

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL, INC.
AND THE
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

This Memorandum of Understanding (MOU) is made and entered into by and between the Certified Professional in Erosion and Sediment Control, Inc., hereinafter referred to as CPESC, and the Department of Agriculture (USDA), Natural Resources Conservation Service, hereinafter referred to as NRCS.

I. BACKGROUND

NRCS is responsible for providing technical assistance to land owners and operators in protecting soil, water, and related resources under the provisions of Title XII of the Food Security Act of 1985, section 1242 (16 U.S.C. 3842, as amended by the Food, Conservation, and Energy Act of 2008) and other applicable legislation. This legislation authorizes NRCS to cooperate with various Federal agencies, State and local governments, nongovernmental organizations, and individuals in order to carry out its responsibilities and further the conservation mission of NRCS on private lands in a voluntary, scientifically-based manner.

In addition to the technical assistance available from NRCS, USDA conservation program participants have the option of obtaining conservation technical assistance from individuals accepted as Technical Service Providers (TSP) by NRCS.

Section 1242 of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, Public Law 107-171, May 13, 2002 (referred to as the 2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 require the Secretary to provide technical assistance under Title XII of the Food Security Act of 1985 to a program participant "directly, or ... through a payment....for an approved third party, if available."

Section 1242 also requires the Secretary to establish a system for approving individuals and entities to provide technical assistance to carry out programs under this Title including criteria for the evaluation of providers or potential providers of technical assistance.

CPESC is a 501(c)(6) non-profit corporation which maintains a registry of individuals who have proven that they (a) meet the educational and practical experience standards, (b) subscribe to the code of ethics, (c) qualify for particular identification of special abilities, and (d) pass a qualifying examination, and thus, have been identified as a Certified Professional in Erosion and Sediment Control. The public continues to demand evidence of professional competence from persons whose activities affect the physical and economical well being of people throughout the world. Such professionals must be able to show evidence of their qualifications.

II. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation between the CPESC and NRCS to recommend CPESC certified individuals for possible acceptance into the NRCS TSP program. Under this MOU, CPESC will recommend qualified individuals to NRCS who meet CPESC certification standards, and NRCS may consider such individuals for acceptance as third party TSPs through an abbreviated application process. It will be determined to what extent CPESC certification standards will be accepted. It is the intent of both parties that this cooperative effort will be for the mutual benefit of each party, as well as program participants who wish to avail themselves of technical services provided by TSPs.

This MOU recognizes that an individual who has met CPESC standards and is certified by CPESC also meets the performance proficiencies established and agreed to by both parties for providing conservation assistance in the areas of planning, management, and practice installation.

III. BENEFITS AND INTEREST

This MOU will benefit NRCS by providing CPESC certified individuals, recommended by CPESC, the opportunity to become accepted by NRCS as a TSP. This, in turn, will assist NRCS in carrying out its mission of providing quality conservation technical assistance to its customers.

This MOU will benefit CPESC by providing CPESC certified individuals the opportunity to become accepted by NRCS as a TSP through an abbreviated application process. NRCS will place CPESC certified TSPs on the approved list to provide technical service to USDA conservation program participants, thereby expanding their scope of services to existing and future clientele.

IV. RESPONSIBILITIES

A. CPESC will:

1. Develop performance proficiencies for providing conservation assistance in the category of technical services which applicants can be certified in by CPESC.

CPESC will submit performance proficiencies to NRCS for review and concurrence that NRCS proficiency standards are met.

2. Train, test, and evaluate¹ candidates for competency in the category of technical services that applicants wish to be certified to deliver. Upon request and with agreement of all parties involved, provide NRCS with a list of courses and individuals on a registry used to fulfill continuing education requirements. Provide NRCS with a copy of competencies used for certification.
3. Verify annually that its registrants/certified individuals meet the requirements of CPESC for the specific areas of planning, management, and practice installation of technical services including individual efforts to satisfy continuing education requirements each year to maintain CPESC certification. CPESC will provide NRCS with updates of any changes to their certification status within 30 days of implementation.
4. Make available to NRCS a registry, as needed, with an agreed-to format of CPESC members who have applied to become TSPs and who meet the NRCS criteria for which they are being evaluated including specific conservation practice(s). The registry will contain the following information:
 - a) Name of individual
 - b) Company (if applicable)
 - c) Address
 - d) Telephone and fax numbers; email address, if applicable
 - e) Skill area
 - f) Service area
 - g) Expiration date of qualification

CPESC is the certifying organization that recommends their members to NRCS.

5. Inform individuals seeking certification/accreditations from CPESC that they must meet all requirements necessary for technical services, including entering into a TSP Certification Agreement with NRCS in order to provide technical services under this MOU.
6. Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.

¹“Train, test, and evaluate” is defined as the identification or development of approved training curriculums and courses that support the identified proficiencies for the category of technical services applicants and registrants of the third party entity, as well as providing training opportunities for registrants to maintain technical competency in selected areas of technical services, test for proficiency and competency levels, and maintain a system of record of such training (i.e., CEUs, PDUs, etc.).

7. Remove individuals from the registry provided to NRCS who:
 - do not maintain their requirements for CPESC registration/certification; and/or
 - are found to be providing substandard assistance from its registry and immediately notify the individuals and NRCS.

Within 30 days of suspension or decertification, CPESC will notify NRCS.

8. Notify registrants when technical and programmatic materials are available from NRCS to ensure that the highest quality of conservation technical assistance is available.

B. NRCS will:

1. Advise CPESC of the performance proficiencies an individual will need to possess in order to qualify for TSP designation for each of the technical services identified in this MOU.
2. Review the performance proficiencies of CPESC to determine minimum criteria necessary to perform work as a TSP at the beginning of this MOU and for 5 years thereafter. Ensure that CPESC standards for certifying their individual registrants meet NRCS standard criteria for technical services covered by this MOU.
3. Provide CPESC with access to current program information and appropriate technical reference documents for use by TSPs. Such documents will include manuals and standards and specifications for appropriate conservation practices. Links will be provided through the TechReg Web site at <http://techreg.usda.gov/>.
4. Assist in training opportunities for CPESC registrants, and serve as a training resource when available.
5. Consult with CPESC in possible decertification issues and complaints. Remove TSPs from the approved list through the decertification process if NRCS determines that the TSP has failed to meet the terms and conditions of their Certification Agreement.
6. Notify CPESC within 30 days of the date when individuals are removed from the approved list through the NRCS decertification process.
7. Terminate this agreement with CPESC if concerns or problems with its accreditation program, recommendations for certification, or other requirements under the agreement arise.

- C. It is agreed upon that both parties will:

Communicate at least annually, or as requested by either party, to review progress and discuss methods of improving this process.

V. GENERAL PROVISIONS

- A. This MOU takes effect upon the signature of the parties and will remain in effect for 5 years from the date of execution. This MOU may be renewed or amended upon written request of either party and the subsequent written concurrences of the other. Either party, in writing, may terminate this MOU with a 30-day written notice to the other.
- B. This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
- C. Termination of this agreement will not affect individuals accepted as TSPs by NRCS. TSPs will continue to be listed on the approved TSP list in accordance with the terms and conditions of their certification until their renewal.
- D. The parties and their respective officers will handle their own activities and utilize their own resources, including expenditures of their own funds, in pursuing the purposes of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- E. All activities under this agreement will be in compliance with the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D).
- F. In accordance with NRCS Property Management Regulation, Temporary Regulation A-2, "The program or activities conducted under this Memorandum of Understanding will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendment of 1972, and the Age Discrimination Act of 1975. They will also be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, subparts A and B), which provide that no person in the United States will on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any

program or activity receiving Federal financial assistance from the Department of Agriculture or any agency hereof."

- G. The parties and their respective officers will be responsible for its own tasks and results thereof and will not be responsible for the acts of the other party and their results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents, or employees for any injury to persons or property resulting in any manner from the conduct of its agents or employees under this MOU, and for any loss, cost, damage, or expense resulting at any time from failure to exercise proper precautions of, or by itself or its own agents or employees, while occupying or visiting the projects under and pursuant to this MOU. The Federal Government's liability will be governed by the provisions of the Federal Tort Claims Act (28 USC 2671-80).
- H. This MOU is neither a fiscal nor a funds obligation document. Any endeavor, including specific work projects or activities where there is to be reimbursement or contribution of funds between the parties to this instrument, will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors and work plans will be made in writing in a separate and independent agreement by representatives of the participating programs, authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
- I. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

VI. CONTACTS

A. Certified Professional in Erosion and Sediment Control, Inc.:

CPESC Executive Director
49 State Street
Marion, North Carolina 28752
Telephone: (828) 655-1600
Fax: (828) 655-1622

B. Natural Resources Conservation Service:

Dwayne Howard
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Telephone: (202) 720-6731
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dwayne.howard@wdc.usda.gov

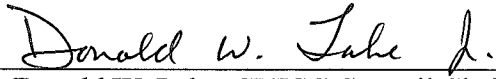
Anthony J. Kramer
Deputy Chief for Programs
1400 Independence Avenue, SW
Washington, D.C. 20250
Telephone: (202) 720-4527
Fax: (202) 720-6559

VII. AUTHORITY

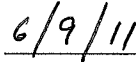
NRCS enters into this agreement under the authority of the Food Security Act of 1985, Section 1242. 16 U.S.C. 3842.

VIII. APPROVAL

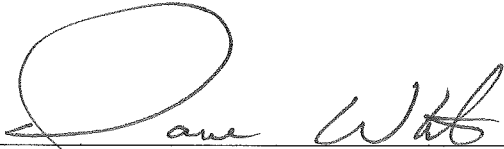
The undersigned parties hereby agree to the terms and conditions specified above.



Donald W. Lake, CPESC Council Chairman
Certified Professional in Erosion and Sediment Control, Inc.



Date



Dave White
Chief, Natural Resources Conservation Service



Date