

**AGREEMENT BETWEEN
CALIFORNIA CROP IMPROVEMENT ASSOCIATION
and
AGRICULTURAL COMMISSIONER, TULARE COUNTY**

THIS AGREEMENT shall be effective the first day of April, 2010, by and between the CALIFORNIA CROP IMPROVEMENT ASSOCIATION (hereinafter "CCIA"), and the County of Tulare, as executed by the Agricultural Commissioner (hereinafter "the Commissioner").

RECITALS

WHEREAS, CCIA is designated as the Recognized Agency to certify seed pursuant to Section 3875 of the California Code of Regulations, and is empowered to adopt rules and regulations for such certification.

WHEREAS, pursuant to authority in the Food and Agricultural Code Section 52421, the Commissioner is authorized to do all of the following: a) cooperate with seed-certifying agencies which are officially recognized under the provisions of this chapter; b) supervise the harvesting, cleaning, and packaging of any seed which is eligible for certification, and the affixing of labels and seals to it; c) examine, sample, and test such seeds; and d) perform such other services as may be necessary to maintain the identity and quality of certified seed.

WHEREAS, CCIA desires to retain the Commissioner as an independent contractor for the purpose of providing services related to seed certification, and the Commissioner desires to provide such services to CCIA on such basis pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Responsibilities of the Commissioner.** The Commissioner shall provide the services described in **Attachment A** to this Agreement, attached hereto and incorporated herein by this reference.
2. **Responsibilities of CCIA.** CCIA shall be responsible for providing the Commissioner such information and documentation as may be necessary for the Commissioner to provide the services required by this Agreement.
3. **Compensation.** Upon execution of this Agreement by the Commissioner, CCIA shall pay the Commissioner the estimated annual payment not to exceed \$700 after July 1, 2010 and within 30 days of receipt of the signed agreement from the Commissioner.

In no event shall the total amounts paid to the Commissioner by CCIA exceed \$700 during the term of this Agreement.

4. **Term/Termination.** The term of this agreement shall be for the period commencing April 1, 2010, and terminating March 31, 2011.

CCIA may terminate this Agreement for good cause upon 10 days advance notice to the Commissioner. Provided however, that if the good cause for termination is one that can be cured, the Commissioner shall have 10 days from receipt of the notice in which to cure. If the breach is cured within the 10 day period, the Agreement shall continue as if there had been no breach. If the Commissioner fails to cure, then the Agreement shall terminate at the end of the 10 day period. If the good cause for termination is one that *cannot* be cured, the Agreement shall terminate immediately upon receipt of the notice of termination by the Commissioner.

5. **Use of CCIA Name and Logo.** CCIA hereby grants to the Commissioner a non-exclusive revocable license to use CCIA's name and certification logo (a copy of which is attached hereto as **Attachment B**). The logo may be used as an indication of certification by the Commissioner. CCIA shall not charge for use of the logo so long as it is used only in accordance with this Agreement. All good will developed by use of the CCIA name or logo is for the benefit of CCIA. Nothing herein contained provides the Commissioner any ownership interest in the name or logo

but provides the Commissioner only with the use thereof. The Commissioner hereby waives any and all possible rights, ownership or use of the CCIA name or logo other than as specifically provided in this Agreement. The Commissioner agrees not to file with the United States Patent and Trademark Office or any other state or country, an application for the registration of the name or logo, or any type of trademark, service mark, certification mark, trade name or the like, which in any way incorporates the CCIA name or logo or their facsimiles. The right to use the name or logo shall terminate at the same date as termination of this Agreement.

6. Insurance. The parties represents that they have an adequate policy of insurance to protect one another from any negligent acts committed by CCIA, CCIA officers, CCIA employees or the Commissioner, the Commissioner's assistants, helpers, employees, or agents during the performance of any of its responsibilities under the terms of this Agreement.

7. Proprietary information. The parties hereto acknowledge and agree that any and all information which is provided by CCIA to the Commissioner, obtained by the Commissioner from CCIA's officers, directors or employees, or obtained by the Commissioner in carrying out its responsibilities pursuant to this Agreement, is confidential, proprietary and trade secret information. As a result of being provided with this information, the Commissioner agrees to maintain in confidence all such information as confidential, proprietary and trade secret information.

8. Property of Commissioner. All intellectual and personal property, including but not limited to data, reports, or writings, in whatever form, finished or unfinished, developed, prepared or purchased pursuant to this Agreement, will be exclusively the property of CCIA, and the Commissioner agrees to deal with it as such. All such property shall be delivered to CCIA within fifteen (15) days of CCIA's written request or upon termination of this Agreement.

9. Indemnification. Each Party agrees to indemnify and hold the other Party harmless against any and all liabilities, losses, costs, damages, attorneys' fees, and any other expenses which occur as a result of a Party's breach of this Agreement or its acts or omissions during the course of this Agreement. Such indemnification includes, but is not limited to, indemnity for sums paid or liabilities incurred in settlement of, expenses paid or incurred in connection with, claims, suits, or judgments against a Party and/or its officers, directors, members, agents, and employees, and expenses paid or incurred in enforcing the terms of this Agreement, or in procuring or attempting to procure, release from liability resulting from a Party's breach of this Agreement or its acts or omissions during the course of this Agreement.

10. No Partnership/Liability. The parties hereto acknowledge and agree that the relationship between CCIA and the Commissioner is an independent contractor relationship and no other. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relationship or other relationship except as set forth between the parties. The parties hereto further acknowledge and agree that the Commissioner is not a partner with CCIA, whether general or limited, and no activities of the Commissioner or CCIA or statements made by the Commissioner or CCIA shall be interpreted by any of the parties hereto as establishing any type of business relationship other than as an independent contractor. The Commissioner shall not have the right or power to create any liability on behalf of CCIA as a result of execution of this Agreement.

11. No Withholdings/No Benefits. As a result of the independent contractor relationship between CCIA and the Commissioner, CCIA shall not deduct from the fees paid to the Commissioner any sums required for social security, withholding taxes, FICA, state disability insurance, or any other federal, state or local tax or charge which may or may not presently be in effect or are hereinafter enacted, or required as a charge or withholding on the compensation of the Commissioner. The Commissioner understands and agrees that neither it nor its employees are employees of CCIA but that the Commissioner is an independent contractor, and as such, neither the Commissioner nor its employees will receive any fringe benefits from CCIA including the protections of workers' compensation insurance.

12. Commissioner's Employees, Representatives and Subcontractors.

- a. The Commissioner shall furnish its own employees, representatives or subcontractors that the Commissioner determines are necessary in order to provide the services required by this Agreement.
- b. The Commissioner shall be solely responsible for the direction and control of the employees, representatives and subcontractors of the Commissioner, if any, performing services for the Commissioner, including their selection, hiring, firing, supervision, assignment, and direction, the setting of wages, hours and working conditions, and the adjustment of their grievances. The Commissioner shall determine the method, means and manner of the performance of the work of its employees, representatives and subcontractors based on the obligations required by this Agreement. The Commissioner shall be solely responsible for the negligent or intentional acts or omissions of its employees, representatives and subcontractors who are retained incident to providing services pursuant to this Agreement.
- c. The Commissioner assumes full and sole responsibility for the payment of all fees, wages, benefits and expenses of its employees, representatives, and subcontractors, and for all state and federal income tax withholding, unemployment insurance, workers compensation insurance, and social security or other taxes as to all persons employed by the Commissioner in the performance of services under this Agreement.
- d. The parties acknowledge, intend and agree that neither the Commissioner, nor any of the Commissioner's employees, representatives or subcontractors, shall be considered a "leased employee" of CCIA within the meaning of Section 414(n) of the Internal Revenue Code of 1986, as amended, nor shall any such individual be eligible or entitled to participate in any benefit plan sponsored by CCIA.

13. Audit. The Commissioner agrees that it will make its records available for audit by CCIA for up to three years after the date of termination of this Agreement. CCIA agrees that such audit will be limited to those matters connected with the performance of this Agreement.

14. Amendment/Assignment. No change, amendment or modification of this Agreement shall be valid unless in writing and signed by the parties hereto. Neither party may assign or transfer this Agreement to any third party without the prior written consent of the other party.

15. Attorney's Fees and Venue. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party in addition to any other reasonable relief to which he or she may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the appropriate court in the County of Tulare, State of California for any proceeding arising hereunder.

16. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to Services provided by the Commissioner to CCIA. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party that are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

17. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

18. Notice. All notices and other communications hereunder shall be deemed to have been given when delivered personally, at the time confirmed for delivery if by facsimile, at the time sent by email, or if mailed, at the time deposited in the United States mail or with an express mail service, postage prepaid and addressed as follows:

CALIFORNIA CROP IMPROVEMENT ASSOCIATION
Parsons Seed Certification Center
University of California
One Shields Avenue
Davis, California 95616-8541
Fax: (530) 752-4735
Email: ccia@ucdavis.edu

AG COMMISSIONER
COUNTY OF TULARE
4437 S. Laspina Street
Tulare, CA 93274
Fax: 559-685-3323
Email: gkunkel@co.tulare.ca.us

The parties hereto may change their address, fax, or email as set forth in this paragraph by providing the other party with written notice thereof.

19. Successors and Assigns. This Agreement shall be binding and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

20. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

21. Survival. The provisions of this Agreement which are necessary to enforce or interpret it in the event of a dispute, both as to the letter and spirit of the Agreement, shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

Date: _____

CALIFORNIA CROP IMPROVEMENT ASSOCIATION,
a California nonprofit corporation

By: _____
Larry R. Teuber, Executive Director

By: _____
Robert F. Stewart, Program Advisor

Date: _____

TULARE COUNTY BOARD OF SUPERVISORS

By: _____
Chair, Board of Supervisors

Date: _____

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

By: _____
John Heaton, CDFA Representative

ATTACHMENT A

Agricultural Commissioner Seed Certification Responsibilities

County Agricultural Commissioners are authorized by the California Seed Law and Regulations to engage in seed certification services in cooperation with the California Crop Improvement Association (CCIA), which is designated as the Recognized Agency to certify seed (California Code of Regulations, Section 3875) and thus are empowered to have rules and regulations for such certification. California Seed Law (Section 52421) states that the Commissioners may do all of the following:

- a. Cooperate with seed-certifying agencies which are officially recognized under the provisions of this chapter.
- b. Supervise the harvesting, cleaning, and packaging of any seed which is eligible for certification, and the affixing of labels and seals to it.
- c. Examine, sample, and test such seeds.
- d. Perform such other services as may be necessary to maintain the identity and quality of certified seed.

Contracts are issued by CCIA with all county commissioners involved. A fee is negotiated with the Commissioner and paid to the county. Services which must be performed by the Commissioner's office are described in these procedures, which expand on the General Seed Certification Standards.

APPLICATIONS

The Commissioner will have online access to applications at the time submitted application is accepted by CCIA. The Commissioner will receive weekly email notifications when applications are approved by CCIA.

FIELD INSPECTIONS

After CCIA's inspection of the field(s), a Field Inspection Report is prepared and will be available to the Commissioner at the CCIA web site.

The Field Inspection Report will include the names of the applicant and grower, crop and variety, applied acreage, county where the field(s) are located, application number, class and category of seed eligible to be produced, and whether the field(s) met or failed standards. Occasionally, a report will have special instructions indicating a portion of a field must not be harvested due to lack of isolation, excess weeds, etc. Compliance with these instructions may require monitoring by the Commissioner.

HARVESTING

Harvesting is subject to the supervision of the Commissioner. It is the Commissioner's discretion, based on previous compliance, as to the frequency and extent of these inspections. The Commissioner should refer to the Field Inspection Report for any special instructions about a particular field before allowing the harvest to proceed.

TRANSPORTING SEED FROM HARVESTER

Conveyances used in transporting the seed from harvester to storage or conditioning are also subject to supervision and inspection by the Commissioner. As with harvesting, it is the Commissioner's discretion, based on previous compliance, as to the frequency and extent of these inspections.

INTER-COUNTY PERMIT and INTER-STATE TRANSFER of SEED CERTIFICATE

It is the responsibility of the Commissioner to issue or have issued inter-county permits and inter-state transfer of seed certificates for seed moving between counties, states or (rarely) countries.

CONDITIONING

The Commissioner and CCIA must approve of any facility where seed intended for certification is to be conditioned by use of an Application for Certified Seed Conditioning Permit signed annually (July 1) by the operator who agrees to comply with standards, cooperate with the Commissioner and CCIA. The Commissioner or CCIA may inspect the facility at any time.

Approved facilities handling more than an occasional lot of seed for certification are expected to become Accredited. This designation involves the appointment of a Certification Representative and less direct supervision by the Commissioner. At the discretion of the Commissioner, the Certification Representative will be responsible for any or all conditioning and related operations, acting as a representative of CCIA and the Commissioner at that facility. Only conditioners with personnel capable of meeting these responsibilities should be designated as Accredited.

CONDITIONER RECORDS

Conditioning records should be available to the Commissioner or CCIA at all times.

BLENDING

A copy of a Certified Seed Blending Permit will be sent to the conditioner and to the Commissioner, when such activity is requested.

SAMPLING

Unless the conditioner has Accredited status, the Commissioner samples seed eligible for certification. The sample should be drawn in the same manner that official samples are drawn (California Seed Law, Section 3872). A Certification Sample Form is required with a sample drawn for certification. CCIA and/or the Commissioner's office must approve any variations in sampling technique.

TAGS (LABELS) AND SEALS

The Commissioner's office and/or the conditioning plant must account for all tags. These tags are sent to the Commissioner for distribution to the conditioning facility. Upon request of the Commissioner tag will be sent directly to the conditioning facility.

PRETAGGING

Seed eligible for certification may be tagged with the official certification tag at the time of conditioning, before final certification, if supervised by the Agricultural Commissioner and approved by CCIA.

ATTACHMENT B

California Crop Improvement Association Logo

