

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is entered into by and between the Board of Governors of the Colorado State University System, acting by and through Colorado State University (“University”) and the Colorado Seed Growers Association (“Association”), a Colorado non-profit corporation.

### RECITALS

A. The University and the Association are parties to a Memorandum of Understanding (MOU), approved by the Colorado State Board of Agriculture on January 1, 1999.

B. Pursuant to the Colorado Seed Act and agreements between the Colorado Department of Agriculture and the University, the seed certification service of the University is responsible for the certification of certain agricultural seeds and related activities, (the “Program”).

C. Pursuant to prior agreements and custom and practices developed over a substantial period of time, The University through Cooperative Extension and the Association have cooperatively provided for seed certification and related services required by the Colorado Seed Act and the Colorado Department of Agriculture with the Association performing a substantial portion of the acts required in connection with those services and has collected fees from recipients of the services for performing the services.

**NOW THEREFORE**, in consideration of the foregoing Recitals, the mutual promises contain herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The parties mutually desire to terminate their relationship as set forth in the MOU dated January 1, 1999. The terms and conditions of this MOU supercede all previous MOUs.
2. It is understood and agreed that the Association provides members to the Board of Directors of the Association pursuant to its By-Laws. Further, the Association cooperates with the Cooperative Extension and the Agricultural Experiment Station of the University in carrying out the seed certification program, including establishing standards for certification of seeds, furthering efforts to increase and release new varieties of seeds developed by the Agricultural Experiment Station, making such varieties available to certified growers, and approving the eligibility of out-of-state certified seeds for certification in Colorado. The following provisions shall apply to such activities:

A. The Board of Directors of the Association shall establish, from time to time, standards for certification of seeds, which standards shall meet the minimum standards in the industry. In all cases, the standards established by the Association shall meet the requirements, if any, established by the Colorado Department of Agriculture and any applicable federal laws or agency regulations.

B. The Board of Directors of the Association shall include no voting members who are representatives of the University. However, if requested and permitted by the Association By-Laws, non-voting representatives designated by the University may participate as ex-officio, non-voting members.

C. Upon establishment of standards or any amendment or modification thereto, the Association shall furnish a copy to the University. The Association and the University may at any time request the other to meet and discuss standards which are in existence or which are proposed to be established, amended, or modified. The University shall have the right to disapprove any standard for certification of seeds proposed for adoption by the Association so long as the disapproval shall not be contrary to any legal requirements applicable to the program and is based on scientific or industry standards.

3. It is understood and agreed that the Program, within Cooperative Extension and the Department of Soil and Crop Sciences is operated by the University in accordance with the following provisions:

A. The Program operates under the guidance of the Director of Seed Programs, who is employed by and reports to the University. The University may also employ additional personnel for the inspection and certification of seeds, including an Assistant to the Director, administrative and clerical assistants, and such other employees as it deems necessary to carry out the Program (the "CSU Employees"). The Director of Seed Programs shall serve half-time (50% FTE) as Director, funded by the Association, and half-time (50% FTE) as an Extension Specialist, funded by the University. All other personnel serving the Association will be supported by funding from the Association.

B. It is further understood and agreed that the University provides office and workroom facilities for personnel engaged in the inspection and administrative aspects of the Program.

C. It is recognized and agreed that all of the CSU Employees, including the Director, are employees of and report to the appropriate person at the University through normal administrative channels. Each CSU Employee shall be subject to the supervision and authority of the University in performing services in connection with the Program. The University shall use its best efforts to require such persons to perform any duties in accordance with the requirements of the Program and standards established by the Association and shall seek input from the Association where appropriate in handling evaluation and similar personnel matters. However, under no circumstances shall such persons be considered employees of the Association and the University shall have the right to reassign or remove the persons from such positions at any time upon notice to the Association. The Association shall cooperate with the University to discuss and

resolve any actual or potential conflict of interest that may arise in the performance of seed certification services and employees' roles in providing services and liaison to the Association.

D. The Association agrees that it shall not make any payments of any kind directly or indirectly to any CSU employee, including but not limited to "bonus" payments of any kind.

E. Any travel or other expenses incurred by such CSU Employees in connection with the Program shall conform to University travel and purchasing regulations and shall be considered an "expense" of the Program pursuant to Paragraph 4 below.

4. The Association, through its Board of Directors, shall determine the fees to be assessed and collected by it from time to time from its members or others for the certification of seeds (the "Association Fees"). The following provisions shall apply to matters pertaining to the Association Fees:

A. The Association shall notify its members that all fees assessed by it and applications for certification of seeds shall be remitted to the Association at the Shepardson Building, Colorado State University in Fort Collins, Colorado.

B. All checks for such amounts shall be made payable to the Association and shall be deposited by the CSU Employees in the accounts of the Association, not University accounts.

C. The Association acknowledges and agrees that it shall be responsible for independent financial accounts at financial institutions of its choosing. No CSU Employee shall have any signature authority with respect to the accounts of the Association. Further, the Association acknowledges that the CSU Employees are not permitted to sign contracts on its behalf, prepare tax and other regulatory reporting documents, hire accountants or engage in any activities for the benefit of the Association not connected to the Program. The Association shall hire its own financial advisors and accountants for such matters to the extent it deems necessary. Additionally, the Association shall have an independent audit of its financial accounts prepared at least annually and shall provide copies to the University.

5. The Association agrees to pay all expenses incurred in the Program which are not provided for by State appropriation. Such amounts shall be paid to the University by the Association in accordance with the following provisions:

A. The University shall prepare, in cooperation with the Association, a budget for all costs associated with the Program prior to the beginning of each fiscal year. The budget for the Program is based on a July 1 through June 30 fiscal year. The University shall notify and discuss with the Association any modifications to the budget necessitated during the course of each fiscal year.

B. The University shall bill the Association monthly for reimbursement of the actual costs of the Program operation, including all salaries and fringe benefits for

the University Employees, and all other operating expenses. The Association shall pay the University within 30 days of the invoice date.

C. All expenditures associated with the University's operation of the Program pursuant to the budget shall be paid from University accounts in accordance with all applicable federal, state and University regulations and procedures, including but not limited to all policies and procedures applicable to procurement of goods and services, travel, and employment of individuals necessary to operate the Program. No expenses of the Program incurred by the University shall be paid by the Association directly from Association accounts.

6. For the purpose of this agreement, the persons holding the positions identified below are designated as representatives of the parties and all notices required to be given by the parties hereunder shall be given by certified or registered mail to those persons with respect to the party they represent. Either party may from time to time designate in writing new or substitute representatives or addresses to which notice shall be sent.

A. For the University:

Milan Rewerts  
Director, Cooperative Extension  
1 Administration Building  
Colorado State University  
Fort Collins, CO 80523  
Telephone: (970) 491-6281  
Facsimile: (970) 491-6208

Candyce Jeffery  
Senior Research Administrator  
Office of Sponsored Programs  
Colorado State University  
2002 Campus Delivery  
Ft. Collins, CO 80523-2002  
Telephone: (970) 491-0537  
Facsimile: (970) 491-6147

B. For the Association:

Brad Erker  
Director of Seed Programs  
Department of Soil and Crop Sciences  
Colorado State University  
Fort Collins, CO 80523  
Telephone: (970) 491-6202  
Facsimile: (970) 491-1173

This MOU is effective October 1, 2004 and continues through June 30, 2009.

IN WITNESS WHEREOF, the parties have executed the Memorandum of Understanding as of the dates set forth below.

Board of Governors of the Colorado State University System,  
acting by and through Colorado State University

By: \_\_\_\_\_ Date: \_\_\_\_\_

Lynn Johnson  
Director of Sponsored Programs  
Colorado State University

The Colorado Seed Growers Association, Inc. a Colorado non-profit corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_

Walter Henes  
President