation systems.

The current License fee is scheduled as follows:

When	Rent
Year 1	\$1,500/annually
Year 2	\$3,000/annually
Year 3	\$4,500/annually
Year 4 until the last day of the 9 th year	\$9,339/annually
Every 10 th Year	Re-open

However, the business experienced Covid-19 pandemic-related difficulties that included the departure of one of the partners. Business plans, planting schedule, and planned income fell behind. As of January 25, 2023, Licensee maintained a rent arrearage of \$4,500.

REQUEST:

Licensee requests that the license fees be retroactively amended and restructured as indicated below. The request would waive Licensee’s \$4,500 arrearage by retroactively restructuring the license fee.

When	Rent
Year 1-3	\$1,500/annually
Year 4	\$3,000/annually
Year 5	\$4,500/annually
Year 6 until the last day of the 9 th year	\$9,339/annually

Every 10 th Year	Re-open
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WATER NEEDS AND SOURCE OF WATER:

Licensee accesses water via the Kokee Ditch.

OPERATIONAL PLAN:

Licensee's operational plan remains substantially the same as the prior plan but reflects the delayed timeframe.

CONSERVATION PLAN:

Licensee has developed and implemented a conservation plan with the United States Department of Agriculture's Natural Resources Conservation Service with approval by the West Kauai Soil and Water Conservation District.

DISCUSSION:

Rent arrearage notwithstanding, Licensee has been a good tenant, a good steward of the property, and has invested significant time and effort in clearing the property and returning it to productivity. Specialty crops such as these represent the type of small-farming activity that ADC seeks to encourage.



RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Request noted above subject to the following conditions:

1. ADC will waive Licensee's \$4,500 license fee arrearage; and
2. Authorize staff to amend numbered paragraph 2 as follows: "2. License Fee. The base license fee and schedule for this License shall be as indicated in the table below, payable in monthly installments, on or before the first of each month.

When	Rent
Year 1-3	\$1,500/annually
Year 4	\$3,000/annually

January 25, 2023

Page 4 of 5

Year 5	\$4,500/annually
Year 6 until the last day of the 9 th year	\$9,339/annually
Every 10 th Year	Re-open

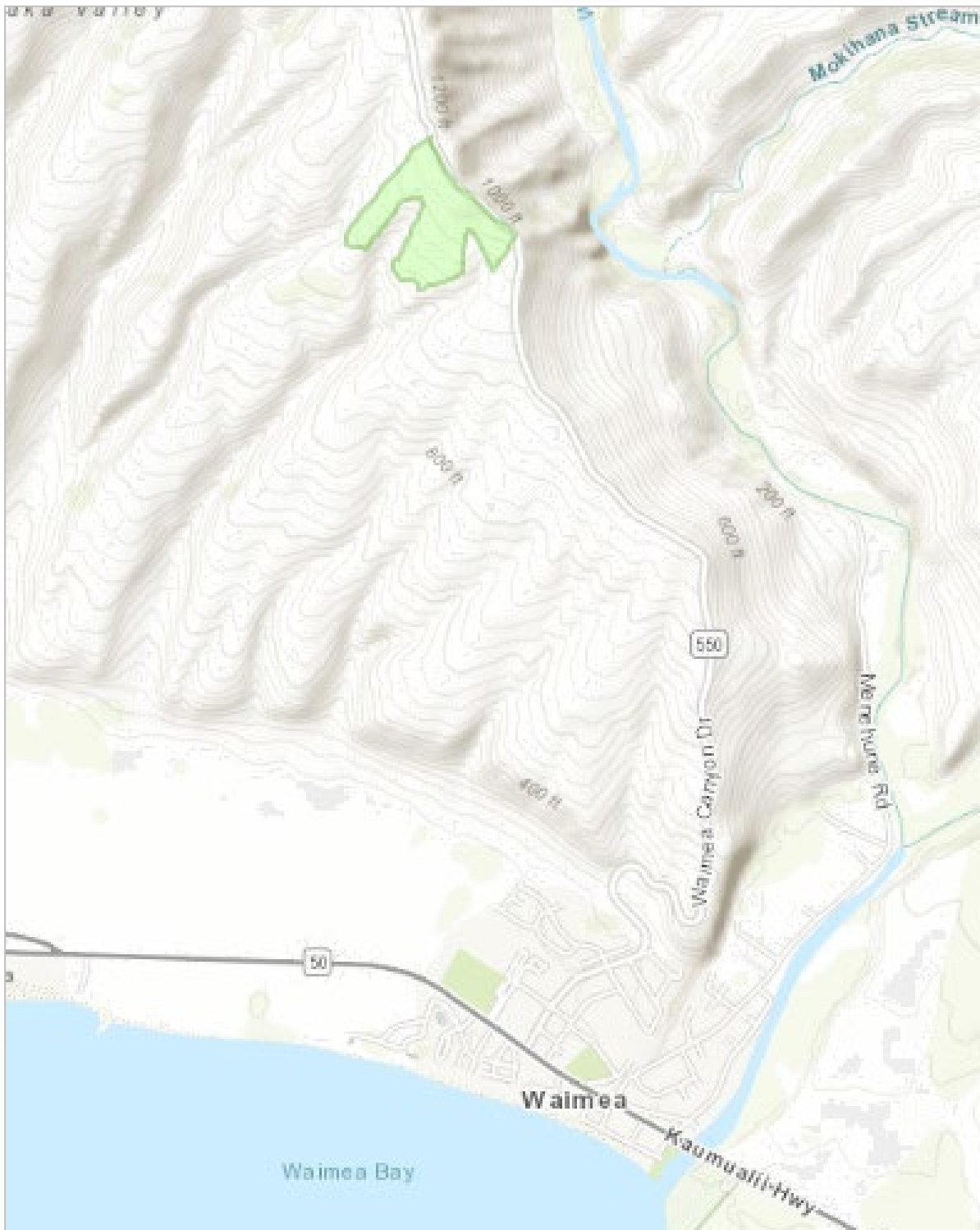
3. All other terms and conditions of the License shall remain unchanged.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-4

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Request for Approval to Authorize the Executive Director to Execute the *Department of Health – Wastewater Branch Individual Wastewater System (IWS) Owner's Certification Form*

Licensee: William H. Wise III dba Waihii Farms and Kalama Hardwood LLC

Authority: 163(D)-4(a)(5), Hawaii Revised Statutes

Area: 16 acres, more or less

Field No(s): Non-designated

Tax Map Key: (1) 7-1-002:004

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2015

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ____ No X

Character of Use: Diversified Ag, Residential

Land Doc. Type: License

Term: 35 years (currently in year 8)

Rental Rate: \$850 per month (re-open 2025)
Annual Rent: \$10,200

BACKGROUND:

In 2015, the Agribusiness Development Corporation (ADC) purchased the subject parcel (Property) from Dole Food Company, Inc. (Dole). The acquisition included that certain "Assignment and Assumption of Lease" agreement dated February 26, 2015 in which ADC accepted the assignment of then Dole lessees on the Property. William H. Wise III, was one of the Dole licensees.

In September 2015, ADC issued a Revocable Permit to William H. Wise III dba Waihii Farms (Exhibit A), for 16 acres, more or less (Premises), for agricultural purposes. There are two homes and a workshop/showroom structure located on the Premises. In December 2015,

ADC issued License Agreement No. LI-WM1505 (License) (Exhibit B) for 35 years to William H. Wise III dba Waihii Farms for the same Premises and for the same purpose. The License allows use of the existing structures for residential purposes.

In November 2018, the License was amended to add Kalama Hardwood LLC as a licensee (collectively "Licensees"). Kalama Hardwoods, LLC is owned by Shawndrea M.K. Wise, who operates the business out of the workshop/showroom.

In response to a complaint, on December 3, 2021, an inspector from the Waste Water Branch of the Hawaii Department of Health (HDOH) conducted an inspection of the Premises where it was noted that the two residential structures were using an open pit cesspool and septic tank with leach field. The inspector noted that both of these wastewater systems were unapproved and that a Field Citation would be issued to the property owner for use of unauthorized wastewater systems.

On December 17, 2021, ADC received a "Field Citation" from HDOH that assessed ADC a fine of \$600 for the wastewater system violations. The Board approved the request to pay the fine at their meeting on January 26, 2022.

Licensees, at their own cost and expense, obtained the services of a licensed contractor to obtain approval from HDOH for the design and installation of approved individual wastewater systems. Licensees have submitted the design, application, and application fee to HDOH.

As part of the application process, HDOH requires the property owner to submit an Owner's Certification Form, certifying that the property owner shall comply with all provisions of HAR Title 11, chapter 62, related to Wastewater Systems. The Owner's Certification Form is attached as Exhibit B. Licensees are unable to obtain approval to install the new individual wastewater systems without ADC submitting the signed Owner's Certification Form to HDOH.

REQUEST:

Staff requests that the Board authorize the Executive Director to execute the Certification Form on behalf of ADC.

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

N/A

CONSERVATION PLAN:

N/A

DISCUSSION:

As the owner of the Property, ADC is required to comply with the provisions of HAR Title 11, chapter 62, which are specifically identified in the Owner's Certification Form. Licensees are unable to obtain approval to install the new individual wastewater systems without the property owner submitting the signed Owner's Certification Form to HDOH. Authorizing the Executive Director to execute the Certification Form will allow ADC to avoid potential liability for further wastewater system violations.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Request noted above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be "J. Nakatani", followed by a horizontal line extending to the right.

James J. Nakatani
Executive Director

EXHIBIT A



JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM D-5

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OU LU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Request for Approval to Amend–License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)

Licensees: William H. Wise III dba Waihii Farms and Kalama Hardwood LLC

Authority: 163D-4(a)(5), Hawaii Revised Statutes

Area: 16 acres, more or less

Field No(s).: Non-designated

Tax Map Key: (1) 7-1-002:004

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2015

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No **X**

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ____ No **X**

Character of Use: Diversified Ag, Residential

Land Doc. Type: License

Term: 35 years (currently in year 8)

Rental Rate: \$850 per month (re-open 2025)
Annual Rent: \$10,200

BACKGROUND:

In 2015, the Agribusiness Development Corporation (ADC) purchased the subject parcel (Property) from Dole Food Company, Inc. (Dole). The acquisition included that certain "Assignment and Assumption of Lease" agreement dated February 26, 2015 in which ADC accepted the assignment of then Dole lessees on the Property. William H. Wise III, was one of the Dole licensees.

In September 2015, ADC issued a Revocable Permit to William H. Wise III dba Waihii Farms (Exhibit A), for 16 acres, more or less (Premises) for agricultural purposes. There are two homes and a workshop/showroom structure located on the Premises. In December 2015, ADC issued License Agreement No. LI-WM1505 (License)(Exhibit B) for 35 years to William H. Wise III dba Waihii Farms, for the same Premises and for the same purpose. The License allows use of the existing structures for residential purposes.

In November 2018, the License was amended to add Kalama Hardwood LLC as a licensee (collectively "Licensees"). Kalama Hardwoods, LLC is owned by Shawndrea M.K. Wise, who operates the business out of the workshop/showroom.

In response to a complaint, on December 3, 2021, an inspector from the Waste Water Branch of the Hawaii Department of Health (HDOH) conducted an inspection of the Premises where it was noted that the two residential structures were using an open pit cesspool and septic tank with leach field. The inspector noted that both of these wastewater systems were unapproved and that a Field Citation would be issued to the property owner for use of unauthorized wastewater systems.

On December 17, 2021, ADC received a "Field Citation" from HDOH that assessed ADC a fine of \$600 for the wastewater system violations. The Board approved the request to pay the fine at their meeting on January 26, 2022.

Licensees, at their own cost and expense, obtained the services of a licensed contractor to obtain approval from HDOH for the design and installation of an approved individual wastewater system. Licensees have submitted the design, application, and application fee to HDOH.

As part of the application process, HDOH requires the property owner to submit an Owner's Certification Form, certifying that the property owner shall comply with all provisions of HAR Title 11, chapter 62, related to Wastewater Systems. The Owner's Certification Form is attached as Exhibit B. Licensees are unable to obtain approval for installation of new individual wastewater systems without ADC submitting the signed Owner's Certification Form to HDOH. However, a review of the Owner's Certification Form makes it clear that the property owner, not the residential tenant, is responsible to ensure all provisions of HAR Title 11, chapter 62 are met. Any penalty would fall on ADC if the provisions are not met.

REQUEST:

Staff requests approval to amend the License by including an addendum (Exhibit C), requiring Licensees to comply with, HAR Title 11, chapter 62 as it relates to the HDOH – Wastewater Branch Individual Wastewater System Owner’s Certification Form.

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

N/A

CONSERVATION PLAN:

N/A

DISCUSSION:

As the owner of the Property, ADC is required to comply with the provisions of HAR Title 11, chapter 62. The statutory provisions specifically included in the Owner’s Certification Form are set forth below.

HAR section 11-62-08(b) states:

(b) No person shall construct, modify the construction of, or modify the use of a wastewater system without the approval of the director. The following documents shall be submitted to the director prior to such approval:

(1) Construction plans prepared by or under the supervision of an engineer indicating the following:

(A) Acreage, address, and tax map key number(s) of the project site;

(B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies or water, drinking water sources, and existing public sewers within 2,000 feet of the nearest property line; and

(C) Sufficient details to show compliance with all applicable requirements of this chapter.

(2) Construction plans for an individual wastewater system prepared by the engineer showing sufficient details to enable the contractor to construct the individual wastewater system.

(3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.

HAR section 11-62-08(g) states:

(g) All wastewater systems shall be constructed or modified by a person meeting the requirements of chapter 444, HRS,¹ and any pertinent rules adopted by the department of commerce and consumer affairs, State of Hawaii.

HAR section 11-62-31.1(e)(2) states:

(e) Before the approval of the operation of an individual wastewater system excluding cesspools, the following requirements shall be satisfied:

(1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and

(2) The owner of the individual wastewater system shall certify that the individual wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

HAR section 11-62-31.1(f) states:

(f) No person shall use an individual wastewater system until authorized in writing by the director.

(1) Written approval to use an individual wastewater system shall be issued if:

(A) The owner resolves all discrepancies recorded as a result of any inspections conducted.

(B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:

(i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specification or that changes made to the approved plans and specification are accepted by the engineer; and

(ii) An "as built" plan of the individual wastewater system; and

¹Chapter 444, Hawaii Revised Statutes requires licensing of certain professionals, including the licensing of electrical or plumbing workers.

(2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.

HAR section 11-62-33.1(b)(3) states:

(b) Household aerobic units.

** * **

(3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit and its disposal system with a certified operator or factory certified representative, and a copy of an active service contract shall be submitted annually to the department. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system.

HAR section 11-62-72 states:

Any person who violated any provision of this chapter shall be subject to the penalties and remedies for violations provided for in chapters 321, 322-part I, 342D, and 342H, HRS.

Additionally, ADC, as the owner of the property identified as TMK No. (1) 7-1-002:004, is required to certify that, prior to use, the owner will instruct and require the contractor to leave uncovered for inspection, various parts of the individual waste water system. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. The property owner will be required to re-expose these areas if, at the time of inspection, they are not visible.

Amending the license through an addendum that specifically addresses the HDOH requirements will document Licensees understanding of the HDOH wastewater system requirements and memorialize Licensees agreement to abide by the HDOH requirements. Staff requests that the following paragraphs be included in the addendum:

1. Licensees shall utilize the services of a licensed engineer to design and prepare any individual wastewater system construction plans; and to submit any proposed changes to the individual wastewater system to Licensor and HDOH for review and approval prior to making any changes. Proposed changes that require approval include, but are not limited to, changes in location of any component of the wastewater

system, changes in the type of products used, changes in the disposal system methods, changes in the dwellings/buildings location or size and changes in the design engineer for the individual wastewater system.

2. Licensees shall obtain the services of licensed engineers and contractors when necessary to comply with the requirements of HAR Title 11, chapter 62.
3. Licensees shall provide Licensors with a copy of the operation and maintenance manual developed by the contractor pursuant to section 11-62-23.1(d)(2).
4. Licensees shall provide Licensors with a copy of the engineer's final inspection report and a copy of the written approval to use the individual wastewater system issued by the director of health.
5. Should a household aerobic unit be placed on the Premises, Licensees shall maintain an active service contract for the proper maintenance of the individual household aerobic unit and provide Licensors with a copy of the annual service contract concurrent with submittal to HDOH.
6. Licensees shall instruct and require the contractor to leave various parts of the individual waste water system uncovered for inspection by HDOH. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. Licensee will be required to re-expose these areas should these areas not be visible at the time of inspection by HDOH.
7. Should HDOH find that Licensees violated the provisions of HAR Title 11, chapter 62, Licensors at its option, may cancel this License and take immediate possession of the Premises. Licensors may, but is not required to, allow Licensees sixty-days to diligently cure the violation(s). Licensees agree to reimburse Licensors for any monetary penalties assessed against Licensors as the property owner based upon violations determined by HDOH to have resulted from actions attributed to Licensees, and/or their agents, employees, and invitees.
8. Pursuant to paragraph 13 of the License, Licensee at its sole cost and expense, may improve the Premises by removing the existing unapproved open pit cesspool and septic tank with leach field, and replace the unapproved system with individual wastewater systems approved by HDOH in accordance with HAR Title 11, chapter 62.

Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
January 25, 2023
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Licensees shall obtain all necessary permits and meet all applicable federal, state, and county laws, ordinances, and rules. Ownership of the HDOH approved individual wastewater systems shall vest in Licensees until expiration or sooner termination of the License, at which time the ownership shall vest in Licensors.


See attached Exhibit C.

Amending the License by addendum to document Licensees agreement to abide by the same provisions set forth in the Owner's Certification Form, will provide an avenue of relief to ADC should the Licensees violate HAR Title 11, chapter 62. An addendum will assure Licensees are clearly informed of the statutory requirements, and the resulting consequences ADC and Licensees may suffer if a violation of HAR Title 11, chapter 62 is found by HDOH.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Request noted above.

Respectfully Submitted,

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James J. Nakatani
Executive Director

Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
January 25, 2023
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EXHIBIT A

Revocable Permit No. RP15-02

[see following pages]

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

REVOCABLE PERMIT NO. RP15-02

Effective and issued this 9th day of September, 2015, William H. Wise III, dba Waihii Farms hereinafter called the "PERMITTEE", whose mailing address is 346 N. Circle Mauka Place Wahiawa, Hawaii 96786 is permitted to enter and occupy, on a month-to-month basis only, that certain parcel of State land (and any improvements located thereupon) situate at Whitmore, District of Wahiawa, Oahu, TMK: (1) 7-1-02-04 (por), as shown on attached Exhibit A, containing an approximate area of 16 acres which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The PERMITTEE shall:

1. Occupy and use the premises for the following specified purposes only:
Agricultural
2. Pay, to the Agribusiness Development Corporation, hereinafter called "ADC", the sum of \$725.00 being rental due and payable of the first day of each and every month commencing on the effective date.

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/DOLLARS (\$50.00) per month for each month of delinquency.

3. Upon execution of this Permit, deposit with ADC the sum of \$725.00 as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PERMITTEE upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed.
4. At the PERMITTEE's own cost and expense, keep insured all buildings and improvements erected on the demised premises in the joint names of the State of Hawaii and the PERMITTEE against loss or damage by fire, including perils specified in the extended coverage endorsement

and in an amount equal to the full replacement value thereof. In the event of a loss, damage, or destruction of those improvements, ADC shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage or destruction of the improvements and the balance of those proceeds, if any, shall be delivered to the PERMITTEE.

5. Give ADC twenty-five (25) days notice, in writing, before vacating the property.
6. If a holdover lessee or licensee, pay all real property taxes, which shall be assessed against the premises from the date of this Permit. In addition, a PERMITTEE, not a holdover lessee or licensee, who has occupied the premises for commercial purposes for a continued period of one year or more, shall pay the real property tax assessed against the premises after the first year of the Permit as provided in Section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinance, rules, and regulations of the federal, state, municipal, or county governments affecting the premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the premises.
9. Obtain the prior written consent of ADC before making any major improvements.
10. Keep the premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other utilities, and whatever charges for the collection of garbage that may be levied.
12. Not make, permit, or suffer, and waste, strip, spoil, nuisance or unlawful, improper or offensive use of the premises.
13. PERMITTEE shall agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury,

or wrongful death, to the extent arising out of any occurrence on the premises, resulting from any act or omission of the PERMITTEE, or occasioned by any act or nuisance made or suffered on the premises, or by any accident or fire thereon caused by the PERMITTEE, or growing out of or caused by any failure on the part of PERMITTEE to maintain the premises in a safe condition, or by any act or omission of PERMITTEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by PERMITTEE of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments.

14. PERMITTEE shall maintain during the entire period of this Permit a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of PERMITTEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

PERMITTEE, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Permit, whichever is sooner, shall furnish ADC with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of this Permit, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance that a notice of cancelation and time to cure by PERMITTEE or by ADC at its option, shall be issued to PERMITTEE and ADC at least thirty (30) days before cancelation. The policy shall include ADC as an additional insured as its interests appear under this Permit.

B. Additional Conditions:

1. ADC may revoke this Permit for any reason whatsoever, upon written notice to the PERMITTEE at least thirty (30) days prior to the revocation; provided, however, that in the event that payment is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the PERMITTEE at least five (5) business days prior to the revocation.
2. If the PERMITTEE does not vacate the premises upon the revocation of the Permit by ADC, the PERMITTEE shall pay to the State of Hawaii liquidated damages at the daily rate of (\$20.00) for each day, or portion thereof, the PERMITTEE remains on the premises over the date of revocation. The payment is in addition to any other rights or remedies ADC may be entitled to pursue breach of contract, or for illegal occupancy, including the right evict the PERMITTEE without court action, and the cost thereof to be paid by the PERMITTEE.
3. If the PERMITTEE fails to vacate the premises upon the revocation of the Permit, ADC, its agents and/or representatives may enter upon the premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the premises, and the PERMITTEE agrees to pay for all cost and expenses of removal and disposition.
4. ADC may at any time increase or decrease the monthly rental by written notice at least thirty (30) days prior to the date of change of rent.
5. Any improvements, including but not limited to equipment, buildings and fences, erected or moved on to the premises by the PERMITTEE shall remain the property of the PERMITTEE and the PERMITTEE shall have the right, prior to the termination of this Permit, or within an additional period ADC in its discretion may allow, to remove the improvements from the premises; provided, however, that in the event the PERMITTEE fails to remove the improvements forty-five (45) days, after written notice to remove has been sent, ADC may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the PERMITTEE.

6. ADC reserves the right for itself, its agents, and/or representatives, to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the PERMITTEE has inspected the premises and knows the conditions thereof and fully assumes all risk incident to its use.
9. The acceptance of rent by ADC shall not be deemed a waiver of any breach by the PERMITTEE of any term, covenant, restriction, or condition of this Permit, or of ADC's right to declare and enforce a forfeiture for any breach; and the failure of ADC to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option unless reduced to writing and signed by ADC.
10. The term of this month-to-month permit beyond three (3) years from date of issuance, is subject to the prior approval of the ADC Board of Directors.
11. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, or physical handicap.
12. Any and all disputes and/or questions arising under this permit shall be referred to the ADC Executive Director and his determination of the disputes or questions shall be final and binding on the parties.


[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates noted below.

ADC:

STATE OF HAWAII

AGRIBUSINESS DEVELOPMENT
CORPORATION


By  _____

James J. Nakatani

Its Executive Director

Date: September 14, 2015

APPROVED AS TO FORM:

 _____

Myra M. Kaichi

Deputy Attorney General

PERMITTEE:

William H. Wise III dba Waihii
Farms

By W-H Wise III _____

William Wise, III

(Print name)

Its Owner _____

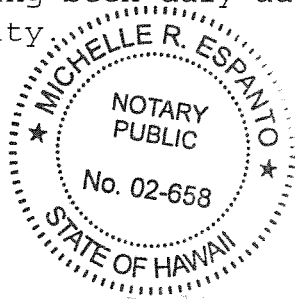
Date: 09/09/2015

APPROVED AS TO FORM:

Attorney for Permittee

STATE OF HAWAII)
CITY & COUNTY OF Honolulu) ss.

On this 9th day of September, 2015, before me personally appeared William H. Wise III, personally known/proved to me on the basis of satisfactory evidence, 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.



Michelle R. Espanto
Print
Name: Michelle R. Espanto
Notary Public, State of Hawaii
My commission expires: 12/29/2018

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

State of Hawaii Agribusiness
Development Corporation Revocable Permit No. RP15-02

Document Date: 09/09/2015

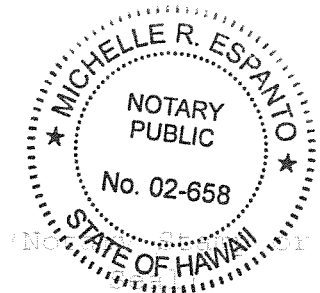
No. of Pages: 9

Jurisdiction (in which notarial act is
performed):

Michelle R. Espanto
Signature of Notary

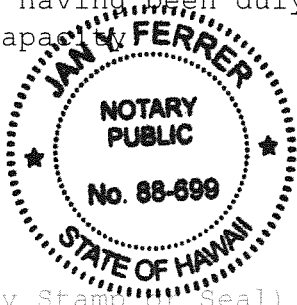
09/09/2015
Date of
Notarization and
Certification
Statement

Michelle R. Espanto
Printed Name of Notary



STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

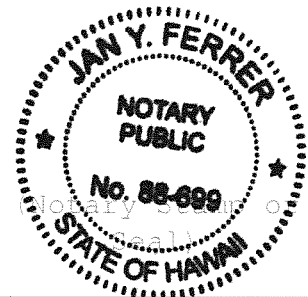
On this 14th day of September, 2015, before me personally appeared James J. Nakatani, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jan Y. Ferrer
Print
Name: Jan Y. Ferrer
Notary Public, State of Hawaii
My commission expires: 11/29/15

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>State of Hawaii Agribusiness</u>
<u>Development Corporation Revocable Permit No. RP15-02</u>	
Document Date:	<u>September 9, 2015</u>
No. of Pages:	<u>09</u>
Jurisdiction (in which notarial act is performed):	
Signature of Notary	<u>9/14/15</u> Date of Notarization and Certification Statement
<u>Jan Y. Ferrer</u>	
Printed Name of Notary	



Total Area: 16 Acres
TMK: (1)7-1-02-04 (por)

Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
January 25, 2023
Page 9 of 11

EXHIBIT B

License Agreement No. LI-WM1505 and Amendment

[see following pages]

LICENSE AGREEMENT NO. LI-WM1505
between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

WILLIAM H. WISE III
DBA WAIHII FARMS
as LICENSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-WM1505

THIS LICENSE made and issued this 4th day of December, 2015, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and William H. Wise III, dba Waihii Farms, a Hawaii company, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is 346 N. Circle Mauka Place Wahiawa, Hawaii 96786, hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR owns and is obligated to manage and operate that certain parcel of land situated at Wahiawa, Oahu, identified by Tax Map Key No. (1)7-1-02-04, containing a gross area of approximately 257 acres, more or less, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for agricultural and related purposes; and

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Wahiawa, Oahu for cultivation and production purposes; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use that portion of land, Tax Map Key No. (1)7-1-02-04, outlined on the map attached hereto and incorporated herein as Exhibit "A", containing a land area of 16 acres, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the Premises that are under the control, operation, or management of any entity, including LICENSOR.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure

improvements that are under the exclusive control, operation, and management of the LICENSOR).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for 35 years, or until such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided.
2. License Fee. The base license fee for the tillable acres of this License shall be as outlined in the following table, payable in monthly installments, on or before the first of each month.

WHEN	RENT
Upon execution until last day of 9 th year	\$850/month
Year 10	Re-open
Year 20	Re-open
Year 30	Re-open

LICENSOR may permit the LICENSEE to offset the cost of land clearance and land improvements performed by or on behalf of LICENSEE against not more than Fifty-one thousand and no/100 Dollars (\$51,000.00) of rent, during the first five (5) years of a license term, the evidence of which shall be submitted to and approved by the LICENSOR.

LICENSOR may permit the LICENSEE to offset the cost of water development work on the Premises performed by or on behalf of LICENSEE against not more than twelve thousand and no/100 Dollars (\$12,000.00) of rent, the evidence of which shall be submitted to and approved by the LICENSOR within thirty (30) days of the completion of the water development work.

LICENSOR and LICENSEE agree that the Premises consist of 12 tillable acres and 4 non-tillable acres. For purposes of this License, "tillable acres" shall include all portions of the Premises measured in acres that are suited for cultivation in accordance with normal agronomic practices, and "non-tillable acres" shall include all portions of the Premises measured in acres that are not suited for cultivation in accordance with normal agronomic practices.

3. [Reserved.]
4. [Reserved.]
5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.
6. [Reserved.]
7. Taxes, Assessments, and Utilities. LICENSEE shall pay, if and when due, LICENSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings, if any, of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Premises and the improvements now on or hereafter erected by LICENSEE thereon.
8. Character of Use. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
 - (a) LICENSEE shall use the Premises solely for diversified agriculture purposes, as set forth in LICENSEE's land utilization plan attached hereto as Exhibit "B". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.
 - (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
 - (c) All livestock production operations shall be operated and maintained so as not to create any public health problems as determined by the State Department of Health.
 - (d) No cesspools shall be constructed on the Premises. However, upon approval from the State Department of Health, LICENSEE may use alternative wastewater

treatment and disposal systems which do not pose a threat to the groundwater.

(e) No solid or liquid animal waste shall be disposed of at the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.

(f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE and to address any material increase in weeds or litter on the Premises.

9. Utilization and Development of the Land. LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "B" hereto. Any material modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.

10. Sublicensing. LICENSEE shall not sublicense or rent the whole or any portion of the Premises without the prior consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sub-licensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges is neither allowed, nor shall be sought by LICENSEE.

11. Good Husbandry and Conservation Practices. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and

other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE and LICENSEE shall be required, within sixty (60) days of the notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.

12. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.
13. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. The preceding sentence shall not apply to any building, structure, signs, or improvement constructed, placed, maintained, or installed on the Premises with the consent and approval of LICENSOR under any prior permit or agreement pursuant to which LICENSEE or any of LICENSEE's permitted assigns, sub-licensees, or permittees occupied the Premises before the effective date of this License. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR, vest in LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.
14. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted. LICENSEE shall have no obligation under this License to keep, repair, or maintain any common infrastructure improvements.

15. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold LICENSOR harmless from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.
16. Dwelling Restrictions. The construction or placement of any new structure on the Premises for residential purposes without prior approval of the LICENSOR and all federal, state, and county permits is strictly prohibited. LICENSEE, its agents, employees, and invitees may use existing structures on the Premises as a temporary or permanent residence for security purposes.
17. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap.
18. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its option, to the extent permitted by law, cancel this License and thereupon take immediate possession of the Premises, after a reasonable time or pursuant to any right of action which LICENSOR may have.
19. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of

LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.

20. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License Agreement have been observed and performed.
21. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.
22. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(s). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail

or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

23. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License Agreement, insured against loss or damage by fire and other hazards, casualties, and contingencies for the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of its License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to LICENSEE, except that, in the

event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

24. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
25. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.
26. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
27. Withdrawal for Public Purpose; Condemnation.

A. Withdrawal for a Public Purpose. LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises to become

unusable for the specific use or uses for which it was licensed, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops; and provided further that, upon any withdrawal or taking, LICENSEE shall be compensated for the present value of all permanent improvements in place at the time of withdrawal or taking that were legally constructed upon the Premises by LICENSEE being withdrawn or taken or that are made unusable because of such withdrawal or taking.

If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

B. Condemnation. If at any time, during the term of this License Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the base annual license fee and any other charges under this License Agreement, including LICENSEE's proportionate share of Common Infrastructure Improvement Costs, shall be reduced in proportion to the value of the portion of the Premises condemned. LICENSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LICENSEE is not permitted to harvest, and (b) the proportionate value of LICENSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the License Agreement; provided, that LICENSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE. LICENSEE shall not by reason of the condemnation be entitled to any claim against the LICENSOR for compensation or indemnity for the license interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LICENSOR. The foregoing rights of LICENSEE shall not be exclusive of any other

rights to which LICENSEE may be entitled by law, and LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such compensation as may be separately awarded or recoverable in LICENSEE's own right on account of such condemnation of LICENSEE's interest under this License Agreement and any improvements constructed by LICENSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were licensed, LICENSEE shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that LICENSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LICENSOR.

28. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License Agreement, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.
29. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License.
30. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term that the same are licensed to LICENSEE hereunder, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
31. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LICENSOR

shall have the right to terminate this License Agreement. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.

32. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use. Notwithstanding the foregoing or any other provision of this License Agreement, LICENSEE does not assume liability or responsibility for any hazardous material claims resulting from, arising out of, or relating to any hazardous materials on the Premises or hazardous discharge occurring prior to the date of this License Agreement, and LICENSOR (and/or LICENSOR's predecessors in interest) shall be solely responsible for and in respect of any such hazardous materials claims.
33. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.
34. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
35. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the covenants and agreements of this License, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

If LICENSEE shall be made a party to any litigation commenced by or against LICENSOR (other than condemnation proceedings), without any fault on LICENSEE's part, LICENSOR shall pay all

costs and expenses incurred by or imposed on LICENSEE, including, but not limited to, attorney's fees; furthermore, LICENSOR shall pay all costs and expenses which may be incurred by or paid by LICENSEE in enforcing the covenants and agreements of this License; PROVIDED THAT, any such litigation arises out of any damage or personal injury resulting from wrongful or negligent acts or omissions of LICENSOR or LICENSOR's employees or agents while acting within the scope of their employment, and LICENSOR's liability for such damage or injury has been determined by a court or otherwise agreed to by LICENSOR. Unless otherwise determined by a court, LICENSOR shall pay for such costs and expenses to the extent that funds therefor have been authorized and appropriated by the Legislature of the State of Hawaii for such purpose and such funds have been allocated therefor by the executive budget process of the State of Hawaii.

36. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death (collectively, the "Claims") arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, and regulations of the federal, state, or county governments, with the exception of Claims arising out of the wrongful or negligent acts or omissions of LICENSOR. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
37. Hunting. No hunting shall be allowed on the Premises during the term of this License.
38. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.
39. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall

be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.

40. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License Agreement. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.
41. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises in favor of the Future Coop or any successor or substitute entity (including LICENSOR) necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises at any point.
42. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
43. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
44. Hazardous Materials. LICENSOR remains responsible for addressing any issue identified as having occurred prior to or during Del Monte Corporation's occupancy of the Premises as

reported in the Phase 1 Environmental Assessment prepared by Bureau Veritas dated September 30, 2011 ("BV Report"). Any environmental issue occurring on Premises after the date of this License Agreement shall be the responsibility of LICENSEE.

- (a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the BV Report) which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

(b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

45. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.

46. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall

control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service (NRCS). Prior to the termination of this License, LICENSEE shall provide to LICENSOR a NRCS approved erosion control plan. The termination of this License will not be approved by LICENSOR unless LICENSEE is in full compliance with such plan to the satisfaction of NRCS and LICENSOR.

47. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.
48. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.
49. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.
50. [Reserved.]
51. [Reserved.]
52. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

53. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the License term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.
54. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for

sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR, provided that such commercial activity is authorized by state and local laws, and provided further that LESSEE first obtains the prior written approval of LESSOR for such commercial activity.

55. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

56. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.

57. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.

58. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the State Historic Preservation Division (SHPD) shall be contacted prior to any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,

5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and
7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

59. Performance bond. The LICENSEE shall procure and deposit with the LICENSOR and thereafter keep in full force and effect during the term of this license, a good and sufficient surety bond in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by the LICENSEE of the License terms, conditions, and covenants of the license. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the LICENSOR as liquidated and ascertained damages and not as a penalty.

The LICENSOR may waive or suspend the performance bond requirement at its discretion; provided that the LICENSEE has substantially complied with the terms, conditions, and covenants of this license; and provided further that the LICENSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of the License.

60. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the LICENSEE may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, or, in lieu of any surety or sureties, the LICENSEE shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that is approved by the LICENSOR.

61. Conservation Easement for Agricultural Preservation. LICENSEE shall be aware that the Property is encumbered by a Grant of Conservation Easement For Agricultural Preservation, between The Trust for Public Land, a California nonprofit public benefit corporation, and the City and County of Honolulu, a Hawai'i municipal corporation ("C&C Honolulu"). To the extent applicable to the Premises, LICENSEE shall be in full compliance with the conditions and restrictions specified in the easement.
62. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.
63. Land Swapping. LICENSEE is allowed, but shall not be obligated, to swap land for uses consistent with its land utilization plan with any other licensees or revocable permit holder of any portions of the Property at no cost to LICENSEE.
64. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees or the Future Coop and its agent to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.
65. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.
66. Cropping Changes. LICENSEE shall consult with and obtain prior approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original land utilization plan submitted with the license application.
67. Recordation. LICENSOR and LICENSEE agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License Agreement to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.
68. Soil and Water Conservation Plan. LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan within one year of the date of the execution of this License.

LICENSEE shall submit a revised soil and water conservation plan to LICENSOR if LICENSEE makes changes to its initial planting or harvesting practices which require terrain alteration.

69. [Reserved.]

70. [Reserved.]

71. Reopening of Annual Rental. The annual rental shall be reopened and redetermined at the expiration of the ninth, nineteenth, and twenty-ninth year of the term herein, provided however, in no event shall the base annual rental be revised downward, provided that should LICENSEE disagree with the fair market rental as determined by LICENSOR, LICENSEE may appoint its own appraiser, within fourteen (14) days after written notice of the fair market rental, to prepare an independent appraisal report.

DEFINITIONS

As used in this License Agreement, unless the context otherwise requires:

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Property" means the approximately 257 acres of land situated in Wahiawa, Oahu, Hawai'i, bearing Tax Map Keys: (1)7-1-002:004.

"Premises" includes the land hereby licensed by LICENSOR to LICENSEE and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or

improvements specifically excluded from the description of the Premises in the License Agreement.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter

128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the Premises or any portions thereof; (3) failure to employ all of the usable portions of the Premises; and (4) abandonment of the Premises.

"Days" shall mean calendar days, unless otherwise specified.

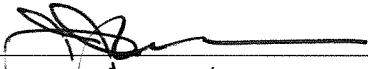
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IN WITNESS WHEREOF, the parties hereto have caused these presents
to be executed this 4th day of December, 2015.

LICENSOR

STATE OF HAWAII,
AGRIBUSINESS DEVELOPMENT
CORPORATION

APPROVED AS TO FORM:

By 
James J. Nakatani
Executive Director


Myra M. Kaichi
Deputy Attorney General

LICENSEE

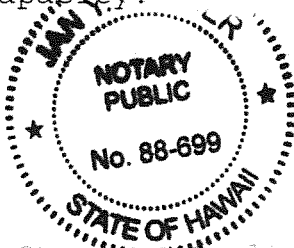
WILLIAM H. WISE III
DBA WAIHII FARMS



By owner
Its

STATE OF HAWAII)
) ss.
CITY & COUNTY OF Honolulu)

On this 4th day of December, 2015, before me personally appeared James J. Nakatani, personally known/proved to me on the basis of satisfactory evidence, 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.



Jan Y. Ferrer
Print Name: Jan Y. Ferrer
Notary Public, State of Hawaii
My commission expires: 11/29/16

Notary Stamp or Seal

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

License Agreement No. LI-WM1505 between

State of Hawaii Agribusiness Development Corporation and William H. Wise III
DBA Waihi Farms

Document Date: undated

No. of Pages: 29

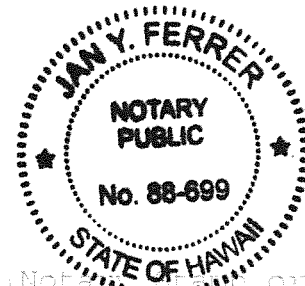
Jurisdiction (in which notarial act is
performed): 1st circuit

Jan Y. Ferrer
Signature of
Notary

12/4/18
Date of
Notarization and
Certification
Statement

Jan Y. Ferrer

Printed Name of Notary



(Notary Stamp or
Seal)

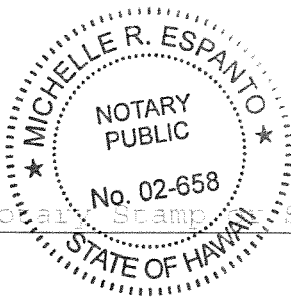
STATE OF HAWAII)

CITY & COUNTY OF)

Honolulu)

ss.

On this 2nd day of December, 2015, before me personally appeared William H. Wise III, personally known/proved to me on the basis of satisfactory evidence, 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.



Michelle R. Espanto

Print

Name: Michelle R. Espanto

Notary Public, State of Hawaii

My commission expires: 12/29/2018

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

State of Hawaii Agribusiness Development Corporation
License Agreement No. LI-WM1505

Document Date:

(undated)

No. of Pages:

29

Jurisdiction (in which notarial act is performed): First Circuit

Signature of Notary

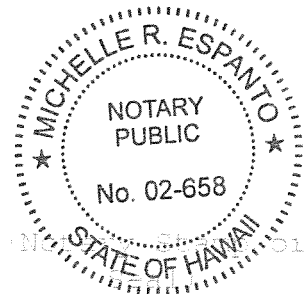
Michelle R. Espanto

Date of Notarization and Certification Statement

12/02/2015

Printed Name of Notary

Michelle R. Espanto



"EXHIBIT A"



Total Area: 16 Acres
TMK: (1)7-1-02-04 (por)

Licensee: Waihii Farms

November 2015

Licensee's Land Utilization Plan: Licensee shall use the premises for cultivating and harvesting tropical flowers and fruit trees. Such activities shall include, without limitation, the use of heavy equipment such as a backhoe and also power mowers and various hand tools. Farming activities shall include soil preparation (adding compost/mulch), planting, transplanting and land clearing.

Total Acres	Type of Crop	Land Use Timeline	Comments
12	Tropical Flowers	2015 – 2050	Maintain and Transplant.
2	Fruit trees	2015 – 2050	Start with clearing, prep soil, plant and maintain.

Planning subject to change.

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

FIRST AMENDMENT OF
LICENSE AGREEMENT NO. LI-WM1505

This LICENSE AGREEMENT is amended and effective this 8th day of November, 2018, between State of Hawaii, Agribusiness Development Corporation, (hereinafter "LICENSOR"), and William H. Wise III dba Waihii Farms, (hereinafter "LICENSEE").

WHEREAS, LICENSOR and LICENSEE have previously entered into that certain LICENSE AGREEMENT NO. LI-WM1505, dated December 4, 2015 (the "LICENSE AGREEMENT") pursuant to which LICENSOR has granted the LICENSEE an exclusive license to use that portion of land (and any improvements located thereupon), Tax Map Key: (1)7-1-02-04, containing a land area of 16 acres, more or less, hereinafter referred to as the "Premises."

WHEREAS, LICENSEE requested and received approval at ADC's Board of Director's meeting on October 3, 2018 to make the following adjustment to the LICENSE AGREEMENT as follow:

1. Addition of Kalama Hardwood LLC as a Licensee;

NOW, THEREFORE, in consideration of the premises hereof and the mutual covenants, provisions, and undertakings herein contained, LICENSOR and LICENSEE hereby agree as follows:

1. **Amendment of License Agreement.**
 - a. The cover page of the LICENSE AGREEMENT shall be amended to read:

LICENSE AGREEMENT NO. LI-WM1505
between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

as LICENSOR

and

WILLIAM H. WISE III
DBA WAIHII FARMS

and
Kalama Hardwood LLC

as LICENSEES

- b. The opening paragraph of the LICENSE AGREEMENT shall be amended to read:

THIS LICENSE made and issued this 4th day of December, 2015, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and William H. Wise III, dba Waihii Farms, a Hawaii company, and Kalama Hardwood LLC, both of which, for purposes of this License Agreement, have the business and post office address in the State of Hawaii of 346 N. Circle Mauka Place Wahiawa, Hawaii 96786, hereinafter collectively called "LICENSEE."

2. Ratification of Remaining Provisions of License Agreement. Except as provided in the cover page and opening paragraph immediately preceding, the terms, conditions, undertakings, promises, and covenants of the LICENSE AGREEMENT, including the Addendum thereto, are hereby ratified and confirmed, shall remain and continue in full force and effect, shall be binding on the parties, and shall not be deemed to be modified or amended in any respect by this First Amendment of LICENSE AGREEMENT NO. LI-WM1505.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 19th day of November, 2018.

LICENSOR:

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT
CORPORATION

APPROVED AS TO FORM:

By 
James J. Nakatani
Its Executive Director


Andrew D. Goff
Deputy Attorney General

LICENSEE:

WILLIAM H. WISE III

By W.H. Wise III
Its owner

Dated: 11/08/2018

KALAMA HARDWOOD LLC

By Shawndrea M.K. Wise
Its owner

Dated: 11/8/2018

STATE OF HAWAII

)

) ss.

CITY & COUNTY OF HONOLULU

)

On this 8 day of November, 2018, before me personally appeared William H Wise III, personally known/proved to me on the basis of satisfactory evidence, 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.

B.K. Yee

Print

Name:

B.K. Yee

Notary Public, State of Hawaii

My commission expires: 8-30-21

(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Amendment of
License Agreement

Document Date: 11-8-18

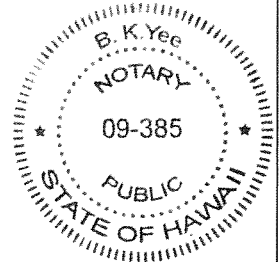
No. of Pages: 6

Jurisdiction (in which notarial act is
performed):

B.K. Yee
Signature of
Notary

11-8-18
Date of
Notarization and
Certification
Statement

B.K. Yee
Printed Name of Notary



(Notary Stamp or
Seal)

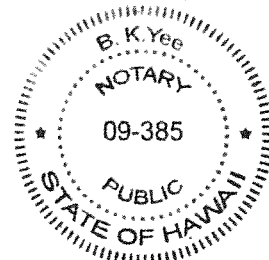
STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 8 day of November 2018, before me personally appeared Shawndrea M.K. Wize, personally known/proved to me on the basis of satisfactory evidence, 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.

B.K. Yee
Print
Name: B.K. Yee
Notary Public, State of Hawaii
My commission expires: 8-30-21

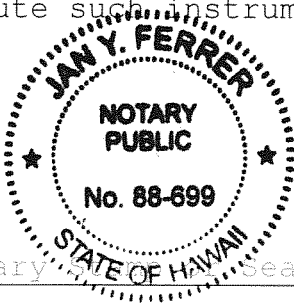
(Notary Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Amendment of License Agreement</u>	
Document Date: <u>11-8-18</u>	
No. of Pages: <u>6</u>	
Jurisdiction (in which notarial act is performed):	
Signature of Notary <u>B.K. Yee</u>	Date of Notarization and Certification Statement <u>11-8-18</u>
Printed Name of Notary <u>B.K. Yee</u>	(Notary Stamp or Seal)



STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 19th day of November, 2018, before me personally appeared JAMES J. NAKATANI, personally known/proved to me on the basis of satisfactory evidence, 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.



Print Jan Y. Ferrer
Name: Jan Y. Ferrer
Notary Public, State of Hawaii
My commission expires: 11/29/20

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

First Amendment of
License Agreement No LI-WM1505

Document Date: November 8, 2018

No. of Pages: 6

Jurisdiction (in which notarial act is
performed):

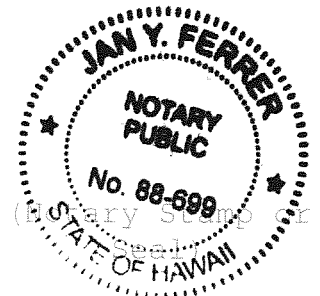
Jan Y. Ferrer
Signature of
Notary

NOV 19 2018

Date of
Notarization and
Certification
Statement

Jan Y. Ferrer

Printed Name of Notary

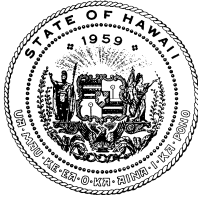


Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
January 25, 2023
Page 10 of 11

EXHIBIT C

Department of Health – Wastewater Branch Individual Wastewater System (IWS)
Owner's Certification Form

[see following pages]



**DEPARTMENT OF HEALTH - WASTEWATER BRANCH
INDIVIDUAL WASTEWATER SYSTEM (IWS)
OWNER'S CERTIFICATION FORM**

Subject: Individual Wastewater System for Agribusiness Development Corporation

Tax Map Key (TMK) Number: (1) 7 - 1 - 002 : 004

Mailing Address: 235 S. Beretania Street, #205, Honolulu, HI 96813

I, _____, hereby certify that I am the owner (s) of the
(please print name)
subject property and that I have read the following and shall comply with all provisions. Failure to comply with any or all of the provisions can lead to imposition of the penalties and remedies as provided for in Administrative Rule, Title 11, Chapter 62, Section 11-62-72, Penalties and remedies.

1. I certify that as the owner of the Individual Wastewater System (IWS) serving the subject property, the IWS will be inspected, operated and maintained in accordance with the operation and maintenance manual developed by my IWS design engineer section (section 11-62-31.1(e)(2)).

Furthermore, if an aerobic unit is utilized for wastewater treatment, an active service contract for the proper operation and maintenance shall be maintained at all times (section 11-62-33.1.(b)(3)).

2. I understand and shall comply with the provision of section 11-62-08 (g) which requires that the IWS be constructed by a licensed contractor with a license type of: **A, C-9, C-37, C-37a or C-43.**
3. I understand and shall comply with the provisions of section 11-62-31.(f) which states that the IWS must be inspected and approved of by the Department prior to use.

Furthermore, I shall instruct and require my contractor to leave uncovered for inspection, various parts of the IWS system. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. I understand that I will be required to re-expose these areas if at the time of inspection they are not visible.

4. I understand and shall comply with the provisions of section 11-62-31.1.(e)(2) which required me to certify upon sale or transfer of the subject property, that the appropriate transfer or sales documents and provisions shall bind the new owners to the operation and maintenance provisions referenced in item 1 above.
5. I understand and shall submit any and all changes made to my IWS plans to the Department (section 11-62-08(b)) for review and approval. Changes to the approved IWS plans that need to be submitted to the Department include but are not limited to the following - changes in location of any component of the wastewater system, changes in the type of products used, changes in the disposal system methods, changes in the dwellings/buildings location or size and changes in the design engineer for the IWS.

Signed: _____ Dated: _____

Request for Approval to Amend License Agreement No. LI-WM1505 Issued to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC for 16 Acres, More or Less, in Whitmore, Oahu, Hawaii, Tax Map Key No. (1) 7-1-002:004 (por.) by adding an Addendum that Requires the Licensees to Abide by the Requirements of Title 11, chapter 62 of the Hawaii Administrative Rules (HAR)
January 25, 2023
Page 11 of 11

EXHIBIT D

Addendum to License Agreement No. LI-WM1505

[see following pages]

ADDENDUM TO LICENSE AGREEMENT NO. LI-WM1505

between

State of Hawaii, Agribusiness Development Corporation (Licensor)

and

William H. Wise III dba Waihii Farms and Kalama Hardwood LLC (Licensees)

This ADDENDUM to License Agreement No. LI-WM1505 is effective as of the execution date last entered below. Licensor is the property owner of a parcel of land situated at Wahiawa, Oahu, identified by Tax Map Key (TMK) No. (1) 7-1-002:004, containing a gross area of approximately 257 acres, more or less.

Pursuant to License Agreement No. LI-WM1505, Licensees occupy an area of approximately 16 acres of the parcel of land upon which two residences and a workshop/showroom structure are located (Premises). The Premises are further identified as 346 N. Circle Mauka Pl., Wahiawa, HI 96786.

The Premises are situated in such a manner that the Hawaii Department of Health Waste Water Branch (HDOH) has deemed it infeasible for the residential units to connect to the existing sewer laterals at Whitmore Road and N. Circle Mauka Place.

The Premises have been served by an open pit cesspool and septic tank with leach field, which are unapproved methods of waste disposal that must be replaced with HDOH approved individual wastewater systems.

To obtain HDOH approval to install a new septic system, Licensor, as the property owner, is required to certify compliance with Title 11, chapter 62, *Hawaii Administrative Rules* (HAR), entitled "WASTEWATER SYSTEMS." The HDOH Owner's Certification Form, and HAR Title 11, chapter 62, contains certain prohibitions, requirements, and penalties related to the installation and use of individual wastewater systems.

Specifically, HDOA requires Licensor to certify compliance with the following provisions:

HAR section 11-62-08(b) states:

(b) No person shall construct, modify the construction of, or modify the use of a wastewater system without the approval of the director. The following documents shall be submitted to the director prior to such approval:

(1) Construction plans prepared by or under the supervision of an engineer indicating the following:

(A) Acreage, address, and tax map key number(s) of the project site;

(B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing

and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies or water, drinking water sources, and existing public sewers within 2,000 feet of the nearest property line; and

(C) Sufficient details to show compliance with all applicable requirements of this chapter.

(2) Construction plans for an individual wastewater system prepared by the engineer showing sufficient details to enable the contractor to construct the individual wastewater system.

(3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.

HAR section 11-62-08(g) states:

(g) All wastewater systems shall be constructed or modified by a person meeting the requirements of chapter 444, HRS,¹ and any pertinent rules adopted by the department of commerce and consumer affairs, State of Hawaii.

HAR section 11-62-31.1(e) states:

(e) Before the approval of the operation of an individual wastewater system excluding cesspools, the following requirements shall be satisfied:

(1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and

(2) The owner of the individual wastewater system shall certify that the individual wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

HAR section 11-62-31.1(f) states:

(f) No person shall use an individual wastewater system until authorized in writing by the director.

(1) Written approval to use an individual wastewater system shall be issued if:

(A) The owner resolves all discrepancies recorded as a result of any inspections conducted.

¹ Chapter 444, Hawaii Revised Statutes, requires licensing of certain professionals, including the licensing of electrical or plumbing workers.

(B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:

(i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specification or that changes made to the approved plans and specification are accepted by the engineer; and

(ii) An "as built" plan of the individual wastewater system; and

(2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.

HAR section 11-62-33.1(b)(3) states:

(b) Household aerobic units.

* * *

(3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit and its disposal system with a certified operator or factory certified representative, and a copy of an active service contract shall be submitted annually to the department. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system.

HAR section 11-62-72 states:

Any person who violated any provision of this chapter shall be subject to the penalties and remedies for violations provided for in chapters 321, 322-part I, 342D, and 342H, HRS.

In addition to the specific HAR sections listed above, Licensor, as the owner of the property identified as TMK No. (1) 7-1-002:004, is required to certify that, prior to use, Licensor will instruct and require the contractor to leave uncovered for inspection, various parts of the individual wastewater system. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. Licensor will be required to re-expose these parts should these areas not be visible at the time of inspection.

WHEREAS, Licensor and Licensees have read and understand the provisions set forth above, and have been informed of the consequences of violating the provisions of HAR Title 11, chapter 62; and

WHEREAS, Licensees acknowledge that any violation of HAR Title 11, chapter 62, by Licensees will subject Licensor, as the property owner, to a variety of penalties that range from liens, civil penalties, administrative penalties, injunctive relief, and criminal fines or imprisonment; and

WHEREAS, Licensees acknowledge their responsibility as the Licensees under LI-WM1505, and occupants of the Premises located at 346 N. Circle Mauka Pl., Wahiawa, HI 96786, to install and maintain the septic system in accordance with HDOH rules as set forth in HAR Title 11, chapter 62; and

WHEREAS, Licensees agree to abide by the provisions set forth in HAR Title 11, chapter 62, and the HDOH Owner's Certification Form, which is attached hereto as Exhibit A, and incorporated by reference; and

WHEREAS, Licensor and Licensees agree that License No. LI-WM1505 be amended to include this Addendum, for purposes of incorporating the fundamental requirements of HAR Title 11, chapter 62.

ACCORDINGLY, Licensor and Licensees agree as follows:

1. Licensees shall utilize the services of a licensed engineer to design and prepare any individual wastewater system construction plans; and to submit any proposed changes to the individual wastewater system to Licensor and HDOH for review and approval prior to making any changes. Proposed changes that require approval include, but are not limited to, changes in location of any component of the wastewater system, changes in the type of products used, changes in the disposal system methods, changes in the dwellings/buildings location or size and changes in the design engineer for the individual wastewater system.
2. Licensees shall obtain the services of licensed engineers and contractors when necessary to comply with the requirements of HAR Title 11, chapter 62.
3. Licensees shall provide Licensor with a copy of the operation and maintenance manual developed by the contractor pursuant to section 11-62-23.1(d)(2).
4. Licensees shall provide Licensor with a copy of the engineer's final inspection report and a copy of the written approval to use the individual wastewater system issued by the director of health.
5. Should a household aerobic unit be placed on the Premises, Licensees shall maintain an active service contract for the proper maintenance of the individual household aerobic unit and provide Licensor with a copy of the annual service contract concurrent with submittal to HDOH.

6. Licensees shall instruct and require the contractor to leave various parts of the individual waste water system uncovered for inspection by HDOH. These parts include manhole/access openings, distribution boxes, ends of trenches to visually see gravel, pipe and geotextile fabrics used and/or seepage pit openings. Licensee will be required to re-expose these parts should these areas not be visible at the time of inspection by HDOH.
7. Should HDOH find that Licensees violated the provisions of HAR Title 11, chapter 62, Licenser at its option, may cancel this License and take immediate possession of the Premises. Licenser may, but is not required to, allow Licensees sixty-days to diligently cure the violation(s). Licensees agree to reimburse Licenser for any monetary penalties assessed against Licenser as the property owner based upon violations determined by HDOH to have resulted from actions attributed to Licensees, and/or their agents, employees, and invitees.
8. Pursuant to paragraph 13 of the License, Licensee at its sole cost and expense, may improve the Premises by removing the existing unapproved open pit cesspool and septic tank with leach field, and replace the unapproved system with individual wastewater systems approved by HDOH in accordance with HAR Title 11, chapter 62. Licensees shall obtain all necessary permits and meet all applicable federal, state, and county laws, ordinances, and rules. Ownership of the HDOH approved individual wastewater systems shall vest in Licensees until expiration or sooner termination of the License, at which time the ownership shall vest in Licenser.

IN WITNESS WHEREOF, Licenser, and Licensees William H. Wise III dba Waiiii Farms, and Shawndrea M.K. Wise, owner of Kalama Hardwood LLC, have caused this Addendum to LI-WM1505 to be executed with full knowledge and agreement to the terms and conditions set forth above.

[the remainder of this page left blank; signature page follows]

LICENSOR:
STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT
CORPORATION

APPROVED AS TO FORM:

By _____
James J. Nakatani
Its Executive Director

Delanie Prescott-Tate
Deputy Attorney General

Dated: _____

LICENSEES:

WILLIAM H. WISE III dba Waihii Farms

By _____
Its Owner

Dated: _____

KALAMA HARDWOOD LLC

By _____
Its Owner

Dated: _____



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OU LU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 23, 2023

Subject: Request for Approval of the Transfer of Water Use Permit No. 808
from Pioneer Hi-Bred International, Inc. to Aloun Farm, Inc.

Transferor: Pioneer Hi-Bred International, Inc.

Transferee: Aloun Farm, Inc.

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

BACKGROUND:

The Agribusiness Development Corporation (ADC) and Waiahole Irrigation Company, Limited (WIC) executed that certain Asset Purchase Agreement for the purchase of the Waiahole Ditch System ¹(WWS), effective June 1, 1998. On July 13, 2006, the Commission on Water Resource Management (CWRM), "In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations For the Waiahole Ditch Combined Contested Case Hearing: ON SECOND REMAND," issued their third and final "Findings of Fact, Conclusions of Law, and Decision & Order", following nearly a decade of contested case hearings, and decisions by the Hawaii Supreme Court. Among other things, these rulings served as the bases for water use rights for a number of Leeward water users of WWS, including The Estate of James Campbell under Water Use Permit (WUP) No. 774 for 3.980 million gallons per day (mgd) covering 1,788 acres. On November 13, 2007, a portion of that allocation was administratively transferred to Pioneer Hi-Bred International, Inc. (Pioneer) under Water Use Permit 808 (WUP 808) for 0.470 mgd covering 191 acres. The acreages and amounts of allocation were determined and awarded by the Commission on Water Resource Management.

Pioneer is currently a 72.24% tenant in common owner with Hawaii Agriculture Research Center of a 388.921 agricultural lot located in Kunia, Oahu. Although not subdivided, the respective agricultural lots of the owners are distinctly demarcated by brush, berms, fences, and windbreaks. The land area of the Pioneer lot, Lot 16246-A-1, is 280.70 acres. Aloun Farm, Inc. (Aloun) has offered to purchase Lot 16246-A-1 from Pioneer and Pioneer has accepted the offer.

REQUEST:

Pioneer requests that ADC, as the owner of WWS, consent to the transfer of the WUP to Aloun, and that the place, quantity and purpose of the water use remain unchanged.

¹ Waiahole Ditch System is a plantation era irrigation system which collects ground water from a series of development tunnels in the Ko'olau mountain range and diverts the water to the Ewa plain for agricultural irrigation purposes via a series of ditches and tunnels.

WATER NEEDS AND SOURCE OF WATER:

Under a transferred WUP, Waiahole Water System would provide up to 0.470 mgd to 191 acres, more or less, for diversified agriculture. This amount has been sufficient for Pioneer's activities. Aloun has not indicated that this allocation is a problem.

DISCUSSION:

This Request is primarily administrative. By signing the "Request to Transfer Water Use Permit" ADC indicates that 1) it has no objection to the WUP transfer request, 2) that the condition of use of the transferred permit including place, quantity, and purpose of the use remain the same, and 3) that a new water use permit will be issued to document the transfer and that the old water use permit and number will be void and superseded.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the transfer of WUP No. 808 from Pioneer Hi-Bred International, Inc to Aloun Farm, Inc.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

Request for Approval of the Transfer of Water Use Permit No. 808 from Pioneer Hi-Bred International, Inc. to Aloun Farm, Inc.

January 25, 2023

Page 3 of 4

EXHIBIT A

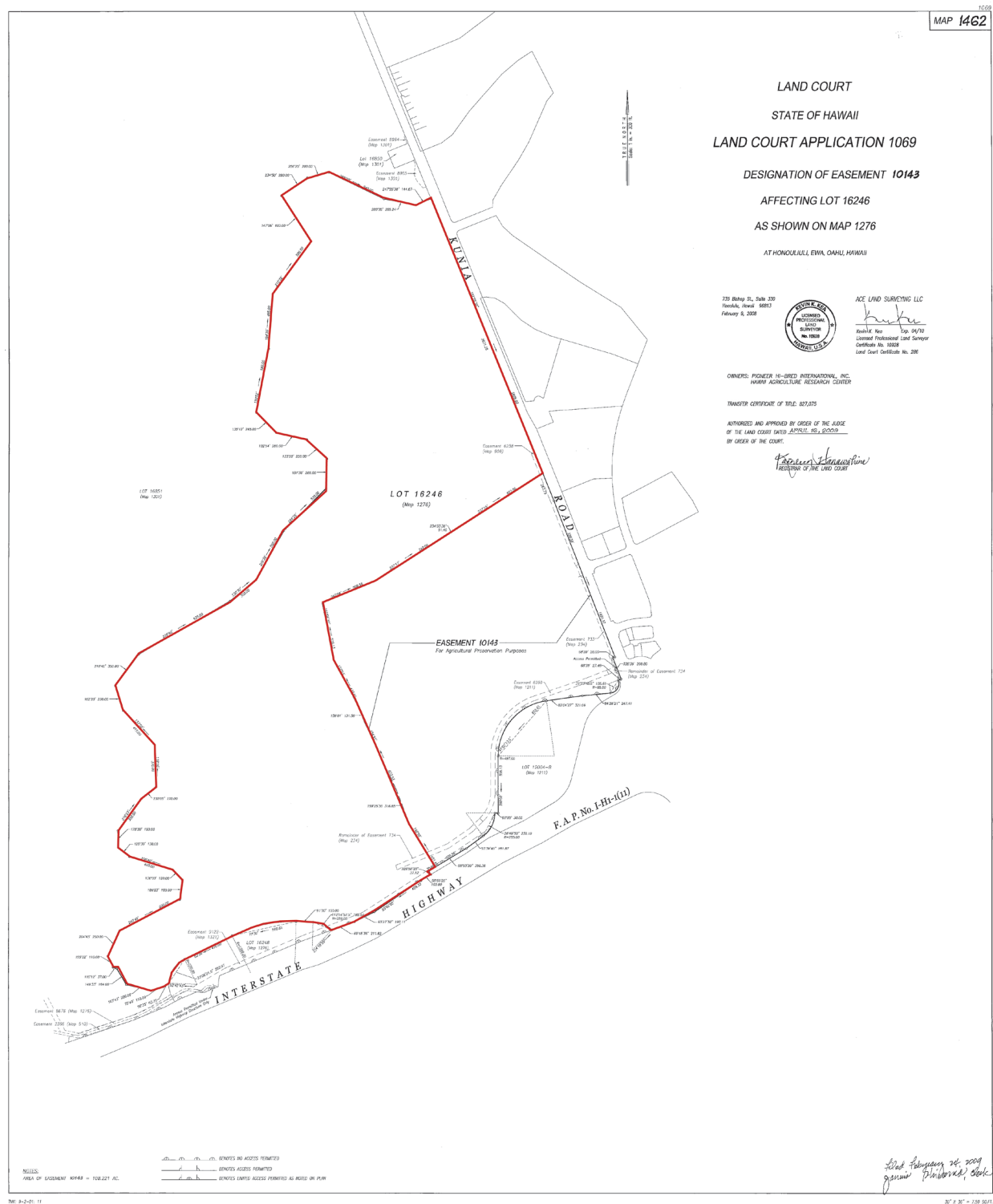


EXHIBIT B



State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
REQUEST TO TRANSFER WATER USE PERMIT
☐ Groundwater or ☐ Surface Water

For Official Use Only:

Instructions: Please print in ink or type and send completed application to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225. For further information and updates to this application form, visit <http://www.hawaii.gov/dlnr/cwrm>.

CURRENT PERMIT HOLDER:

1. (a) PERMITTEE

Firm/Name _____
Contact Person _____
Address _____
Phone _____ Fax _____
E-mail _____

(b) LANDOWNER OF SOURCE

Firm/Name _____
Contact Person _____
Address _____
Phone _____ Fax _____
E-mail _____

Signing below indicates that the signatories understand and have no objection to this water use permit transfer request.

Signature _____
Date _____

Signature _____
Date _____

PERMIT TO BE TRANSFERRED (CHECK ONE ONLY) ☐ IN ENTIRETY or ☐ IN PART BY _____ GPD
TO:

2. (a) PERMITTEE

Firm/Name _____
Contact Person _____
Address _____
Phone _____ Fax _____
E-mail _____

(b) LANDOWNER OF SOURCE

Firm/Name _____
Contact Person _____
Address _____
Phone _____ Fax _____
E-mail _____

Signing below indicates that the signatories swear that: 1) the conditions of use of the transferred permit including place, quantity, and purpose of the use remain the same. I also understand that a new water use permit will be issued to document this transfer and the old water use permit and number will be void and superseded.

Signature _____
Date _____

Signature _____
Date _____

WATER USE PERMIT TRANSFER INFORMATION

3. WATER USE PERMIT NO.: _____ EFFECTIVE DATE OF TRANSFER: _____

4. WELL/STREAM DIVERSION NAME AND STATE NUMBER: _____

5. T.M.K. AT SOURCE _____

6. END USE T.M.K. _____

WUP TRANSFER REQUEST FORM (10/21/2008)

Strike-through are deletions
made pursuant to 2022 Haw. Sess.
Laws Act 219, §§ 2-7 at 483-489

Yellow highlights are newly added/changed
materials pursuant to 2022 Haw. Sess.
Laws Act 219, §§ 2-7 at 483-489

Effective until June 30, 2022	Effective July 1, 2022
Part I. General Provisions	Part I. General Provisions
Section	Section
<p>163D-1 Findings and purpose</p> <p>163D-2 Definitions</p> <p>163D-3 Agribusiness development corporation; board of directors; established</p> <p>163D-4 Powers; generally</p> <p>163D-5 Hawaii agribusiness plan</p> <p>163D-6 Subsidiaries; establishment</p> <p>163D-7 Agricultural projects; agricultural development plans</p> <p>163D-8 Project facility program</p> <p>163D-8.5 Approval of projects, plans, and programs</p> <p>163D-9 Bonds</p> <p>163D-10 Revenue bonds; payment and security</p> <p>163D-11 Revenue bonds; interest rate, price, and sale</p> <p>163D-12 Revenue bonds; investment of proceeds, and redemption</p> <p>163D-13 Revenue bonds; special funds</p> <p>163D-14 Trustee; designation, duties</p> <p>163D-15 Trust indenture</p> <p>163D-15.5 Waiahole water system revolving fund</p> <p>163D-15.6 Commitment and preservation of agricultural leases</p> <p>163D-16 Use of public lands; acquisition of state lands</p> <p>163D-17 Hawaii agricultural development revolving fund; established; use of corporation funds</p> <p>163D-18 Exemption from taxation</p> <p>163D-19 Annual report</p>	<p>163D-1 Findings and purpose</p> <p>163D-2 Definitions</p> <p>163D-3 Agribusiness development corporation; board of directors; established</p> <p>163D-4 Powers; generally</p> <p>163D-5 Hawaii agribusiness plan</p> <p>163D-6 Subsidiaries; establishment</p> <p>163D-7 Agricultural projects; agricultural development plans</p> <p>163D-8 Project facility program</p> <p>163D-8.5 Repealed [L 2022, c 219, §7]</p> <p>163D-9 Bonds</p> <p>163D-10 Revenue bonds; payment and security</p> <p>163D-11 Revenue bonds; interest rate, price, and sale</p> <p>163D-12 Revenue bonds; investment of proceeds, and redemption</p> <p>163D-13 Revenue bonds; special funds</p> <p>163D-14 Trustee; designation, duties</p> <p>163D-15 Trust indenture</p> <p>163D-15.5 Waiahole water system revolving fund</p> <p>163D-15.6 Commitment and preservation of agricultural leases</p> <p>163D-16 Use of public lands; acquisition of state lands</p> <p>163D-17 Hawaii agricultural development revolving fund; established; use of corporation funds</p> <p>163D-18 Exemption from taxation</p> <p>163D-19 Annual report</p>
Part II. Acquisition of Important Agricultural Lands	Part II. Acquisition of Important Agricultural Lands
<p>163D-31 Acquisitions of important agricultural lands authorized by the legislature</p> <p>163D-32 Acquisitions; payment</p>	<p>163D-31 Acquisitions of important agricultural lands authorized by the legislature</p> <p>163D-32 Acquisitions; payment</p>

<p>163D-33 Installment purchase agreements; interest payment</p> <p>\$163D-1 Findings and purpose. The legislature finds that the downsizing of the sugar and pineapple industries is presenting an unprecedented opportunity for the conversion of agriculture into a dynamic growth industry. Within the next decade, seventy-five thousand acres of agricultural lands and fifty million gallons per day of irrigation water are expected to be released by plantations. The downsizing of the sugar and pineapple industries will idle a valuable inventory of supporting infrastructure including irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses. The challenge to government and business is to conserve and convert the arable lands and their associated production infrastructure in a timely manner into new productive uses that are based upon strategies developed from detailed marketing analysis and monitoring of local, national, and international opportunities. Constantly evolving economies require an aggressive and dynamic leadership for the promotion and development of agricultural enterprises, and centralized leadership to coordinate industry development, provide industry-wide services, provide marketing assistance, and facilitate investments and coventures in viable enterprises.</p> <p>The purpose of this chapter is to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an aggressive and dynamic agribusiness development program. The corporation shall coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other</p>	<p>163D-33 Installment purchase agreements; interest payment</p> <p>\$163D-1 Findings and purpose. The legislature finds that the downsizing of the sugar and pineapple industries presented an unprecedented opportunity for the conversion of agriculture into a dynamic growth industry. Within the next decade, the State can use public agricultural lands to enhance the local economy, provide employment opportunities, decrease reliance on imported agricultural products, and provide more sources of locally grown food for residents. Thousands of acres of agricultural lands and fifty million gallons per day of irrigation water were released by plantations. The downsizing of the sugar and pineapple industries idled and left vacant a valuable inventory of supporting infrastructure including irrigation systems, roads, drainage systems, processing facilities, workshops, and warehouses that are still largely underutilized. The challenge to government and business is to continue to conserve and convert the arable lands and their associated production infrastructure in a timely manner into new productive uses. Aggressive and dynamic leadership can play a critically important role in promoting and developing agricultural enterprises, coordinating industry development, providing industry-wide services, providing marketing assistance, and facilitating investments and coventures in viable enterprises.</p> <p>The purpose of this chapter is to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii. This chapter establishes a public corporation to administer an aggressive and dynamic agribusiness development program. The purposes of the corporation shall be to support the production of local agricultural products for local consumption in a manner that is economically and environmentally sustainable while continuing to</p>
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agricultural enterprises, ~~to carry on the marketing analysis to direct agricultural industry evolution, and to provide the leadership for the development, financing, improvement, or enhancement of agricultural enterprises.~~

§163D-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Agriculture" means the production for ~~marketing~~ and exporting of plant and animal life on land and within ponds and other bodies of water for food, fiber, and raw materials for value-added products, and any agricultural enterprise or enterprises organized for the production of agricultural materials or value-added products based on detailed marketing analysis and strategies to exploit profitable potentials in local, national, and international markets, including general farming, cane growing, fruit growing, flower growing, aquaculture, growing of timber and forest products, apiary, grazing, dairying, and the production of any form of livestock or poultry, and their appurtenant services and facilities.

"Board" means the board of directors of the agribusiness development corporation.

"Coordinating entrepreneur" means a qualified person capable of organizing, operating, and assuming the risk for enterprises that may include securing land and seed capital, locating farmers, arranging right-to-till agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of products.

"Corporation" means the agribusiness development corporation.

develop commercial exports of locally produced agricultural products. To further these purposes, the corporation shall coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises, increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for small local farmers and cooperatives.

§163D-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Agriculture" means the production for consumption within the State and exporting of plant and animal life on land and within ponds and other bodies of water for food, fiber, and raw materials for value-added products, and any agricultural enterprise or enterprises organized for the production of agricultural materials or value-added products based on detailed marketing analysis and strategies to exploit profitable potentials in local, national, and international markets, including general farming, cane growing, fruit growing, flower growing, aquaculture, growing of timber and forest products, apiary, grazing, dairying, and the production of any form of livestock or poultry, and their appurtenant services and facilities.

"Board" means the board of directors of the agribusiness development corporation.

"Coordinating entrepreneur" means a qualified person capable of organizing, operating, and assuming the risk for enterprises that may include securing land and seed capital, locating farmers, arranging right-to-till agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of products.

"Corporation" means the agribusiness development corporation.

<p>"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.</p> <p>"Direct investment" means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.</p> <p>"Enterprise" means a business with its principal place of business in Hawaii, which is, or proposes to be, engaged in agricultural crop development, development of new value-added products, enhancement of existing agricultural commodities, and the application of existing agricultural appurtenant facilities to productive uses; provided that the majority of whatever the corporation produces shall be produced for export.</p> <p>"Export crops" means crops whose majority of production shall be for export outside the State or whose majority of the value-added products shall be exported.</p> <p>"Fund" means the Hawaii agricultural development revolving fund.</p> <p>"Private lender" includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.</p> <p>"Professional investor" means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940,</p>	<p>"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.</p> <p>"Direct investment" means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.</p> <p>"Enterprise" means a business with its principal place of business in Hawaii, which is, or proposes to be, engaged in agricultural crop development, development of new value-added products, enhancement of existing agricultural commodities, and the application of existing agricultural appurtenant facilities to productive uses; provided that the majority of whatever the corporation produces shall be produced for export.</p> <p>"Export crops" means crops whose majority of production shall be for export outside the State or whose majority of the value-added products shall be exported.</p> <p>"Fund" means the Hawaii agricultural development revolving fund.</p> <p>"Private lender" includes banks, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of loans in the State.</p> <p>"Professional investor" means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under the federal Investment Company Act of 1940,</p>
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<p>financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.</p> <p>"Project" means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.</p> <p>"Project cost" means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including, but not limited to: studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering this chapter; and the cost of financing the project; and relocation costs.</p> <p>"Project facilities" includes roads and streets, utility and service corridors, utility lines where applicable, water and irrigation systems, lighting systems, security systems, sanitary sewerage systems, and other community facilities where applicable.</p> <p>"Qualified person" includes any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation in administering this chapter.</p> <p>"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or</p>	<p>financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources, a substantial amount is dedicated to investing in securities or debt instruments, and whose net worth exceeds \$250,000.</p> <p>"Project" means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.</p> <p>"Project cost" means the total of all costs incurred by the corporation in carrying out all undertakings that it considers reasonable and necessary for the development of a project, including, but not limited to: studies; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering this chapter; and the cost of financing the project; and relocation costs.</p> <p>"Project facilities" includes roads and streets, utility and service corridors, utility lines where applicable, water and irrigation systems, lighting systems, security systems, sanitary sewerage systems, and other community facilities where applicable.</p> <p>"Qualified person" includes any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation in administering this chapter.</p> <p>"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or</p>
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<p>participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.</p> <p>"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.</p> <p>"Right-to-till agreement" means a contract with a farmer assigning the farmer to a particular parcel or parcels with conditions set to specify the crop or crops that are to be grown, when the crops are to be grown, and how the crops are to be grown.</p> <p>"Seed capital" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.</p> <p>"Trustee" means a national or state bank or trust company, within or outside the State, that enters into a trust indenture.</p> <p>"Trust indenture" means an agreement by and between the corporation and a trustee that sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as may be deemed necessary or convenient by the corporation to secure the revenue bonds.</p> <p>"Value-added" means any activity that increases, by means of processing or any other means, the value of raw agricultural materials.</p> <p>§163D-3 Agribusiness development corporation; board of directors; established. (a) There is established the agribusiness development corporation, which shall be a public body corporate and</p>	<p>participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.</p> <p>"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.</p> <p>"Right-to-till agreement" means a contract with a farmer assigning the farmer to a particular parcel or parcels with conditions set to specify the crop or crops that are to be grown, when the crops are to be grown, and how the crops are to be grown.</p> <p>"Seed capital" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.</p> <p>"Trustee" means a national or state bank or trust company, within or outside the State, that enters into a trust indenture.</p> <p>"Trust indenture" means an agreement by and between the corporation and a trustee that sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as may be deemed necessary or convenient by the corporation to secure the revenue bonds.</p> <p>"Value-added" means any activity that increases, by means of processing or any other means, the value of raw agricultural materials.</p> <p>§163D-3 Agribusiness development corporation; board of directors; established. (a) There is established the agribusiness development corporation, which shall be a public body corporate and</p>
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politic and an instrumentality and agency of the State. The corporation shall be headed by a board of directors. The corporation shall be placed within the department of ~~agriculture~~ for administrative purposes, but the corporation may later incorporate as a nonprofit corporation if this proves desirable to further its objectives; provided that such reorganization as a nonprofit corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility.

(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor. The terms of these eight members shall be four years; provided that, commencing on July 1, 2005, the governor shall reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry, agricultural economics, banking, real estate, finance, promotion, marketing, and management. Of these eight members, one shall be from the city and county of Honolulu, one shall be from the county of Hawaii, one shall be from the county of Maui, one shall be from the county of Kauai, and four shall be appointed at-large. The director of business, economic development, and tourism; the chairperson of the board of agriculture; and the chairperson of the board of land and natural resources, or their designated representatives, shall be ex-officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members; provided that the

politic and an instrumentality and agency of the State. The corporation shall be headed by a board of directors. The corporation shall be placed within the department of **business, economic development, and tourism** for administrative purposes, but the corporation may later incorporate as a nonprofit corporation if this proves desirable to further its objectives; provided that such reorganization as a nonprofit corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility.

(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor. The terms of these eight members shall be four years; provided that, commencing on July 1, 2005, the governor shall reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry, agricultural economics, banking, real estate, finance, promotion, marketing, **local food production**, and management. Of these eight members, one shall be from the city and county of Honolulu, one shall be from the county of Hawaii, one shall be from the county of Maui, one shall be from the county of Kauai, and four shall be appointed at-large. The director of business, economic development, and tourism; the chairperson of the board of agriculture; and the chairperson of the board of land and natural resources, or their designated representatives, shall be ex-officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members; provided that the

<p>(2) Have a seal and alter the same at its pleasure;</p> <p>(3) Make and alter bylaws for its organization and internal management;</p> <p>(4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;</p> <p>(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;</p> <p>(6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of agricultural production in the national and international community;</p> <p>(7) Acquire or contract to acquire by grant or purchase any real, personal, or mixed property or any interest therein for its immediate or future use for the purposes of this chapter; own, hold, improve, and rehabilitate any real, personal, or mixed property acquired, and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;</p> <p>(8) By itself, or in partnership with qualified persons, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project;</p> <p>(9) In cooperation with the department of agriculture, pursuant to chapter 167, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, to acquire,</p>	<p>(2) Have a seal and alter the same at its pleasure;</p> <p>(3) Make and alter bylaws for its organization and internal management;</p> <p>(4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;</p> <p>(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;</p> <p>(6) Acquire or contract to acquire by grant or purchase any real, personal, or mixed property or any interest therein for its immediate or future use for the purposes of this chapter; own, hold, improve, and rehabilitate any real, personal, or mixed property acquired, and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;</p> <p>(7) By itself, or in partnership with qualified persons, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project;</p> <p>(8) In cooperation with the department of agriculture, pursuant to chapter 167, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, to acquire, construct, operate, and maintain water facilities for conveying, distributing, and transmitting water for irrigation and agricultural uses at rates or charges</p>
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<p>construct, operate, and maintain water facilities for conveying, distributing, and transmitting water for irrigation and agricultural uses at rates or charges determined by the corporation; provided that:</p> <p>(A) This chapter shall not be construed to permit or allow the department of agriculture or any agribusiness development corporation to:</p> <p>(i) Amend or modify rights or entitlements to water as provided for by article XI, section 7, of the Constitution of the State of Hawaii, or the Hawaiian Homes Commission Act, 1920, as amended, and chapter 168;</p> <p>(ii) Diminish or abridge the traditional and customary rights of ahupua'a tenants who inhabited the Hawaiian Islands prior to 1778 under sections 1-1 and 7-1; and</p> <p>(iii) Impair, abridge, or terminate the legal rights or interests to water and its uses, whether by lease, easement, or other means, which are possessed or held by organizations whose primary purpose is to benefit people of Hawaiian ancestry; and</p> <p>(B) All usage of water shall be in accordance with chapter [174C] and</p>	<p>determined by the corporation; provided that:</p> <p>(A) This chapter shall not be construed to permit or allow the department of agriculture or any agribusiness development corporation to:</p> <p>(i) Amend or modify rights or entitlements to water as provided for by article XI, section 7, of the Constitution of the State of Hawaii, or the Hawaiian Homes Commission Act, 1920, as amended, and chapter 168;</p> <p>(ii) Diminish or abridge the traditional and customary rights of ahupua'a tenants who inhabited the Hawaiian Islands prior to 1778 under sections 1-1 and 7-1; and</p> <p>(iii) Impair, abridge, or terminate the legal rights or interests to water and its uses, whether by lease, easement, or other means, which are possessed or held by organizations whose primary purpose is to benefit people of Hawaiian ancestry; and</p> <p>(B) All usage of water shall be in accordance with chapter [174C] and other applicable laws in the State;</p> <p>(9) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or</p>
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<p>other applicable laws in the State;</p> <p>(10) Assist agricultural enterprises by conducting detailed marketing analysis and developing marketing and promotional strategies to strengthen the position of those enterprises and to better exploit local, national, and international markets;</p> <p>(11) Carry out specialized programs designed to develop new markets for Hawaii agricultural products;</p> <p>(12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new crops and agricultural products, the expansion of established agricultural enterprises, and the altering of existing agricultural enterprises;</p> <p>(13) Coordinate its activities with any federal or state farm credit programs;</p> <p>(14) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on the terms and conditions it deems advisable;</p> <p>(15) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;</p> <p>(16) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;</p> <p>(17) Accept gifts or grants in any form from any</p>	<p>grants for the development of new crops and agricultural products, the expansion of established agricultural enterprises, and the altering of existing agricultural enterprises;</p> <p>(10) Coordinate its activities with any federal or state farm credit programs;</p> <p>(11) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on the terms and conditions it deems advisable;</p> <p>(12) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;</p> <p>(13) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;</p> <p>(14) Accept gifts or grants in any form from any public agency or any other source; and</p> <p>(15) Do all things necessary or proper to carry out the purposes of this chapter.</p> <p>(b) The corporation shall develop, promote, assist, and market agricultural products for local consumption, and shall promote and assist in commercial export of agricultural products.</p>
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<p>public agency or any other source; and</p> <p>(18) Do all things necessary or proper to carry out the purposes of this chapter.</p> <p>(b) The corporation shall develop, promote, assist, and market export crops and other crops for local markets.</p> <p>§163D-5 Hawaii agribusiness plan. (a) The corporation shall prepare the Hawaii agribusiness plan which shall define and establish goals, objectives, policies, and priority guidelines for its agribusiness development strategy. The plan shall include but not be limited to:</p> <p>(1) An inventory of agricultural lands with suitable adequate water resources that are or will become available due to the downsizing of the sugar and pineapple industries that can be used to meet present and future agricultural production needs;</p> <p>(2) An inventory of agricultural infrastructure that will be abandoned by sugar and pineapple industries such as irrigation systems, drainage systems, processing facilities, and other accessory facilities;</p> <p>(3) An analysis of imported agricultural products and the potential for increasing local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency;</p> <p>(4) Alternatives in the establishment of sound financial programs to promote the development of diversified agriculture;</p> <p>(5) Feasible strategies for the promotion, marketing, and distribution of Hawaii agricultural products in local, national, and international markets;</p>	<p>§163D-5 Hawaii agribusiness plan. (a) The corporation shall prepare and post on its website the Hawaii agribusiness plan which shall define and establish goals, objectives, policies, and priority guidelines for its agribusiness development strategy. The plan shall include but not be limited to:</p> <p>(1) An inventory of agricultural lands with suitable adequate water resources that are or will become available; provided that the inventory of agricultural lands under this paragraph shall be agricultural lands within the purview of the corporation that can be used to meet present and future agricultural production needs;</p> <p>(2) An inventory of available agricultural infrastructure, such as irrigation systems, drainage systems, processing facilities, and other accessory facilities, that are controlled by the corporation; and</p> <p>(3) Strategies for federal, state, county, and community stakeholder actions that will promote the development and enhancement of Hawaii's agricultural industries.</p> <p>(b) The Hawaii agribusiness plan goals shall have specific one-year, five-year, and ten-year objectives and measurable outcomes that prioritize local food production from the corporation's leases or licenses. The objectives and outcomes shall include annual performance goals and measures that</p>
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<p>(6) Programs to promote and facilitate the absorbing of displaced agricultural workers into alternative agricultural enterprises;</p> <p>(7) Strategies to insure the provision of adequate air and surface transportation services and supporting facilities to support the agricultural industry in meeting local, national, and international market needs;</p> <p>(8) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future harvests and production; and</p> <p>(9) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's agricultural industries.</p> <p>(b) The corporation shall revise the Hawaii agribusiness plan from time to time and shall incorporate the plan in its annual report to the governor and the legislature as provided in section 163D-19.</p>	<p>the corporation shall be evaluated on annually.</p> <p>(c) The Hawaii agribusiness plan shall also include metrics, timeframes, and budget expectations as part of the corporation's agribusiness development strategy.</p> <p>(d) The corporation shall update the Hawaii agribusiness plan no later than July 1, 2023, and every five years thereafter, and shall incorporate the plan in its annual report to the governor and the legislature as provided in section 163D-19.</p>
<p>* * * * *</p> <p>§163D-8.5 Approval of projects, plans, and programs. All agricultural projects, agricultural development plans, and project facility programs developed by the corporation must be approved by the board of agriculture before implementation.</p>	<p>* * * * *</p> <p>§163D-8.5 Repealed</p>



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OU LU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

January 25, 2023

Subject: Request for Approval to Establish an Ad Hoc "Committee to Evaluate the FY2021-2022 Annual Performance of the Executive Director"; Appointment of Members thereto

Authority: Section 163D-3 (e)-(f), Hawaii Revised Statutes

BACKGROUND:

The Board of Directors (Board) of the Agribusiness Development Corporation (ADC) last conducted an evaluation of the ADC Executive Director in November 2022 covering the period of FY2020-2021 (ending June 30, 2021).

REQUEST:

That the Board authorize the Chair to establish an ad hoc committee¹, the "Committee to Evaluate the Annual Performance of the Executive Director" which shall:

1. conduct the annual evaluation of the executive director for the period of FY2022 (July 1, 2021 to June 30, 2022); and
2. develop and document annual goals and performance measures for the executive director that will allow the Board to ensure compliance by the corporation with the statutory requirements of its statutory purposes for future evaluations.

DISCUSSION:

Historically, the Board has conducted irregular performance evaluations of the Executive Director. Since 2018 the Board has made a concerted effort to conduct annual evaluations of the Executive Director's performance each fiscal year. In 2022, the legislature made changes to Chapter 163D, Hawaii Revised Statutes that requires the Board to develop and document annual goals and performance measures for the executive director² and to evaluate and document the evaluation of the executive

¹ Article 4, Section 2 of the Bylaws of the Agribusiness Development Corporation states "Ad hoc committees may be established by the chairperson of the Board of Directors upon authorization by the Board of Directors with such powers and duties as determined by the Board of Directors."

² 163D-3(e), HRS: "The board shall develop and document annual goals and performance measures for the executive director that allow the board to annually evaluate the executive director's work to ensure compliance by the corporation with statutory requirements and achievement of its statutory purposes."

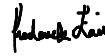
director's performance annually³. These statutory requirements became effective July 1, 2022. As the FY 2020-2021 Executive Director evaluation was not completed until November 2022, the Board must accelerate the after-the-fact evaluation of the executive director's FY2021-2022 performance. This will allow the Board to timely conduct the FY2022-2023 evaluation closer to the end of the current fiscal year on June 30, 2023, with the goal of annually reviewing the Executive Director's performance between August and September of each fiscal year. To comport with HRS section 163D-3(f), the Board should authorize the Chair to appoint an ad hoc committee to develop new goals independent of the Executive Director's past performance evaluation to allow for future performance comparison with the newly developed goals and performance measures.

RECOMMENDATION:

Based on the foregoing, I respectfully request that the Board approve the Request above, subject to the following conditions:

1. The tenure of the Committee shall expire once the Committee has submitted its final evaluation of the executive director to the Board for consideration and has submitted the FY2021-2022 proposed annual goals and performance measures for the executive director to the Board for consideration.

Respectfully Submitted,



Frederick Lau
Chairperson

³ 163D-3(f), HRS: "The board shall evaluate and document the evaluation of the executive director's performance annually, or more frequently upon the request of at least four board members, based on annual goals, performance measures, and other relevant criteria."



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

January 25, 2023

Subject: Request for Approval to Adopt the RFP-2022 Evaluation Committee's Recommendations to Establish a Permitted Interaction Group of Board Members and Project Professionals to Assess and Evaluate the Offeror's Proposal

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

BACKGROUND

On June 2, 2022, the State of Hawaii Agribusiness Development Corporation (ADC) issued a Request for Proposal (RFP 2022) to solicit proposals to facilitate the purchase, construction, operation, and maintenance of a high-pressure processing machine, and agricultural facilities situated in Wahiawa, Oahu. RFP-2022 is attached as Exhibit A. ADC extended its deadline to receive applications from August 17, 2022 to November 15, 2022 to provide interested offerors additional time to develop their proposals.

DISCUSSION

ADC received one offer from a reputable company. An Evaluation Committee was assembled and completed its review on November 29, 2022. The Evaluation Committee found that the offeror met the minimum requirements of the request for proposal. Although the offeror's qualifications met the requirements, the Evaluation Committee lacked expertise on the ongoing infrastructure improvements at the project site that affect the offeror's proposal. Without this expertise, it was difficult to determine if the offeror's proposal was fair and reasonable.

The Evaluation Committee believes that a Permitted Interaction Group comprised of Board members and/or professionals with development expertise could assess the offeror's proposal in depth to ensure the project's goal can be met in a manner that is fair and reasonable to both parties.

RECOMMENDATION

Based upon the foregoing, the Evaluation Committee recommends that the Board establish a Permitted Interaction Group comprised of Board members and other project development professionals to investigate and evaluate the offeror's proposal to

purchase, install, and operate a high-pressure processing machine, and construct agricultural processing facilities situated in Wahiawa, Oahu.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Nakatani', followed by a horizontal line extending to the right.

James J. Nakatani
Executive Director

EXHIBIT A

RFP 2022

[see following pages]



State of Hawaii
Agribusiness Development Corporation
235 S. Beretania St., Rm. 205
Honolulu, HI 96813
T: (808) 586-0186 F: (808) 586-0189

Release Date: June 2, 2022

Request for Proposals
No. RFP-2022 Whitmore High Pressure Processing Machine & Agricultural Facilities

Competitive Sealed Proposals

TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES AT THE WHITMORE FOOD HUB, WAHIAWA, OAHU

Will be received up to 4:30 P.M. Hawaii Standard Time (HST) on August 17, 2022
in the Agribusiness Development Corporation Office
235 S. Beretania Street, Rm. 205, Honolulu, HI 96813

Direct questions relating to this solicitation to Ken Nakamoto
Email at ken.t.nakamoto@hawaii.gov.

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• Attachment 6: AG-008 Chapter 103D General Conditions (Bound separately)	

RFP Administrative Information

RFP Title:	RFP 2022 Whitmore High Pressure Processing Machine & Agricultural Facilities
RFP Project Description: (See Section 1.1 Introduction)	The State of Hawaii is seeking Contractor(s) to purchase/obtain, operate, and maintain one, or possibly two high-pressure processing (HPP) machines, as well as construct agricultural facilities to house these machines situated at 1126 Whitmore Avenue in Whitmore Village, Oahu.
RFP Point of Contact: (See Section 1.8 Contract Administrator)	Buyer Name – Ken Nakamoto Agency Name – Agribusiness Development Corporation Agency Address – 235 S. Beretania St., Rm. 205, Honolulu, HI 96813 Buyer email – ken.t.nakamoto@hawaii.gov Buyer Phone – (808) 586-0087
Submit proposals electronically via email:	Electronic Submission Contract Administrator – Ken Nakamoto Email – ken.t.nakamoto@hawaii.gov
Pre-Proposal Conference:	June 8, 2022, 10:00 a.m. HST
Pre-Proposal Conference Location: (See Section 1.2 Pre-Bid Site Visit)	1126 Whitmore Ave., Wahiawa, HI 96786
Deadline to Receive Questions: (See Section 1.7 RFP Schedule and Significant Dates)	June 17, 2022, 2:00 p.m. HST
Question & Answers: (See Section 1.7 RFP Schedule and Significant Dates)	All questions, including those about Terms and Conditions, must be submitted via email to the Contract Administrator. Questions must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.7 RFP Schedule and Significant Dates)	August 17, 2022
RFP Closing Time: (See Section 1.7 RFP Schedule and Significant Dates)	4:30 p.m. HST
Initial Term of Contract and Renewals: (See Section 1.6 Period of Performance)	For 7 years with the option to extend an additional 3 12-month periods, or part of, upon mutual agreement.

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Section One

Introduction, Terms and Acronyms, and Key Dates

1.1 Introduction

The State of Hawaii Agribusiness Development Corporation (ADC) is soliciting proposals to construct, operate, and maintain a high-pressure processing (HPP) machine(s), and agricultural facilities situated in Wahiawa, Oahu.

ADC is providing up to Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, warranty, delivery, and installation of said HPP machine(s), as well as hiring technical expertise, staff training, and project support. ADC will own the machine(s); however, it will be purchased/obtained, installed, operated, and maintained by the awarded contractor for a minimum of 7 years. The awarded contractor will be responsible for providing materials and labor for operating and maintaining the HPP machine(s). Contractor will also establish user fees, as approved by ADC. In consideration of the Offeror's services and Offeror's proposed rent schedule for lease rent, ADC will provide the awarded contractor with a 35-year lease with a 20-year extension option for up to 535,788 square feet (12.3 acres) within the Whitmore Food Hub for the development of agricultural facilities, including, but not limited to: cold storage; food processing; and distribution centers. The awarded contractor will be responsible for providing all materials and labor for the construction of the agricultural facilities, and obtaining all required land use entitlements, government approvals, and permits.

Qualified Offerors will be invited to submit proposals that are permitted under applicable Hawaii laws, ordinances, rules and regulations.¹

The Evaluation Committee will select the Offeror whose proposal best meets ADC's objectives and the RFP selection criteria. The project will proceed under a development agreement between the Offeror and ADC, which will include a lease agreement.

1.2 Pre-Bid Site Visit

The ADC will host a site visit to the Oahu Agricultural and Food Manufacturing Hub, tentatively scheduled for June 8, 2022. At this visit, ADC will explain the project development objectives and the RFP process, and answer questions from potential interested parties. Attendance by any prospective interested party is highly encouraged but is not required. To participate in this site visit, contact the Contract Administrator, Ken Nakamoto via email.

1.3 Modifications and Cancellation

Interested parties and Offerors will be responsible for all risks and for the payment of all costs and expenses in connection with the preparation of their respective Submission of Qualifications (SOQs), as well as any and all planning costs incurred by the Offeror. ADC assumes no risks or costs associated with any Offeror's participation in this portion of the selection process.

The Request for SOQs and Request for Proposals (RFP) may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, at any time, and when it is determined to be in the best interest of the State.

¹ Applicable laws include, but are not limited to Chapter 163D, Hawaii Revised Statutes (HRS), Chapter 205, HRS, and Chapter 321, HRS, and applicable county land development laws and regulations as well as those set forth by the United States Department of Agriculture, Food Safety and Inspection Service, or the State Department of Health.

1.4 Terms and Acronyms

ADC	=	Agribusiness Development Corporation, 235 S. Beretania Street Rm. 205, Honolulu, HI 96813
BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
DAGS	=	Department of Accounting and General Services
DOH	=	Department of Health
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HDOA	=	Hawaii Department of Agriculture, 1428 South King Street, Honolulu, HI 96814
HPP machine	=	High pressure processing machine for value-added product development
HRS	=	Hawaii Revised Statutes
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation
POC	=	Point of Contact for Offeror
Procurement Officer	=	Contracting Officer for the State of Hawaii, Department of Agriculture
RFP	=	Request for Proposals
State	=	State of Hawaii, including each department and political subdivisions
Whitmore Food Hub	=	Within TMKs No. (1) 7-1-002:009/(1) 7-1-002:004, as shown and delineated on the map labeled Attachment 3

1.5 Type of Contract

Firm Fixed Price. Multi-Term Contract HAR §3-122-149.

1.6 Period of Performance

This Contract shall be for a period of 7 years beginning on the date specified on the Notice to Proceed. Unless terminated, the contract may be extended without re-solicitation, upon mutual agreement in writing between the State and the Contractor, prior to the expiration date, for not more than 3 additional 12-month periods, or parts thereof.

1.7 RFP Schedule and Significant Dates

The schedule represents the State's best estimate of the schedule that will be followed. All times indicated are HST. If a component of this schedule, such as "Proposal Due Date/Time" date is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Notice of Request for Proposals	June 2
Site Visit	June 8
Deadline to Submit Written Questions	June 17
State's Response to Written Questions	June 22
Submission of Qualifications Deadline	August 17 4:30 p.m.
Proposals Due Date / Time	August 17 4:30 p.m.
Notification to Qualified Offerors (if necessary)	August 18 – September 1
Proposal Evaluations and Selection	August 18 – September 1
Discussion with Priority Listed Offerors (if necessary)	August 18 – September 1
Best and Final Offer Date / Time (if necessary)	September 8
Notice of Award	September 8-12
Notice to Proceed/Contract Start Date	November 1

1.8 General Administration

Contract Administrator

Ken Nakamoto is the ADC Project Manager, Contract Administrator, and point of contact. Mailing address: Agribusiness Development Corporation 235 S. Beretania Street, Rm. 205, Honolulu, HI 96813. Telephone: (808) 586-0087. Email: ken.t.nakamoto@hawaii.gov.

Questions and Answers Prior To Opening of Proposals

All questions shall be submitted in writing and directed to Ken Nakamoto. The State will respond in writing and/or email. Failure to respond to any questions submitted by the state shall be considered non-responsive and will commensurately impair any submittal.

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Section Two

Background and Scope of Project

2.1 Background

This RFP seeks to bring HPP technology to Hawaii for use by farmers and other food producers.

Local farmers and food producers face challenges of: 1) delivery and shipping logistics, and 2) the limited shelf-life of Hawaii-made value-added food products. Addressing this challenge will immensely increase the economic development opportunities for Hawaii's agricultural and "value-added" industries.

HPP is a non-thermal technology that pasteurizes and preserves food, thereby extending the shelf-life of food products from several weeks up to months. It enables farmers and value-added processors to scale distribution and exports of preserved and pasteurized food products without compromising overall food quality and food safety. HPP machines can process a wide variety of foods, including fruits, vegetables, meats and seafoods. It can deliver ready-to-eat meals, ready-to-cook meats, juices, soups, sauces, dips, and dairy-based products.

It is a proven, growing technology used extensively on the mainland, but so far, not available locally. High start-up costs make it difficult for the private sector to take on this investment.

Accordingly, the State is creating a "food manufacturing hub", that establishes an HPP machine at its core, with supportive facilities including cold storage and distribution capabilities. It will be located in Central Oahu within the Oahu Agricultural and Food Manufacturing Hub (Tax Map Key numbers. (1) 7-1-002:009 and (1) 7-1-002:004. At full build out, the Whitmore Food Hub will also include offices, additional warehousing, and workforce housing.

2.2 Scope of Work

The Offeror shall:

1. Coordinate the purchase, delivery, and installation of at least one, possibly two HPP machine(s);
2. As necessary, design and rehabilitate and/or expand an existing facility and/or construct a new building to house and operate the HPP machine(s);
3. Construct all necessary on-site improvements, including driveways, parking, and loading docks, in compliance with applicable laws and regulations;
4. Construct any necessary, ancillary, supportive agricultural processing facilities, for example, including facilities to provide cold storage, packaging, and other services to meet the needs of food producers;
5. Maintain and operate the HPP machine(s) for a minimum period of seven years,
 - a. The HPP machine, or machines will process a total of 6,000 pounds per hour;
 - b. The HPP machine(s) will be capable of processing a wide variety of packaged products and fresh produce;
6. Source technical support and labor to operate the HPP machine(s), including training programs for operating the HPP machine(s);
7. Establish and collect user fees, as approved by ADC;
8. Provide upgrades for software and/or parts for manufactured HPP machine(s) and supporting and/or ancillary equipment to maintain productivity goals;

9. Perform inspections and equipment maintenance per manufacturer's specifications to maintain productivity goals;
10. Maintain Financial and Operational Records,
 - a. Obtain financial audits of the project and submit findings to ADC annually;
 - b. Provide ADC with regular financial, safety, production and other reports as required by ADC;
11. Remit proceeds to ADC on a regular basis as determined by ADC; and
12. Meet established deadlines and budget as determined by ADC.

2.3 ADC Responsibilities

ADC will provide the following assets to the project:

1. Funding not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000) for the purchase, delivery, and installation of the machine, site improvements, and hiring technical support, and staff training to operate the HPP machine;
2. Provide a land lease at a negotiated rate for an existing 6,500 square feet and 2,625 square feet building for renovations to house the HPP machine(s), and access to on-site utility necessary to operate the HPP machine(s);
3. Provide a land lease at a negotiated rate for up to 535,788 square feet (12.3 acres) of land within the Whitmore Food Hub for the development of agricultural facilities;
4. Completion of necessary off-site-infrastructure improvements, including water, drainage, electricity, and sewer; and
5. Coordination amongst State, County and Federal entities, which represent additional project support.

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Section Three Proposal Format and Content

3.1 RFP Solicitation and Selection Process

Proposals, including SOQs from interested parties detailing their relevant food processing expertise, financial capabilities, and management experience shall be filed together in writing via email by the designated deadline. ADC will review the SOQs and determine which interested parties meet ADC's qualification criteria detailed in Section 4.1. The required format and content of the SOQs are detailed in Attachment 1 and incorporated herein. ADC's evaluation committee will review the proposals and will recommend the proposal that best satisfies the project objectives and selection criteria as detailed in Section 4.2. The required format and content of the proposal are detailed in Attachment 2 and incorporated herein. ADC's evaluation committee recommendation may prioritize proposals submitted for their evaluation.

Interested Offerors with submitted proposals will be notified by ADC by email of the action taken on their submittals.

3.2 RFP Submittals

Each Offeror shall submit via email a development proposal by the established deadline, which shall include: (1) a development plan; (2) an economic proposal; and (3) a business plan. The development proposal shall include the information and materials found under Attachment 2

3.3 Offeror's Authority to Submit an Offer

Other than the HPP machine(s) which the State will own, the State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror must resolve that question prior to submitting an offer or their proposal will be impaired accordingly.

3.4 Competency of Offeror

Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the ADC may require Offeror to submit answers to questions regarding prior projects, expertise, other facilities, equipment, personnel, financial status or any other factors relating to the ability of the Offeror to satisfactorily furnish the goods or services being solicited by the State. Any such inquiries shall be made and replied to in writing; replies shall be submitted with the signature of the persons who sign the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive and their submittal will be commensurately impaired.

3.5 Required Review

1. Before submitting a SOQ or proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become

familiar with State, local and federal laws, statutes, ordinances, rules, and regulations that may, in any manner, affect cost, progress, or performance of the work required.

2. Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the Agribusiness Development Corporation in writing prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which an award could not be made.

3.6 SOQ and Proposal Preparation Costs

Any and all costs incurred by the Offeror in preparing or submitting a SOQ or proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs.

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Section Four

Evaluation and Selection of Proposal

4.1 Evaluation Criteria for Submission of Qualifications (SOQ)

ADC will conduct a review of the SOQs for adequacy and completeness. ADC may ask any interested party for clarification of the information submitted or for additional information/materials to assist ADC in its review/evaluation of the SOQ. ADC may also conduct interviews of any of the interested party and/or members of the interested party's team.

ADC will determine which interested parties meet the qualification criteria below, and are deemed eligible for consideration as Offerors. ADC, may at its sole discretion, form a short list of the most qualified Offerors. ADC may consult with other relevant agencies and entities to qualify interested parties. The qualified Offerors (or short list of the most qualified Offerors, if applicable), will then be invited to participate in the RFP process by submitting their proposals, if necessary.

Qualification criteria. Offerors must demonstrate they meet the following minimum requirements as evidenced by previous projects and/or undertakings to be considered for the evaluation phase. All items described in this section are non-negotiable. ADC shall evaluate the qualifications based on the following summarized criteria:

- a. Real estate development experience relevant to the construction of agricultural facilities, including experience in community outreach and obtaining land use entitlements and government approvals/permits;
- b. Management experience relevant to the operations of HPP machines and/or produce processing or distribution centers and facilities;
- c. Knowledge of Federal and state food safety and sanitation regulations;
- d. Financial capacity to fund the proposed operations; and
- e. Other relevant experience and qualifications submitted.

A full list of information required of SOQs is given under Attachment 1.

All interested parties will be notified of their qualification determination.

4.2 Evaluation of RFP Submittals

An evaluation committee of at least 3 qualified state employees approved by the Procurement Officer, shall evaluate the proposals, and make a recommendation to ADC. The evaluation committee may include additional non-voting members/teams with specific and technical expertise in, including, real estate/development, financials, and high-pressure processing.

The evaluation committee shall evaluate the proposals and make a recommendation to the ADC. The evaluation will be based on the evaluation criteria set out below, and in accordance with applicable procurement laws.

If more than one Offeror is determined to be qualified, ADC will invite the qualified Offerors (or the short list of the most qualified Offerors), to submit their respective development proposals in accordance with Section Three. If there is only one RFP submittal, the evaluation committee may still make a recommendation on whether to accept the proposal.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible offerors who submitted the highest-ranked proposals.

Evaluation Criteria for Proposals

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

The total number of points used to score this contract is 100.

1. Capacity to procure, install, and operate HPP machines (25).
2. Business capacity to develop and manage a new food processing complex, as evidenced by a viable operations plan that addresses, among other elements, personnel hiring, training and retention, security, operational safety, production and revenue goals, inspections and maintenance schedules, record-keeping, and customer service (25).
3. Financial capability and credit worthiness of the Offeror and development team (25).
4. Ability to implement and operate the project on a timely basis within given budget constraints as evidenced by past projects and experience (15).
5. Alignment with the goals of the project and contents of the HPP report produced by University of Hawaii Community Design Center (UHCDC) (10).

Interested Offerors with submitted proposals will be notified by ADC via email of the action taken on their submittals.

4.3 Debriefing

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing from the Procurement Officer to understand the basis for the award.

A written request for debriefing shall be made within 3 working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within 7 working days to the extent practicable from the receipt date of the written request.

4.4 Protest Procedures

Pursuant to HRS §103D-701, HAR §3-126-3, and §3-126-4 an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at: Hawaii Department of Agriculture, Chairperson Office's, 1428 South King Street, Honolulu, HI 95814. Telephone: (808) 973-9553; Fax: (808) 973-9613; Email: Phyllis.Shimabukuro-Geiser@hawaii.gov.

A protest shall be submitted in writing. A protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further, a protest of an award or proposed award shall be submitted within 5 working days after the aggrieved person knows or should have known of the facts giving rise thereto, and in any event, within 5 working days posting of the award, or if debriefing is requested, then within 5 working days after posting of the award, or if debriefing is requested, then within 5 working days after the PO's debriefing was completed.

4.5 ADC Discretion and Reservation of Rights; Cancellation of RFP; Non-Liability and Waiver

ADC reserves the right to: (1) request from any Offeror a clarification of any information submitted or additional information/materials to assist ADC or ADC's evaluation committee in the review of the Offeror's qualifications or proposal; (2) reject any and all submissions in whole or in part; (3) require amendments or modifications to the submissions; (4) waive any of the submission requirements; (5) cancel this RFP; and/or (6) re-advertise for new qualifications and/or proposals, all with no liability whatsoever, whether or not it is in ADC's best interest to do so. ADC also reserves the right to amend this RFP, including but not limited to, the deadlines and submission requirements, at any time prior to the applicable submission deadline.

The Offerors, by submitting a response to this RFP, waive all rights to protest or seek legal remedies whatsoever regarding any aspect of this RFP except as allowed by this RFP.

[Remainder of page intentionally left blank]

Section Five Contract and Lease Agreements

5.1 Contract Minimum Requirements

ADC will enter into a Contract with the awarded contractor for the purchase/acquisition, installation, operation, and maintenance of the HPP machine(s), setting forth the terms and conditions under which the awarded contractor shall perform. The awarded contractor's proposal will be attached to the Scope of Services and made part of the Contract.

At a minimum the Contract shall include the following obligations:

1. Government Approvals/Permits. The selected applicant shall, at its sole expense, obtain all government permits/approvals necessary to construct its proposed project.
2. Compliance with State and County Laws. The selected applicant shall comply with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):
 - a. Chapter 237, General Excise Tax Law;
 - b. Chapter 321, Department of Health
 - c. Chapter 343, Environmental Impact Statements
 - d. Chapter 383, Hawaii Employment Security Law;
 - e. Chapter 386, Workers' Compensation Law;
 - f. Chapter 392, Temporary Disability Insurance;
 - g. Chapter 393, Prepaid Health Care Act; and
 - h. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.
 - i. Chapter 205, Land Use Commission
 - j. County building, zoning and other development requirements

The selected applicant must provide proof of compliance with Hawaii Compliance Express (HCE).

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00, and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Timely Registration on HCE. Offerors are advised to register on HCE soon as possible. If the selected applicant is not compliant on HCE at the time of award, the selected applicant will not receive the award.

3. Compliance with Federal Law. The selected applicant shall comply with all Federal laws relating to food safety, including, but not limited to the following:

- a. Title 9, Code of Federal Regulations, Part 417; and
- b. Directive 5000.15, Food Safety and Inspection Service, United States Department of Agriculture.

Offeror must provide proof of compliance with federal laws.

- 4. Insurance. The selected Offeror shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Development Agreement generally consisting of the following:

- a. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis. All policies shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any premiums and deductibles applicable to these policies.

- b. Equipment Insurance

Warranty covering the HPP machine for the full replacement or repair in addition to other equipment. Said warranty may terminate once it is replaced by similar insurance policy from the entity who will operate the HPP machine post-installation.

- c. Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

- d. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverages required by federal or State laws

- 5. General Conditions. AG-008 Chapter 103D General Conditions. See Attachment 6.

5.2 Special Conditions

The Contract will be based on the project objectives, the requirements of this RFP and the RFP submittal. It will include provisions on the following:

- a. Project Schedule, which will include at minimum, dates for the following milestones:
 - i. Procurement of machines;

- ii. Installation of machines;
 - iii. Machines are operational for public use;
 - iv. Determination of necessary on-site improvements;
 - v. Completion of necessary on-site improvements;
 - vii. Completion of Operations Manual; and
 - viii. Adoption of User fees.
- b. Outline of Operational Plan elements, including record-keeping and hours of operation, personnel management, safety and security, traffic demand strategies, maintenance schedules.
- c. Outline of Financial Plan that addresses:
 - i. How Compensation to ADC will be calculated, if applicable;
 - ii. Estimated annual operating costs; and
 - iii. How user fees will be calculated, and the process to amend fees.
- d. Types of regular reports to be submitted to ADC, and on what schedule, which may include audit reports.
- e. Duration of lease and provisions for amendments to the lease.

5.3 Lease Agreements

Concurrently to the Contract, ADC will enter into exclusive negotiations with the awarded contractor to negotiate the complementary lease agreements. During exclusive negotiations, ADC and the awarded contractor will negotiate in good faith the lease agreements for the existing facilities to house the HPP machine(s) and up to 535,788 square feet (12.3 acres) of development lands within the Whitmore Food Hub.

The exclusive negotiation period shall be 6 months from the date the awarded contractor is notified of the selection and will be based upon the development proposal and rent schedule submitted by the awarded contractor. If the lease agreements are not executed by the expiration of the exclusive negotiation period, then all rights of the awarded contractor to negotiate the lease agreement shall terminate, provided, however, that the Executive Director of ADC may, in his/her sole discretion, extend the negotiation period by written notice to the awarded contractor for up to an additional 6 months.

Upon the expiration of the exclusive negotiation period (including any extension) this RFP process shall terminate and no rights to negotiate any lease agreement shall accrue to the awarded contractor or to any other offeror.

ADC reserves the right to negotiate with the awarded contractor any additional terms, conditions or modifications to the terms set forth in this RFP or to the awarded contractor's development proposal and rent schedule if it is in ADC's best interest to do so.

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Section Six

Attachments and Exhibits

- Attachment 1: SUBMISSION OF QUALIFICATIONS (SOQ)
- Attachment 2: REQUEST FOR PROPOSALS (RFP) SUBMITTALS
- Attachment 3: WHITMORE FOOD HUB (MAPS)
- Attachment 4: GENERAL LEASE TEMPLATE (Bound separately)
- Attachment 5: PRELIMINARY SUMMARY FOR HIGH PRESSURE PROCESSING IN HAWAII (Bound separately)
- Attachment 6: AG-008 Chapter 103D General Conditions (Bound separately)

ATTACHMENT 1

SUBMISSION OF QUALIFICATIONS (SOQ)

TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES, WHITMORE FOOD HUB, WAHIAWA, OAHU

SOQ SUBMISSION REQUIREMENTS

Each interested party shall submit a Statement of Qualifications which shall include the information and materials described below. The SOQ shall be organized in a manner that is consistent with the headings and sequence presented below. Offerors shall submit one electronic copy of the SOQ along with their proposal via email to the Contract Administrator.

1. Cover Letter. Submit a cover letter on the interested party's letterhead addressed to ADC and signed by an authorized representative of the interested party.
2. Applicant – Type of Entity and Ownership Interests. Provide the following information:
 - a. Name. The legal name of the interested party.
 - b. Type of Entity. Identify the type of entity (e.g., corporation, limited liability company, etc.), and the state or country of organization.
 - c. Owners. Identify all individuals or entities holding a 10% or more ownership interest in the interested party and their respective ownership interests. Provide any additional background information about any of the owners that may support the qualifications of the application with respect to this SOQ, including descriptions of any key roles that any of these individuals or entities will play in the project. Any foreign corporation or business entity must obtain the appropriate certificate of authority to do business in the State of Hawaii.
 - d. Directors/Officers. Identify the directors and officers of the interested party, including names and titles. Provide any additional background information about any of the directors and officers that may support the qualifications of the interested party with respect to this SOQ, including descriptions of key roles that any of these individuals will play in the project.
 - e. Development Team. Describe the organization of the interested party and the development team, and the roles and responsibilities of each member of the development team, including major consultants (e.g., architect, planners, etc.), joint venture or limited partners, and legal counsel. Include members that may be added to the development team in the future to develop or manage the project and describe the arrangement or commitment, if any, between the interested party and the projected future development team members. Provide an organizational chart and the names, titles, resumes, and contact information of the principals of each member of the development team.

Describe any previous experiences of the development team with projects that are similar in type, size, and scope to the proposed high pressure processing machine warehouse and the status of those projects.

- f. Other Experience. Describe any other experience that may be appropriate to establish the interested party's qualifications.

- g. Financial Capacity and Credit History. Provide satisfactory evidence to support the financial ability of the interested party to develop and operate the proposed high pressure processing project. Such evidence should include evidence of interested party's past or current debt or equity financing, the interested party's financial statements for the past three fiscal years, current credit report(s), any recent audit reports, and evidence of capital resources or financing commitments. Describe any loan or lease defaults, bankruptcies, judgments or any litigation or other disputes that may potentially have an adverse effect on the interested party's current financial or operational capability.
- h. Other Information. Provide any other information regarding the interested party, the development team, or its members that may be pertinent to establishing the interested party's qualifications.
- i. References. Provide at least 3 references (including name, title, address, email address, phone number) that ADC may contact to confirm the interested party's and development team members' qualifications and any of the information provided in the SOQ.

ATTACHMENT 2

REQUEST FOR PROPOSALS (RFP) SUBMITTALS

TO CONSTRUCT AND OPERATE A HIGH-PRESSURE PROCESSING MACHINE AND AGRICULTURAL FACILITIES, WHITMORE FOOD HUB, WAHIAWA, OAHU

RFP SUBMISSION REQUIREMENTS

Offerors shall submit one digital copy of their RFP submissions via email to the Contract Administrator. Each submittal shall include the following:

1. Cover Letter. Submit a cover letter on the Offeror's letterhead addressed to ADC and signed by an authorized representative of the Offeror.
2. Executive Summary. Provide an executive summary of the critical aspects of the Offeror's development proposal.
3. Narrative Description. Provide a narrative description of how the proposal meets the overall objectives of the project. Accordingly, it should explain the development plan, including the overall approach, schedule, project team expertise, ability to work within budget and on time; and anticipated economic returns. This narrative should explain the reasonableness of the development schedule and reflect an understanding of the requirements necessary to implement the project in a timely manner.
4. Financial Proposal.
 - a. Details on proposed user fees. Machine users may be charged to process and store their products; however, ADC retains broad discretion and oversight of fees in order to ensure that all charges are fairly assessed.
 - b. Anticipated costs to be paid by ADC, if any.
 - c. Proposed rent schedule for lease rent to be paid to ADC. Demonstrate ability to remit to the ADC, at minimum, a fee equivalent to 1% of any gross sales over the first \$1 million of gross sales generated by the HPP machine(s) operation, based on audited financial records.
 - d. Terms and Conditions. Describe the proposed commencement of payment in relation to the applicant's proposed development schedule. Identify which predevelopment events must occur prior to the commencement of payment. Describe any other critical terms and conditions, and the Offeror's rationale for such terms and conditions.
 - e. Discounts, Credits and Offsets. Describe any proposed discounts, offsets, or other terms or conditions that the Offeror believes are necessary or reasonable in consideration for the Offeror's implementing its development proposal, including the Offeror providing, maintaining, and/or managing any proposed public uses, improvements or facilities.
 - f. The depreciation schedule for all equipment shall be the total cost / useful life of 7 years, or manufacturer's expected life of the equipment, whichever ever lesser for financial reporting purposes. (E.g. \$1,000,000 total cost / 7 years useful life = \$142,857.14 depreciation per

fiscal year over its useful life). When the equipment is no longer needed or needs to be replaced, the applicant must obtain disposition instructions and approval from the State.

- g. Discuss planning for 7 years of HPP machine operations, at minimum. If the applicant fails to operate the project for a minimum of 7 years, then the applicant must pay for the housing and maintenance of the machine and is responsible for finding a new company to operate and maintain the machine for the remaining years.
- h. Ability to finance the development proposal.
- i. Market and feasibility reports.
- j. Assessment of utility and other key infrastructure needed, both on- and off-site, to operate the machine and processing facilities, including, but not limited to, power, electricity, water, sewer, and foundational support. Included should be general cost estimate to construct necessary on-site improvements.

5. Operations Plan

- a. Hours of operation.
- b. Organizational chart.
- c. Strategies to hire, train and retain operation employees under projected operation schedule.
- d. Traffic demand management strategies addressing employee commuting, delivery and visitor schedules, and hours of operation.
- e. Record-keeping procedures.
- f. Safety and Security plan, which may include fencing, surveillance equipment, security personnel and staff training.
- g. Maintenance schedule for all major equipment, including compliance with recommended inspections and servicing recommended by manufacturing companies.
- h. Outreach strategy to promote use of the machines and the food hub: 1) to potential users; 2) to educators and students; and 3) general public.

6. Project Schedule. Milestones for procurement, construction, and operation; including:

- a. On-site improvements completion (duration of construction phase).
- b. Opening Day for Users.
- c. Key personnel responsible for implementing the schedule.
- d. Caveats and Prerequisites for complying with proposed schedule.

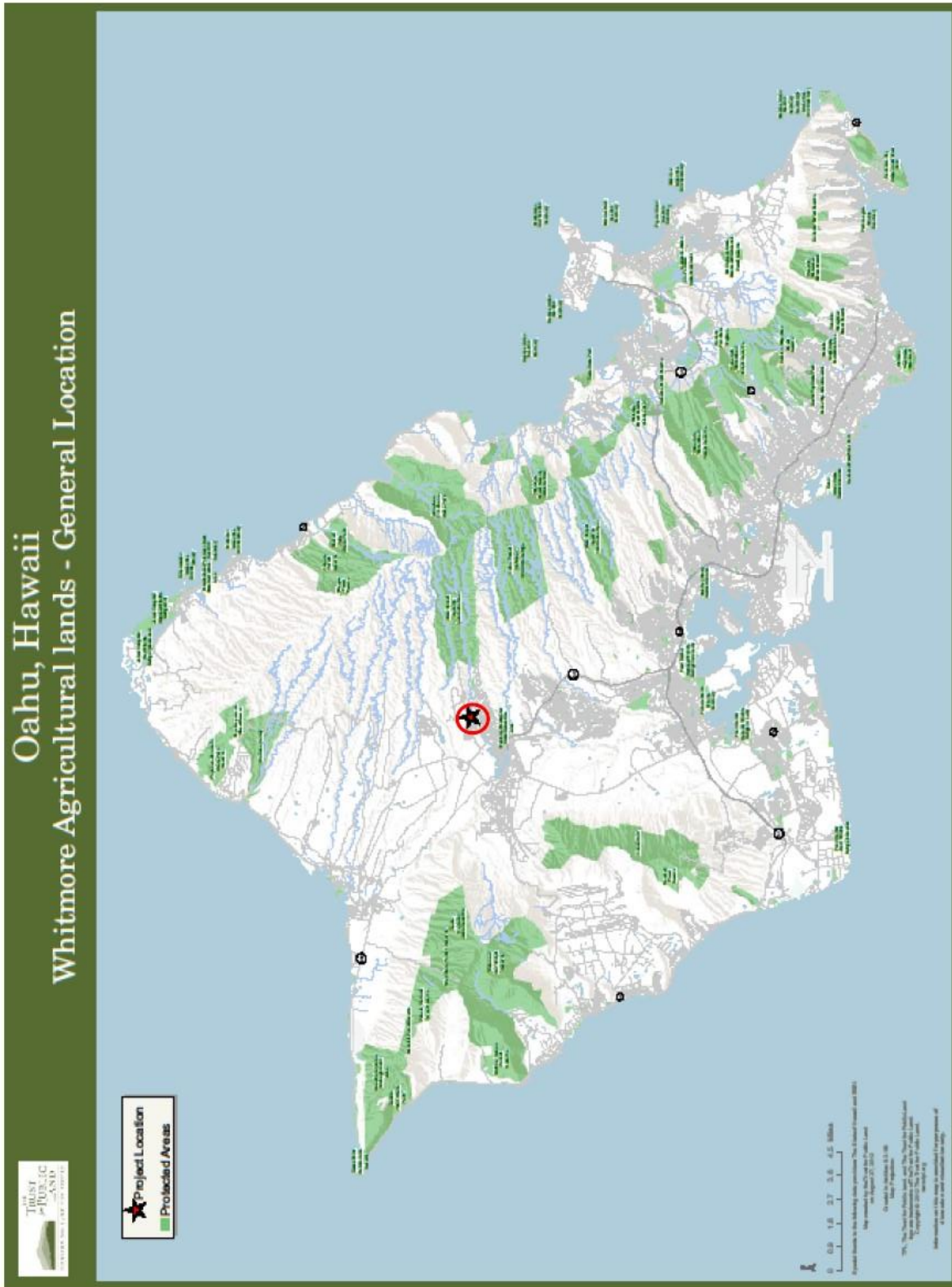
7. Project Management

- a. Key personnel involved in operation and maintenance, including their resumes.

- b. Outline for operations manual; including traffic management, security, hours of operation, and public relations.
- 8. Proposed machines. The HPP machine(s) should be capable of processing a wide variety of packaged products and fresh produce.
 - a. Number of machines: One, possibly two machines. The HPP machine, or machines will process a total of 6,000 pounds per hour.
 - b. Size and weight of each machine; Capacity of machines
 - c. Amount of warehouse space required, including proposed floor plan
- 9. Site Plan. A conceptual site plan showing the location, configuration, and approximate sizing of all proposed agricultural facilities. The site plan should locate where the machines will be installed, as well as convey general circulation patterns, and accommodations for planned future improvements.
- 10. SOQs. As described in Attachment 1.

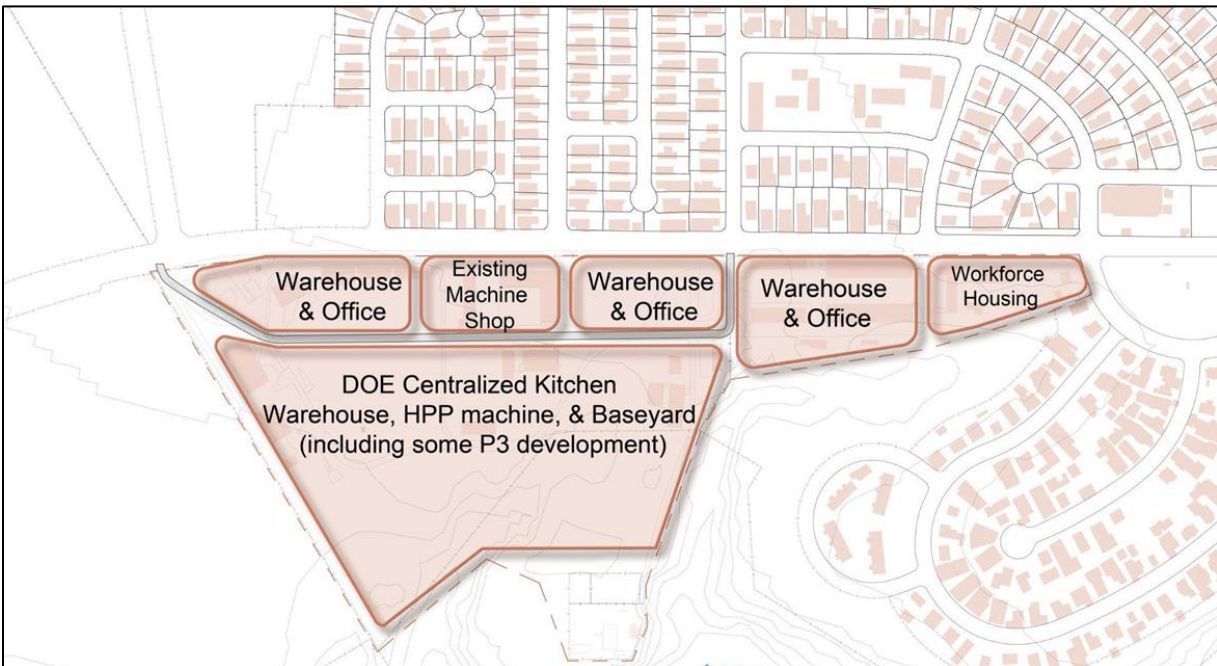
ATTACHMENT 3

WHITMORE FOOD HUB MAPS





CONCEPTUAL MASTER PLAN



JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

ITEM F

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

EXECUTIVE DIRECTOR'S UPDATE

January 25, 2023



Department of Business, Economic Development, and Tourism

ADC still in transition phase pursuant to Act 219, which transfers the administrative attachment of the ADC from the Hawaii Department of Agriculture (HDOA) to the Department of Business, Economic Development, and Tourism (DBEDT). The transfer has been complete, but ADC staff is working with DBEDT staff to adopt new procedures and protocols. The entire State Government is in a transition phase due to the recent elections, which will have impacts on all agencies as the new administration took the helm in November 2022.