

**U.S. Department of Agriculture
Agricultural Research Service**

**BREEDING MATERIAL
MATERIAL TRANSFER AGREEMENT**

PARTIES:

ARS: USDA, ARS, South Atlantic Area
Crop Genetics and Breeding Research Unit
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Tifton, GA 31793-0748
Tel: 229-386-3189
Fax: 229-391-3701
E-mail: jeff.wilson@ars.usda.gov

Recipient: University of Hawaii at Manoa
3190 Maile Way
Honolulu, Hawaii 96822-2279

Recipient's Scientist: Brian Turano
Tel: 808.956.7934
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E-mail: turanob@ctahr.hawaii.edu

PURPOSE:

To provide Recipient with approximately 100 seeds of each of 33 experimental pearl millet (*Pennisetum glaucum*) germplasms 106A1, 206A1, 306A1, 406A1, 506A1, 606A1, 307A1, 507A1, 607A1, 707A1, 807A1, 907A1, 108A1, 208A1, 308A1, 408A1, 508A1, 608A1, 708A1, 908A1, 1008A1, 85DA4, 23DA4, 90DA1E, KS1136A1, 23DA1, DMP C5 A4, DMP C4 A4, DMP C3 A4, 99A1, DMP C3 A4, EDMP C5 A4, EDMP C6 A4, and associated know how, hereinafter collectively referred to as the BREEDING MATERIAL.

The BREEDING MATERIAL is released to RECIPIENT under the following conditions:

1. The BREEDING MATERIAL shall only be used as parents in breeding crosses.
 - a. Official name or number of the BREEDING MATERIAL will be used in all references to such BREEDING MATERIAL.
 - b. In order for ARS to document impact of its BREEDING MATERIAL, RECIPIENT shall report to ARS upon request, any sales or public distribution of material resulting from hybridizing/breeding with the BREEDING MATERIAL.

2. Because the BREEDING MATERIAL has not yet been released officially by ARS, it is considered to be proprietary and confidential. RECIPIENT shall not transfer the BREEDING MATERIAL, in whole or in part, to a third party without express written consent of ARS. Any third party requesting a sample shall be referred to ARS.
3. Recipient shall not report on, describe for publication or exhibit at flower or trade shows or otherwise display publicly any of the BREEDING MATERIAL covered by this Agreement, except by specific written permission from ARS, unless Recipient has received notification of the public release of the BREEDING MATERIAL by ARS.
4. The BREEDING MATERIAL shall remain the property of ARS and shall not be sold for commercial or profit making purposes without an appropriate license or other permission from ARS.
5. RECIPIENT shall keep ARS informed of the results obtained through use of the BREEDING MATERIAL, and shall provide ARS a copy of any manuscript that describes the work with the BREEDING MATERIAL prior to submission for publication, and shall acknowledge ARS' contribution to the work reported.
6. RECIPIENT shall not in any way state or imply that this Agreement or the results of this Agreement are an endorsement by ARS of its organizational units, employees, products, or services.
7. ARS and RECIPIENT shall comply with all laws, regulations, and/or guidelines applying to the use of the BREEDING MATERIAL.
8. ARS GIVES NO WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, FOR THE MATERIAL, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
9. Upon expiration of this Agreement or the completion of the activities to be performed under this Agreement, the BREEDING MATERIAL shall be returned, destroyed or otherwise disposed of as instructed by ARS, unless ARS notifies the recipient in writing that the BREEDING MATERIAL has been released to the public by ARS, at which time the RECIPIENT may dispose of the BREEDING MATERIAL as it sees fit.
10. RECIPIENT shall meet with ARS' representative(s) to determine inventorship if an Invention should arise from RECIPIENT'S work with the BREEDING MATERIAL. Invention means any invention or other intellectual property that is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, *et seq.*, or under the patent laws of a foreign country.

- a. All rights, title, and interest in any Subject Invention made solely by employee(s) of ARS shall be owned by ARS.
- b. All rights, title, and interest in any Subject Invention made jointly by at least one (1) employee of ARS and at least one (1) employee of RECIPIENT shall be jointly owned by ARS and RECIPIENT.
- c. All rights, title, and interest in any Subject Invention made solely by employees of RECIPIENT shall be owned by RECIPIENT.

11. Confidentiality:

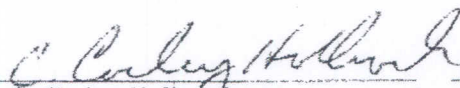
- a. Recipient shall not disclose Material marked "Confidential" or "Proprietary" to any third party nor use such Confidential Information for any purpose other than that given above without written permission from ARS.
- b. Recipient shall use the same degree of care to protect Confidential Information received under this Agreement as it uses to protect its own information of a similar nature, but in any event not less than reasonable care under the circumstances.
- c. The Confidential Information shall be excluded from confidentiality if Recipient can demonstrate that (a) it had possession of the information prior to disclosure, or (b) the information generally is available to the public at the time of disclosure, or becomes generally available, after disclosure, through no fault of Recipient; or (c) Recipient receives the information from a third party having the right to the information and who does not impose confidentiality.
- d. It shall not be a breach of this Agreement if Recipient is required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either party under this Agreement; PROVIDED THAT Recipient shall provide prompt prior notice thereof to ARS to enable ARS to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.


12. Both parties acknowledge and agree to comply with all applicable laws and regulations of the Animal and Plant Health and Inspection Service, the Centers for Disease Control, and /or Export Control Administration pertaining to possession or transfer of technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.

13. This Agreement shall be construed in accordance with United States of America Federal Law as Interpreted by the Federal Courts in the District of Columbia.

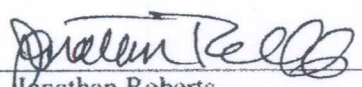
This **BREEDING MATERIAL-MATERIAL TRANSFER AGREEMENT** shall become effective upon date of final signature and shall continue in effect for a period of two (2) years; provided, however, that the obligations assumed by Recipient regarding the maintenance of confidentiality, under this Agreement shall remain in effect for two (2) years from the expiration of this Agreement.

ACCEPTED FOR THE AGRICULTURAL RESEARCH SERVICE:

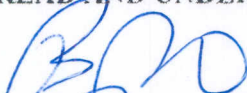

C. Corley Holbrook Research Leader 5/3/10
Title Date


Jeffrey P. Wilson Research Plant Pathologist 5-4-10
Title Date

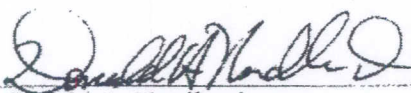
ACCEPTED FOR THE RECIPIENT:


Jonathan Roberts Acting Director, Office of
Technology Transfer and 5/5/2010
Economic Development Date
Title

READ AND UNDERSTOOD BY:


Brian Turano Bioenergy Specialist 5/5/2010
Title Date

APPROVED:


Donald A. Nordlund Technology Transfer Coordinator 04/20/2010
Title Date