

**Soil Science Society of America, Inc. and NAPT Coordinator
Contract Agreement
July 1, 2010 – December 31, 2011**

NOTE: This is a draft document and is included with the NAPT Coordinator Request for Application to provide additional background information. All information in this draft is subject to revision and should not be considered final.

This agreement is entered into between the Soil Science Society of America, Inc., hereafter referred to as SSSA, and (Name of Coordinator), independent contractor, who will provide services to the SSSA North American Proficiency Testing (NAPT) Program and the SSSA Program Assessment Program (NAPT-PAP) Program (operated as part of the NAPT program and for purposes of this agreement, the term NAPT-PAP shall be included within the term NAPT Program) and who shall hereinafter be referred to as the Coordinator as provided herein below.

It is Mutually Agreed:

I. Purpose and Objectives:

SSSA, the S890 NAPT Oversight Committee, hereafter referred to as Oversight Committee, the contract Laboratory, and the Coordinator collaborate to provide a beneficial program to promote aspects of soil science. The nature of the relationship between these parties, and the general responsibilities of each, are laid out in the S890 (NAPT Oversight Committee) Committee Description and in this Agreement. Both the NAPT program and the NAPT-PAP program are the exclusive property of SSSA.

The objective of this agreement is to define the rights and responsibilities of each of the parties to this agreement; to establish the means of payment to the Coordinator and to establish a means of resolving any disputes relating to the contract.

II. Responsibilities and Services Provided by SSSA to the Coordinator:

1. Contract with Coordinator to provide specified services.
2. Disburse fees for services provided to the Coordinator as specified in the Budget (Appendix A). Where reimbursement for exceptional expenses have been approved by the NAPT Oversight Committee (e.g. capital costs), SSSA shall provide payment within 20 days of receipt by NAPT Budget Chair of invoice with required documentation, if any.
3. Annually distribute program membership invoices and collect fees from program subscribers. Provide prompt acknowledgment of payment for enrollment (< 7 days), including a copy of the receipt mailed or emailed, to NAPT Coordinator. Update the database of NAPT clients and payments made and send to Coordinator every 7 days until June 1, then bi-weekly.

III. Coordinator Responsibilities and Services:

1. Ensure timely, satisfactory delivery of high quality, professional and scientific services for the NAPT Program, and to enrolled laboratories and others provided for herein.
2. Coordinate all NAPT client contacts and address inquiries related to NAPT program and program reports. Assist with development and review of program brochures, and renewal mailings.
3. Provide input into the development of the annual budget prepared by the NAPT Oversight Committee.
4. Work cooperatively with the contract Laboratory, Oversight Committee, and SSSA, and provide SSSA and the Oversight Committee, quarterly reports on or by January 15, April 15, July 15, October 15 for the prior three (3) month period concerning the NAPT program and Coordinator's work with such information and specificity as requested by the Oversight Committee and SSSA.
5. Write and submit articles of relevance to the NAPT program (1 to 3 times per year) for publishing in CSA News and/or other SSSA publications.
6. Responsible for promoting the program to all potential laboratories to increase the number of participants.
7. Collect analytical laboratory data, perform recommended statistical analyses, author, generate, and distribute analytical reports and report summaries. Prepare and distribute annual report summarizing method performance, method comparisons and intra- and inter-laboratory proficiency evaluations. Maintain confidential records of program participants.
8. Address inquiries related to the NAPT program and program reports from Laboratories, Oversight Committee, SSSA, and others.
9. Oversee day-to-day operation and implementation of NAPT program, including monitoring performance of contract laboratory, following policies and technical guidelines established by the Oversight Committee.
10. Coordinate with state proficiency program directors to provide state laboratory data in appropriate report format.
11. Lead presentations and be responsible for developing educational materials in cooperation with NAPT Membership and Outreach Committee.
12. Develop promotional materials in cooperation with Oversight Committee.
13. Solicit external funds to support NAPT program in cooperation with Oversight Committee.

14. Manage and oversee pilot programs as recommended by the Oversight Committee and accepted by SSSA. Submit regular reports concerning such pilot programs and invoices to NAPT Budget and Evaluation Committee Chair and SSSA.
15. Manage and oversee the Performance Assessment Program (NAPT-PAP). Submit regular reports concerning the NAPT-PAP and invoices to NAPT Budget and Evaluation Committee Chair and SSSA.
16. Maintain at all times during the term of this Agreement professional liability, workers' compensation, unemployment compensation and comprehensive general liability insurance coverage for Coordinator's business, facilities activities and employees with such insurers and with such coverage and terms as reasonably required by SSSA. Insurer's Certificate(s) of such coverage shall be provided to SSSA within thirty (30) days of the signing of this Agreement by Coordinator, and shall be provided annually by December 15 of each calendar year during the term of this Agreement, for the coming 12 month period.
17. Such other NAPT Program services as requested by SSSA or the Oversight Committee.

IV. Additional Terms:

Effective. This agreement shall be effective for the period of **July 1, 2010 through December 31, 2011**, subject to annual review, and earlier termination as provided herein.

Amendments. This agreement may be amended at any time as agreed to by the parties hereto in writing, clearly marked as an amendment to this agreement and signed by the authorized representatives of the parties.

Termination. This agreement may be terminated by either party hereto by written notice to the other party at least 180 days in advance of the effective date of termination.

Evaluation. During the term of this agreement, the Coordinator shall perform his/her responsibilities hereunder in a diligent, timely, and productive manner. The Oversight Committee will annually evaluate the Coordinator and provide a recommendation to the SSSA concerning performance of Coordinator, the NAPT Program and this contract.

SSSA Physical Assets. Materials collected, formulated or prepared for the NAPT program, including but not limited to soils, plant tissue, organic materials and water samples, shall remain the exclusive property of SSSA, and shall be returned to SSSA at SSSA's expense at the expiration or earlier termination of this agreement, or at SSSA's request. If any capital equipment has been purchased for the program using NAPT funds, the coordinator has the option of purchasing the equipment by repaying any outstanding monies to SSSA, or of returning the equipment to SSSA at SSSA's expense.

SSSA Confidential Information. The Coordinator acknowledges that, during this engagement he/she will have access to and become acquainted with information from SSSA and the enrolled laboratories that is confidential. This information includes, without limitation, SSSA's

NAPT program and product processes, testing methods and protocols, software and computer code, computer programs, data, data bases, methods, certification criteria, formulae, information, records, and specifications developed by or for or on behalf of SSSA and/or utilized for or in connection with the NAPT Program, customer contact and purchase information, accounts, and procedures, and individual lab performance data. Files, records, documents, information, computer discs, electronic files, lists, notebooks, and similar materials containing any such confidential information regarding the NAPT program proficiency testing, services and clientele of the NAPT program and SSSA, whether prepared by the Coordinator or otherwise coming into his or her possession, is and shall remain the exclusive property of SSSA. During and following the Term of this Agreement, the Coordinator shall (a) keep all SSSA Confidential Information confidential and secure; (b) limit the disclosure of SSSA Confidential Information to only those Coordinator employees who have a need to know it and who have been specifically authorized to have such disclosure by SSSA and who are bound by a Confidentiality Agreement signed by each such employee acceptable to SSSA in SSSA's sole discretion; (c) not directly or indirectly disclose, destroy, exploit or use any SSSA Confidential Information (except for the purpose of providing the NAPT Program pursuant to this Agreement, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of SSSA and (ii) in respect of any SSSA Confidential Information about any third-party, the written consent of such third-party; (d) provide SSSA Confidential Information to SSSA on demand; and (e) return all SSSA Confidential Information to SSSA before the termination or expiry of the Contract, with no copy or portion kept by the Coordinator. Coordinator is responsible for the acts and omissions of Coordinator's employees, contractors and agents, and shall ensure confidentiality and nondisclosure of SSSA Confidential Information by its employees, contractors and agents.

Restrictions on Copying. The Coordinator shall not copy any SSSA Confidential Information, in whole or in part, unless copying is essential for the provision of the NAPT Program pursuant to this Agreement. All copies are the sole property of SSSA, whether made by the Coordinator or his/her employees. The Coordinator shall not allow others to copy SSSA property, nor give copies to others, without written notification to SSSA. On each copy made by the Coordinator, the Coordinator must reproduce all notices that appear on the original.

Intellectual Property. The Coordinator agrees that all Intellectual Property developed or acquired for or by SSSA or by the Coordinator alone or with another for or in the carrying out of or in connection with Coordinator's responsibilities and undertakings as provided for in this Agreement and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by SSSA to the Coordinator shall remain solely the property of SSSA at all times. The Coordinator has a non-exclusive limited royalty-free, limited term, license to use SSSA Intellectual Property (without right to sublicense) during the term of this Agreement, solely for benefit of SSSA and solely for the purposes of providing the NAPT Program and the NAPT-PAP under and subject to this Agreement. Except as otherwise provided herein, the Coordinator is the sole owner of Intellectual Property that he/she creates during his tenure as Coordinator that does not utilize SSSA Property or SSSA Confidential Information and/or does not relate directly to the operation of the NAPT program, e.g. PowerPoint presentations, newsletters, journal articles.

Publication. During the term of this Agreement, and subject to SSSA publication guidelines, rules and procedures, the Coordinator may utilize aggregated and not laboratory - identifiable data from the NAPT Program database for Coordinator authored publications for the benefit of the SSSA and NAPT Program, subject to the terms and provisions of this Agreement.

Conflicts of Interest. The Coordinator represents that he/she is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between the Coordinator and any third party. The Coordinator shall (a) avoid any Conflict of Interest in the performance of his/her contractual obligations, for example, acting as a director, owner, operator or having an economic interest in the operation of a laboratory enrolled in NAPT; (b) disclose fully and in writing without delay any actual or potential Conflict of Interest that arises or may reasonably be expected to arise during the performance of his/her contractual obligations; and (c) comply with any requirements prescribed by SSSA to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, SSSA may, at SSSA's sole and absolute discretion, immediately terminate the Contract upon giving notice to the Coordinator where (a) the Coordinator fails to timely disclose an actual or potential Conflict of Interest; (b) the Coordinator fails to comply with any requirements prescribed or direction given by SSSA to resolve a Conflict of Interest; or (c) the Coordinator's Conflict of Interest cannot or is not promptly resolved to SSSA's satisfaction in its sole discretion. This paragraph shall survive any termination or expiry of the Contract.

The Coordinator shall not publicize or use its association with the SSSA or the NAPT Program to promote the Coordinator's activities or business interests other than the NAPT Program. Any disclosure of Coordinator's position in connection with the NAPT Program shall be subject to the terms and provisions of this Agreement. Without limiting the generality of this paragraph, the Coordinator shall not at any time directly or indirectly communicate with the media or third parties concerning this Agreement unless the Coordinator has first obtained the express written authorization to do so by SSSA.

Non-competition. The Coordinator is free to perform other services for third parties during the term of this Agreement so long as such other services do not compete with the NAPT program. Within five (5) days of Coordinator signing this Agreement he/she shall provide to SSSA and the NAPT Oversight Committee, and at least annually thereafter, a list of all other proficiency testing programs he/she conducts and further explanation of and as requested by SSSA. NAPT and/or SSSA Confidential Information and/or materials may not be used for or in connection with the provision of other proficiency testing programs without written approval from SSSA signed by SSSA's authorized representative. For a period of twelve (12) months following any termination or expiration of this Agreement, the Coordinator shall not, directly or indirectly, engage in, solicit, or provide the same or similar services to those offered by the NAPT program with clientele of the NAPT program and/or customers with whom he/she works on behalf of SSSA through this NAPT program.

No Use of SSSA Insignia. The Coordinator shall not use any insignia, trademark or logo of SSSA (all of which is SSSA Property) except during the term of this Agreement, for the benefit of SSSA, and where required to carry out Coordinator's obligations described in this Agreement.

No Restrictive Material in NAPT Program. The Coordinator shall not incorporate into any NAPT Program or SSSA Property (e.g. software) anything that would disable, damage, render unusable or inaccessible any SSSA Property, or restrict or limit the right of SSSA (or of any duly SSSA permitted Client to use SSSA Property pursuant to SSSA license).

Coordinator Representation and Warranty Regarding Third-Party Intellectual Property. The Coordinator represents and warrants that the creation, use or provision of coordinator produced Intellectual Property or performance by Coordinator of his/her responsibilities under this Agreement shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Coordinator further represents and warrants that the Coordinator has obtained all necessary consents and licenses with respect to any Third-Party Intellectual Property he/she may utilize.

V. General

- 1 Choice of Law. The laws of the state of Wisconsin shall govern the validity of this Agreement, without reference to conflict of law provisions or rules of construction with respect to the drafter of this agreement.

- 2 Arbitration and Dispute Resolution. Any controversies arising out of or relating to the terms or provisions of this Agreement or its interpretation or enforcement shall be resolved by final and binding arbitration in Madison, WI as the exclusive venue for dispute resolution, in accordance with the Rules for Commercial Arbitration of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof. Both parties are subject to the jurisdiction of the courts in Madison, WI.

- 3 Survival. The obligations contained in Article IV shall survive the termination or expiration of this Agreement to the greatest extent and for the longest period permitted by law.

- 4 Complete Agreement. This agreement document plus Appendix A, is the complete agreement of the parties with respect to the subject matter hereof, and supersedes all other prior and/or contemporaneous discussions, negotiations, understanding and agreements, oral or in writing, with respect to the subject matter hereof. This Agreement may only be modified by writing, signed by the authorized representatives of both parties and clearly labeled as an “Amendment” to this Agreement.

Soil Science Society of America, Inc.

NAPT Program Coordinator

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment:

1. Appendix A, Program Fees

Appendix A
2010-2011 Fees Assessed by the Coordinator

2010-2011 fees assessed to the NAPT program by the Coordinator shall be in agreement with the annual SSSA approved projected budget, and subject to satisfactory performance of Coordinators obligations, responsibilities and undertakings provided in the Agreement.

The NAPT 2010 budget is based on 150 labs. The Coordinator will invoice SSSA \$118.00/Lab for program enrollments above 150 labs. In consideration of the Coordinator's full and satisfactory completion of all identified responsibilities, SSSA shall pay the Coordinator's fee for providing above services to 150 labs of \$20,000 in 12 equal installments. Should less than 150 enroll in the program, the Coordinator will forfeit \$118.00 per lab from the last due payment.

In addition, the coordinator shall receive a payment of 75% of the fees collected from each lab enrolled in the NAPT-PAP program, and 75% of any fees that have been negotiated with individual state proficiency programs for providing summary data.

Note that these fees will be prorated for 2010, as the contract will only be in effect for the last six months of the 2010 calendar year.

***This Appendix shall be reviewed by Coordinator and SSSA in November of each calendar year. If payment amounts or fees listed for the current year are to be adjusted for the coming calendar year, it must be agreed to by the Coordinator and SSSA, and such agreement by the parties shall be in writing and signed by the authorized representatives of both parties. If agreement to change Appendix A is reached as described in the immediately preceding sentence, a new Appendix A shall be prepared by SSSA and signed by the authorized representatives of both parties.**

Soil Science Society of America, Inc.

Coordinator

Date: _____

Date: _____