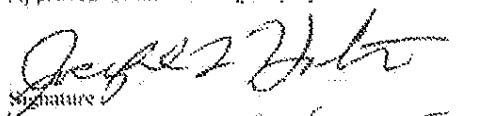
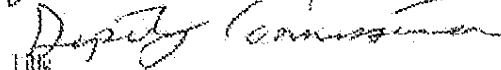


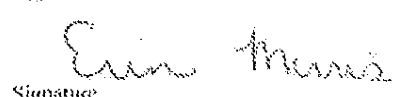
COOPERATIVE AGREEMENT
between the
AGRICULTURAL MARKETING SERVICE,
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, DC
(the Federal Agency)
and the
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
CHARLESTON, WEST VIRGINIA
(the State Agency)

1. **TITLE OF AGREEMENT:** Federal-State Inspection, Grading, Auditing, and Certification of Specialty Crops and Related Products performed by the Federal-State Inspection Service.
2. **OBJECTIVE:** To make inspection and auditing services for specialty crops and related products authorized by Congress widely available.
3. **STATEMENT OF WORK:** This Cooperative Agreement will be carried out by the Federal and State agencies in accordance with the attached Statement of Work, Form AMS 20-2. All grading services; audit services; inspections of specialty crops, including raw products for processing; and other programs that use Federal Agency standards and/or program materials performed by Federally licensed State Agency employees are subject to the requirements of this Agreement.
4. **LEGAL AUTHORITY:** Agricultural Marketing Act of 1946 as amended (7 USC 1621 *et seq.*); Section 713 of Title VII (General Provisions) of Division A of Public Law 108-7; and applicable statutes of the State of West Virginia.
5. **REVISION:** This Agreement supersedes Cooperative Agreement NO. 12-25-A-5061, effective February 1, 2009, between the West Virginia Department of Agriculture and the Agricultural Marketing Service.
6. **EFFECTIVE DATE:** October 1, 2018
7. **APPROVAL OF AGREEMENT:** The signatories below certify they have authority to enter into this Cooperative Agreement.

Approved for the State Agency by:

Approved for the Federal Agency by:


Signature

Title


Signature
Associate Administrator
Agricultural Marketing Service

in Charleston, WV
(City and State)

on October 15, 2018 Washington, DC, on
(Date)

10/18/18
(date)

STATEMENT OF WORK – COOPERATIVE AGREEMENT NO. 19-SCIDX-WV-0028

This STATEMENT OF WORK is part of the Cooperative Agreement between the Agricultural Marketing Service, United States Department of Agriculture, and the West Virginia Department of Agriculture effective October 1, 2018, and having the title of Cooperative Agreement No. 19-SCIDX-WV-0028.

I. PARTIES DESIGNATED TO PERFORM FUNCTIONS UNDER THIS AGREEMENT

- A. Federal Agency - Federal Program Managers and other Federal personnel employed by the Specialty Crops Inspection Division (SCI), Specialty Crops Program, Agricultural Marketing Service.
- B. State Agency - State Program Manager, State supervisors, and federally licensed inspectors and auditors employed or assigned to the work (e.g., contractors) by the State Agency. These are not Federal employees and are not entitled to Federal benefits.

II. RESPONSIBILITIES

A. The Federal Agency will:

1. Advise the State Agency of applicable laws, regulations, and policies. The Federal Agency is exclusively responsible for interpreting U.S. and international grades, standards, and related operational requirements.
2. Establish fees for market inspections, inspections of imported product, and audits; establish fees for travel expenses incurred in providing these services.
3. Supervise the State Agency's licensees in market inspection, auditing, and the State Agency's preparation of Federal certificates, field notes, and reports.
4. Determine the adequacy of the State Agency's training related to the performance of Federal-State duties in accordance with 7 CFR Part 51 and Part 52 and Federal instructions.
5. Provide the State Agency with a federally approved business software application at full cost recovery. Otherwise, evaluate and, if appropriate, approve the use of State or private software that meets Federal requirements.
6. Establish requirements for the transmission and sharing of inspection data, including electronic transmission of information from State or private software that meets Federal requirements.
7. Define qualifications and procedures for evaluating and licensing all inspectors and auditors in accordance with 7 CFR Part 51 Subpart-Regulations and Part 52, and Federal instructions.
8. Issue Federal licenses to all inspectors and auditors the Federal agency determines are qualified and needed to perform inspection or audit services.
9. Suspend or revoke the license of any State Agency licensee when the Federal Agency decides this action is necessary per 7 CFR Part 51 Subpart-Regulations.
10. Provide the State Agency a written statement explaining the revocation of its inspector's or auditor's Federal license.
11. Ensure the State Agency's shipping point program operates in accordance with the SCI Branch Internal Quality Management Systems (BIQMS) Quality System Service Standards (QSSS) operational and control requirements. Conduct documented reviews to ensure all guidelines are followed and verify the State Agency implements effective actions to correct problems and deficiencies.

12. Review the State's program(s) at least once each year, at its own expense, to ensure State Agency personnel are properly performing their duties under this Agreement. Additional reviews or other actions necessary to address continuing issues will be at the State's expense.
13. Arrange third-party fiscal audits of the State Agency in accordance with the USDA Office of Inspector General's "Audits of Federal-State Inspection and Grading Programs for Fresh Fruits and Vegetables" or other requirements, as determined by the Federal Agency. The Federal Agency will give the State Agency and others with a financial interest copies of the fiscal audits upon request. The Federal Agency will pay the salary of independent auditors contracted to perform this work.
14. Deposit payments (fees) received from the State Agency for inspection and audit services performed under this Agreement into the U.S. Treasury's Federal Trust Fund to cover the authorized costs of a national inspection and audit service for specialty crops and other products.
15. Bill audit service customers directly at the prevailing Federal hourly rate for the Federal Agency's time in reviewing and certifying audits.
16. Pay the State Agency moneys owed within 60 days of the end of each month by electronic transfer (fees may be assessed on electronic transfers by the financial institution) or by check drawn to the order of and mailed to an address designated by the State Agency. Payments of net amounts totaling less than \$100 due may be deferred until the end of the next month.
17. Establish and advise the State Agency in writing of Federal oversight fees on a program-by-program basis for Federal-Agency approved alternative inspection programs (e.g., the Partners-in-Quality Program), and new services or programs as they are developed.

B. The State Agency will:

1. Adhere to all applicable Federal laws, regulations, instructions, and policies in carrying out grading, inspection, auditing, certification, and related activities under this Agreement, including Federal conflict-of-interest policies. The State Agency may issue supplemental instructions consistent with Federal regulations to comply with State law or administrative policies. The State Agency must provide the Federal Agency copies of any supplemental instructions.
2. Engage State Agency personnel, other parties, or both to conduct services under this Agreement in accordance with USDA's Uniform Federal Assistance Regulations. The State Agency is fully accountable for all responsibilities assigned to it under this Agreement, whether the work is performed by the State Agency or by other parties. If the other party conducting services is a non-profit organization or an institution of higher education, the State Agency must audit that other party once a year. No member of Congress or resident commissioner may take part in this Agreement or realize any benefit from it, unless via a corporation for its general benefit.
3. Provide technical supervision of its Federal licensees under procedures approved by the Federal Agency.
4. Ensure its federally licensed personnel meet all Federal Agency training requirements. To the extent permissible by State law, the State Agency will furnish the Federal Agency a written notice when dismissing any licensee whose dismissal was not recommended, or whose license was not withdrawn, by the Federal Agency.
5. Implement a quality management system in accordance with the Federal Agency's Branch Internal Quality Management Systems (BIQMS) Quality System Service Standards (QSSS) for its shipping point program.
6. Buy inspection equipment at the request of the Federal Agency. This equipment may be transferred on a reimbursable basis to other States that conduct similar inspection programs.
7. Provide inspection and/or auditing services within the State, and/or in other States upon mutual agreement of the Federal and State agencies and the cooperator in the other State, at the request of a financially interested party.

a. Shipping Point Inspections: States will issue Federal or Federal-State certificates for shipping point inspections,

- which are inspections performed by a qualified licensee on commodities produced within the state before they enter into commerce.
- b. Receiving Market Inspections: States will provide market inspections, which are inspections performed on commodities produced within the state that have entered into commerce or were imported and/or exported into or from another state or foreign country. All offices that perform more than 10 receiving market inspections annually must use a federally approved business software application.
 - c. Audits: States will provide audit services on covered commodities produced within the state by qualified staff who are trained and licensed by the Federal Agency.
8. Establish and collect fees for shipping point inspections and inspections of raw products for processing. All fees for market inspections must match the fees published in the Federal Register for similar work, unless the Federal Agency authorizes higher fees when necessary to cover the State Agency's costs or allow for an orderly termination or transfer of operations. If the State does not to establish fees sufficient to maintain a reserve balance, the State will provide adequate funds from other available sources to provide for program termination.
 9. Report work to the Federal Agency and collect fees for services under this Agreement. Reporting includes, as appropriate:
 - a. Fresh Product Inspections: Form SC-345, *Terminal Market Inspection*, and/or Form SC-346, *Federal-State [Shipping Point] Inspection*. Processed Product Inspections: A summary of processed fruits or vegetables sampled or inspected.
 - b. Audits: Form SC-214, *Inspection or Audit Services Rendered to Specialty Crops Inspection Division*, and the *Audit Services Billing Worksheet*.
 - c. All Services: Annual Cooperator Report on all activities under this Agreement, including fees collected, and the cost of the work conducted, and whether they were paid from fees or State appropriations.
 - d. Maintain a complete accounting of all receipts from work performed and disbursements made under this Agreement using an approved SC-218, *Monthly Financial Report of Federal-State Inspection*.
 10. Provide the Federal Agency with proposed changes to the State Agency's approved software, including, but not limited to: updates, modification, improvement, or any other change in new or existing software used to provide services under this agreement. Further, State Agency will make no change to software used to provide services under this agreement—including Federal software, approved State software, or approved private software—without the written approval of the Federal Agency to change the software.
 11. Collect fees for inspection and audit services, including travel expenses at the current Federal rate, travel expenses may be at a higher rate if needed to cover the cost of travel expenses. Pay all travel and per diem costs of required training and reimburse the Federal Agency for tuition costs.
 12. Pay salaries and benefits of the State Agency's personnel employed or assigned to work under this Agreement, and other allowable expenses (including overhead) as permitted by USDA's Uniform Federal Assistance Regulations (7 CFR Part 3015) and Office of Management and Budget Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*.
 13. Reimburse the Federal Agency for the cost of printing and distributing guidance and other documents, including certificate forms, and inspection equipment furnished by the Federal Agency.
 14. Reimburse the Federal agency for the direct cost of travel and incidental expenses for independent auditors contracted by the Federal or State agency to conduct fiscal reviews of the State Agency's program.

15. In addition to other payments specified in this Agreement, pay the Federal Agency the following fees:

- (a) 7.7 % (percent) of all fees collected for shipping point inspection work.
- (b) 7.7 % (percent) of all fees collected for inspection of raw products for processing.
- (c) 8% (percent) of all fees collected for terminal market work performed by Federal licensees at Federal-State markets.
- (e) 95% (percent) of all fees collected for terminal market work performed by Federal employees at Federal-State markets.
- (f) An administrative fee established by the Federal Agency for any new services provided to recover the development, oversight and administration costs of the service until such time as they are otherwise classified into one of the above categories.

Except that fees to recover the actual expense of additional costs other than normal overhead expenses (e.g., travel reimbursements and postage for mailing samples) and the premium portion of fees collected for work during overtime or holiday periods are not subject to this assessment. In addition, whenever fees are collected by either party to recover travel expenses, the party incurring these expenses will be reimbursed 100 percent of these expenses, regardless of which party collected the fees. Such payments will be made by electronic transfer, or by check or money order drawn to the order of and mailed to the Agricultural Marketing Service in Washington, DC, within 60 days of the end of each month.

16. Pay the Federal Agency all moneys due within 60 days following the end of each month. This includes actual additional costs other than normal overhead expenses (e.g., travel reimbursements and postage for mailing samples). The portion of fees collected for work during overtime, weekends, or holiday periods are not subject to this assessment. If either party incurs travel expenses, the fees collected, whether by the State or Federal agency, will be used to reimburse the party that incurred the cost for 100 percent of the expenses. Payments of net amounts totaling less than \$100 due may be deferred until the end of the next month. Late payments will incur a 6 percent penalty fee and a recurring 15 percent monthly interest charge. Payments may be made electronically or sent to: USDA SCI Division Service Center, Attention: Federal/State Accounts, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Checks should be payable to USDA/AMS Federal-State Account. The State Agency may not order materials or supplies from the Federal Agency Equipment and Supply Depot while there is an unpaid balance.
17. Deposit all fees, expenses, and penalties collected for services provided under this Agreement, including service-related consulting and training, and all other activities or services performed under Federal Agency oversight, and the interest earned from the investment of such collections, into a fund approved by both the Federal and State agencies. If annual user fee revenue exceeds annual program costs so that reserve funds are accumulated, any unexpended balance must remain available in the fund without fiscal year limitation and be used only for conducting work under this Agreement.
18. Keep a separate accounting of expenditures and provide the Federal Agency a final Form SF-269, *Financial Status Report*, submitted no later than 90 days after the end of the agreement. Retain official records for the retention period required by the Federal Agency, and provide the Federal Agency with reports, paper or electronic inspection certificates, and data upon request and in accordance with 7 CFR 51.21.

C. It is mutually agreed:

- 1. The Federal Agency will investigate suspected or alleged wrongdoing by State Agency employees that affects the technical integrity of work performed under this Agreement. The State Agency will investigate suspected or alleged wrongdoing by State Agency employees that affects all other aspects of the work performed under this Agreement. Each party agrees to immediately notify the other of identified suspected or alleged wrongdoing, to cooperate with the other party in investigations, and, to notify the other of the results of such investigations, including actions taken against licensees.
- 2. Each party will be responsible and assume liability for their respective decisions made under this Agreement and any actions taken pursuant to those decisions. Neither party will be responsible or assume liability for decisions made by the other party under this Agreement.

D. Termination of Agreement:

1. This agreement will continue in force, subject to the availability of funds in the Federal Trust Fund and the continuation of the necessary legal authority, until it is terminated by mutual written consent or by either party with 60 days written notice to the other party. Agreement will be reviewed every 5 years.
2. If this Agreement is terminated:
 - a. User fees deposited to the credit of the Federal Trust Fund will continue to be available for disbursement as provided for in this Agreement, and any remaining unobligated balance and assets purchased from that fund will be available for use in any inspection and grading program of the Federal Agency
 - b. The Federal Agency will transfer all user fees collected under this Agreement, except an amount necessary to settle outstanding obligations, to any succeeding entity with which the Federal Agency establishes a cooperative agreement to provide services in the State as outlined in this Agreement. If the Federal Agency does not enter in an agreement with a succeeding entity, and the Federal Agency or another Federal entity provides services in the State, all funds and property will immediately revert to the Federal Agency for these activities. If no Federal inspection is provided in the State within 1 year of the termination of this Agreement, all remaining funds, accrued interest, and/or property will revert to the State Agency for prompt pro-rated distribution to persons who received inspection service from the State Agency within 3 years prior to the termination of this Agreement. All other assets (including supplies) acquired with Federal-State user fees will be disposed of in accordance with USDA's Uniform Federal Assistance Regulations
 - c. The State Agency is responsible for covering accrued liabilities and shutdown expenses from a trust fund or other State funds.

D. Guidance Documents and Resources

Guidance documents and resources for carrying out the duties and responsibilities of this Cooperative Agreement are located at: <https://www.ams.usda.gov/services/sci/fresh-products>.

Equal Employment Opportunity and Civil Rights

No person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in programs or activities funded in whole or in part by the United States Department of Agriculture based on race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. In support of the Department's policy, equal employment opportunity and civil rights for all employees and customers are an essential part of all programs administered by AMS. State agencies are strongly encouraged to develop and support an equal employment opportunity and civil rights program in carrying out the partnership created with this cooperative agreement. ~~(Not all prohibited bases will apply to all programs and/or employment activities.)~~

http://www.usda.gov/wps/portal/usda/usdahome?navid=NON_DISCRIMINATION