

UNITED STATES DEPARTMENT OF AGRICULTURE <b>RESEARCH AGREEMENT</b>	TYPE OF RESEARCH AGREEMENT <b>Cooperative Research and Development Agreement</b>	
	AGREEMENT NO. 58-3K95-0-1445	TYPE OF ACTION <b>New</b>
AGENCY (Name and Address) Agricultural Research Service 1400 Independence Avenue SW Washington, D.C. 20250-0302	PERIOD OF AGREEMENT May 1, 2010 through April 30, 2013	
	FEDERAL OBLIGATION \$ 0	CHANGE IN FEDERAL OBLIGATION

This Agreement is authorized by the Federal Technology Transfer Act, 15 USC 3710a, *et seq.*, and is governed by its terms.

Items	Descriptions										
1. Technology Transfer Coordinator	Donald A. Nordlund (CGBRU), Renee Wagner (BRU)										
2. Cooperator	(b)(4)										
3. Principal Investigator	(b)(4)										
4. USDA Laboratory	USDA, ARS, SAA, Crop Genetics and Breeding Research Unit, P. O. Box 748, Tifton, GA 31794 (CGBRU) USDA, ARS, MWA, Bioenergy Research Unit, 1815 N. University Street, Peoria, IL 61604 (BRU)										
5. USDA Researcher (ADODR)	William F. Anderson (CGBRU) Bruce S. Dien (FBRU)										
6. National Program Leader & Area	Evert Byington, Pasture, Forage and Rangeland Systems (CGBRU) Robert Fireovid, Bioenergy (BRU)										
7. Accounting Code											
8. Amount	(b)(4)										
9. Finance Office	<table border="0"> <tr> <td>USDA, ARS, SAA</td> <td>USDA, ARS, MWA</td> </tr> <tr> <td>Budget &amp; Fiscal Office</td> <td>Budget &amp; Fiscal Office</td> </tr> <tr> <td>950 College Station Road</td> <td>1815 N. University Street</td> </tr> <tr> <td>P.O. Box 5677</td> <td>Peoria, IL 61604</td> </tr> <tr> <td>Athens, GA 30604</td> <td></td> </tr> </table>	USDA, ARS, SAA	USDA, ARS, MWA	Budget & Fiscal Office	Budget & Fiscal Office	950 College Station Road	1815 N. University Street	P.O. Box 5677	Peoria, IL 61604	Athens, GA 30604	
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Budget & Fiscal Office	Budget & Fiscal Office										
950 College Station Road	1815 N. University Street										
P.O. Box 5677	Peoria, IL 61604										
Athens, GA 30604											
10. CRIS No.	6602-21410-004-00D (CGBRU) and 3620-41000-133-00D (BRU)										
11. Title of Project	(b)(4) (b)(4)										
12. Log No.	0040496 (CGBRU) and 40738 (BRU)										

**Incorporated into this Agreement are the Following:**

1. Articles
2. Schedule 1 - Certifications
3. Schedule 2 - Statement of Work
4. Schedule 3 - Estimated Budget
5. Schedule 4. - License Agreement

**FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE**

SIGNATURE	TYPED NAME AND TITLE <b>ROBERT J. GRIESBACH</b> Deputy Assistant Administrator
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**FOR THE COOPERATOR**

(Signature of person(s) authorized by the governing body of the COOPERATOR to incur contractual obligations)

SIGNATURE	TYPED NAME AND TITLE (b)(4)
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## ARTICLES

### Article 1. Definitions

- 1.1 ARS means the United States Department of Agriculture, Agricultural Research Service.
- 1.2 ~~\_\_\_\_\_~~ (b)(4)
- 1.3 Agreement means this Cooperative Research and Development Agreement.
- 1.4 Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 USC 552(b)(4).
- 1.5 Subject Invention means any invention or other intellectual property conceived or first reduced to practice under this Agreement which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country. *Specifically not included in the definition of Subject Inventions are inventions made outside the Scope of Agreement or prior to the execution of this Agreement.*
- 1.6 Scope of Agreement means those activities set forth in Schedule 2, entitled "Statement of Work."
- 1.7 Period of Agreement means that period set forth under the Period of Agreement on the ARS Office of Technology Transfer Cover Form for the Agreement.

### Article 2. Publications

- 2.1 Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either party may publish the results of this Agreement, PROVIDED:
- a. The other party is allowed to review the manuscript for removal of their own Confidential Information at least sixty (60) days prior to submission for publication by submission to the Authorized Agent.
  - b. The publication shall acknowledge this Agreement and the contributions of each party's personnel.
  - c. Subject to subparagraph a, the final decision as to the publication content rests with the party that writes the publication.
- 2.2 Publication and/or other disclosure of the results of this Agreement shall be delayed as necessary to preserve both United States of America and foreign patent rights in a Subject Invention.

- a. Such a delay will only be granted if requested in writing; and
- b. The requesting party demonstrates promptness and diligence in seeking patent protection on the Subject Invention.

### Article 3. Confidentiality

- 3.1 Confidential Information, which is owned by one party to this Agreement and disclosed to the other, shall be labeled "CONFIDENTIAL" by the submitter and shall not be disclosed by the recipient without permission of the owner, EXCEPT in accordance with Article 2.
- 3.2 To the extent either party orally submits its Confidential Information to the other party, the submitting party will prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other party within thirty (30) days of disclosure.
- 3.3 For a period of five (5) years from a date one party discloses Confidential Information to the other, each party agrees not to disclose such Confidential Information, without written permission of the disclosing party, to any third party who is not an affiliate with and/or a contactor for the benefit of the receiving party.
- 3.4 Neither party shall be bound by confidentiality if the Confidential Information received from the other party:
  - a. Already is available to the public or known to the recipient;
  - b. Becomes available to the public through no fault of the recipient;
  - c. Is nonconfidentially and lawfully received from another party; or
  - d. Is independently developed without use of Confidential Information.

### Article 4. Meetings, Reports and Records

- 4.1 Frequent and effective communication is essential to the successful accomplishment of the objectives of this Agreement. To this end, the scientific representatives of ARS and COOPERATOR shall meet (meetings need not be in person if agreed upon) at least once every six (6) months to exchange results, perform critiques, and make plans and recommendations. Written progress reports shall be supplied by each party to the other at least fifteen (15) calendar days prior to each semi-annual meeting.

- 4.2 Any such plan or recommendation that is outside the Scope of Agreement shall be reduced to writing and referred to the Authorized Agent of each party for appropriate action. Any such plan or recommendation so referred shall not be binding upon either party unless incorporated into this Agreement by written amendment.
- 4.3 Each party shall keep complete records relating to this research. All such records shall be available for inspection by either party at reasonable times. The records, or true copies of them, shall be delivered to either party upon request.
- 4.4 The results of this Agreement and research data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by COOPERATOR and ARS.
- 4.5 A final report summarizing all data shall be submitted by ARS to the Authorized Agents of both parties within sixty (60) days of the completion of this Agreement.

#### Article 5. Research Exclusion

- 5.1 The results of this Agreement owned or co-owned by the U.S. Government may be made available to others by ARS for bona fide research purposes if:
- a. Confidentiality is not breached; or
  - b. Patent or Plant Variety Protection Certificate rights are not compromised.
- 5.2 Plants and animals, their genetic materials or information relating thereto, or parts thereof, covered by Plant Variety Protection Certificates, Plant Patents, or Utility Patents, owned or co-owned by ARS, may be made available by ARS to third parties for bona fide research purposes including the development of new animals or plants.

#### Article 6. Ownership of Inventions

- 6.1 All rights, title, and interest in any Subject Invention made solely by employee(s) of ARS shall be owned by ARS.
- 6.2 All rights, title, and interest in any Subject Invention made jointly by at least one (1) employee of ARS and at least one (1) employee of COOPERATOR shall be jointly owned by ARS and COOPERATOR.
- 6.3 All rights, title, and interest in any Subject Invention made solely by employees of COOPERATOR shall be owned by COOPERATOR.

Article 7. Subject Invention Licenses

7.1 COOPERATOR is granted an option to negotiate an exclusive license in each Subject Invention that is not a new variety of napiergrass owned or co-owned by ARS for one or more field(s) of use encompassed by the Scope of Agreement. This license shall be consistent with the requirements of 35 USC 209(a), 209(b) (manufactured substantially in the U.S.), and 209(f) and other such terms and conditions as may be reasonable under the circumstances, as agreed upon through good faith negotiations between COOPERATOR and ARS.

7.2 The option in Article 7.1 shall terminate whenever COOPERATOR fails to:

- a. Submit a complete application for an exclusive license within sixty (60) days of being notified by ARS of any Invention's availability for licensing; or
- b. Submit a good faith written response to a written proposal of licensing terms within forty-five (45) days of such proposal.

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Article 8. Subject Invention Information

8.1 The Authorized Agents or designees of each party shall promptly make written disclosure to each other of each Subject Invention.

- 8.2 This information shall be treated in confidence by the receiving party, EXCEPT: it may be shared with those having a need to know.
- 8.3 Each party shall provide, when requested by the other, all information in its possession, or true copies thereof, pertaining to a Subject Invention which may be necessary or useful in the preparation, filing, and prosecution of patent or Plant Variety Protection Certificate applications covering the Subject Invention.

#### Article 9. Intellectual Property Protection Applications

- 9.1 ARS and COOPERATOR agree to cooperate with the other in the preparation, filing, and prosecution of Patent or Plant Variety Protection Certificate applications on Subject Inventions in the United States of America and any other country.
- 9.2 ARS shall provide COOPERATOR'S Authorized Agent or its designee with a copy of any such application on a Subject Invention within fourteen (14) calendar days of filing.
- 9.3 ARS at their own cost shall have the first option to prepare and prosecute patent or Plant Variety Protection Certificate applications on Subject Inventions that are owned or co-owned by the U.S. Government, which option may be waived in whole or in part.

#### Article 10. Use of Name or Endorsements

COOPERATOR shall not in any way state or imply that this Agreement or the results of this Agreement are an endorsement of its organizational units, employees, products, or services except to the extent permission is specifically granted by ARS.

#### Article 11. Regulatory Compliance with Government Rules & Regulations

- 11.1 COOPERATOR is responsible for obtaining appropriate opinions, permits, or licenses from Federal or State agencies, which regulate research materials, or commercial products that may arise from the research work performed within the Scope of Agreement.
- 11.2 In carrying out its responsibilities under this Article, COOPERATOR shall:
- a. Consult and coordinate regulatory approval actions with ARS; and
  - b. Give ARS' Authorized Agent or designee a copy of any applications and opinions, permits, or licenses issued.

- 11.3 Both parties acknowledge and agree to comply with all applicable laws and regulations of the Animal and Plant Health Inspection Service, the Centers for Disease Control, and /or the Export Control Administration pertaining to possession or technical information, biological materials, pathogens, toxins, genetic elements, genetically engineered microorganisms, vaccines, and the like.

#### Article 12. Liability

It is understood and agreed that neither party to this Agreement shall be responsible for any damages or injuries arising out of the conduct of activities governed by this Agreement, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. ARS' liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*

#### Article 13. Termination

- 13.1 Either party may unilaterally terminate this entire Agreement at any time by giving the other party written notice not less than sixty (60) calendar days prior to the desired termination date.
- 13.2 Articles 2. "Publications," 3. "Confidentiality," 6. "Ownership," 7. "Subject Invention Licenses," 10. "Use of Name or Endorsements," and 12. "Liability" shall survive the expiration or termination of this Agreement.
- 13.3 If either party unilaterally terminates this Agreement pursuant to Article 13.1, each party upon written request of the other shall return to the other or destroy, as shall be then agreed, any and all data and materials originated or provided by one party to the other that is still in the receiving party's possession within 30 days of termination.

#### Article 14. Availability of Appropriations

The continuance of this Agreement is subject to the passage by the Congress of the United States of an appropriation of funds from which expenditures may legally be made to cover ARS' contributions.

#### Article 15. Disputes

- 15.1 Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Authorized Agents, identified in Article 16.
- 15.2 Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the parties.

15.3 Pending the resolution of any dispute or claim pursuant to this Article 15 the parties agree that performance of all obligations shall be pursued diligently.

Article 16. Notices and Authorized Agents

Notices between the parties and copies of correspondence among the scientific and/or technical representatives of each party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions shall be sent to the Authorized Agents. Referencing Agreement Number 58-3K95-0-1445 thereon, send copies to:

ARS' Authorized Agent  
Robert J. Griesbach  
USDA-ARS-OTT  
5601 Sunnyside Ave.  
Beltsville, Maryland 20705-5131  
Tel.: 301-504-6905  
FAX: 301-504-5060  
E-mail: crada.ott@ars.usda.gov

(b)(4)

Article 17. Limitation on ARS' Scientific Representative's Authority

ARS' Scientific Representative, also known as the Authorized Departmental Officer's Designated Representative ("ADODR"), is authorized to perform the research and development falling within the Scope of Agreement. This individual is not authorized to change or interpret with authority the terms and conditions of this Agreement.

Article 18. Assignments

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18.2 In no case shall COOPERATOR assign or transfer this Agreement to a party not a citizen or legal resident of the United States.

18.3 ARS is an agency of the U.S. Government and any rights or obligations created under this Agreement are freely transferable within the U.S. Government and shall not be deemed an "assignment" as contemplated by this Article 18.



Article 19. Relationship of Parties

- 19.1 ARS and COOPERATOR act in their independent capacities in the performance of their respective functions under this Agreement and neither party is to be considered the officer, agent, or employee of the other.
- 19.2 Each party shall allow, consistent with policies and procedures of ARS and the COOPERATOR, access to their facilities, as needed.
- 19.3 Each party shall separately assign personnel, equipment, supplies, transportation, and facilities, as needed and available to meet respective responsibilities hereunder, such resources to remain the property of the assignor.

Article 20. Force Majeure

- 20.1 Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
  - a. Which causes the party to be unable to perform its obligations under this Agreement; and
  - b. Which it has been unable to overcome by the exercise of due diligence.
  - c. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure, or sabotage of either party's facilities or any order or injunction made by a court or public agency.
- 20.2 In the event of the occurrence of such force majeure event, the party unable to perform shall promptly notify the other party. It shall also:
  - a. Use its best efforts to resume performance as quickly as possible;
  - b. Suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 21. Amendment

- 21.1 If either party desires a modification in this Agreement, the parties shall confer in good faith to determine the desirability of such modification.
- 21.2 Such modification shall not be effective until a written amendment is signed by the Authorized Agents of both parties.

Article 22. Severability

The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.

Article 23. Ambiguities

ARS and COOPERATOR agree that each party has reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

Article 24. Officials Not To Benefit

- 24.1 No Delegate to or Member of the Congress of the United States of America shall have a part of or benefit from this Agreement.
- 24.2 This requirement does not include corporations if this Agreement is entered into for the corporation's general benefit.

Article 25. Subcontracting Approval

- 25.1 A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other party, including details of the contract or other arrangement.
- 25.2 This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.

Article 26. Governing Law

The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America as practiced in the Federal Courts located in the District of Columbia.

Article 27. Entire Agreement

- 27.1 This Agreement constitutes the entire agreement between COOPERATOR and ARS and supersedes all prior agreements and understandings between them with respect to its subject matter.
- 27.2 Any representations, promise, or condition in connection with such subject matter, which is not incorporated in this Agreement, shall not be binding upon either party.
- 27.3 No modification, renewal, extension, waiver, or termination of this Agreement or

any of its provisions shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by that party's Authorized Agent.

- 27.4 As used herein, the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms of this Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

## SCHEDULE 1 CERTIFICATIONS

COOPERATOR certifies that it:

- 1.
- 2.
- 3.

(b)(4)

- 4. Has not paid or agreed to pay any company or person (other than a bona fide employee working solely for the Cooperator) any fee, commission, percentage, or brokerage fee, contingent upon the award of this Agreement, and if so, agrees to furnish information relating thereto, as requested, by the Authorized Departmental Officer.
- 5. Has not employed or retained any company or person (other than a full-time bona fide employee working solely for the Cooperator) to solicit or secure this Agreement.
- 6. Its Principal Officers are not listed on the U.S. Government's list of debarred and suspended organizations and individuals; shall notify the Authorized Departmental Officer if so listed; and shall not subcontract or otherwise award to any organization or individual so listed.
- 7. Agrees to comply with the provisions of the Civil Rights Act of 1964, as amended, and Executive Order 11246, addressing equal opportunity and affirmative action.
- 8. Agrees to comply with the provisions of Title IX of the Education Amendment of 1972, 20 USC 1681, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; Age Discrimination Act of 1975, 42 USC 6101-6107; Clean Air Act, 42 USC 7401, et seq.; and Drug-Free Workplace Act of 1988, 41 USC 701, et seq.
- 9. Is in a position to undertake, perform, and complete this Agreement and will diligently perform work in accordance with its provisions.

**SCHEDULE 2**  
**STATEMENT OF WORK**

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(b)(4)

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**SCHEDULE 3  
ESTIMATED BUDGET**

	CGBRU to Receive Funds For	BRU to Receive Funds For	CGBRU In-House	BRU In-House	Cooperator In-House
<b>FIRST YEAR</b>					
A. Salaries and Wages			\$9,500	\$13,500	
B. Equipment				\$2,000	
C. Material and Supplies			\$1,000	\$1,200	
D. Travel					
1. Domestic Travel			\$1,000		
2. Foreign Travel					
E. Facilities			\$1,000	\$3,000	
F. Other Direct Costs			\$1,389	\$2,189	
G. TOTAL DIRECT COSTS			\$13,889	\$21,889	
H. Indirect Costs	(b)(4)	(b)(4)	\$13,889	\$21,889	(b)(4)
I. TOTAL COSTS (G&H)					
<b>SECOND YEAR</b>					
A. Salaries and Wages			\$9,750	\$12,500	
B. Equipment					
C. Material and Supplies			\$1,000		
D. Travel					
1. Domestic Travel			\$1,000		
2. Foreign Travel					
E. Facilities			\$1,000	\$1,000	
F. Other Direct Costs			\$1,417	\$1,500	
G. TOTAL DIRECT COSTS			\$14,167	\$15,000	
H. Indirect Costs					
I. TOTAL COSTS (G&H)			\$14,167	\$15,000	



**THIRD YEAR**

A. Salaries and Wages	\$10,000	\$12,500
B. Equipment	\$1,000	
C. Material and Supplies	\$1,000	
D. Travel	\$1,000	
1. Domestic Travel	\$1,000	\$1,000
2. Foreign Travel	\$1,444	\$1,500
E. Facilities	\$14,444	\$15,000
F. Other Direct Costs	\$14,444	\$15,000
G. TOTAL DIRECT COSTS	\$29,250	\$38,500
H. Indirect Costs	\$0	\$2,000
I. TOTAL COSTS (G&H)	\$3,000	\$1,200
<b>SUMMARY</b>		(b)(4)
A. Salaries and Wages	\$3,000	\$0
B. Equipment	\$0	\$0
C. Material and Supplies	\$3,000	\$5,000
D. Travel	\$4,250	\$5,189
1. Domestic Travel	\$42,500	\$51,889
2. Foreign Travel	\$42,500	\$51,889
E. Facilities	\$42,500	\$51,889
F. Other Direct Costs	\$42,500	\$51,889
G. TOTAL DIRECT COSTS	\$42,500	\$51,889
H. Indirect Costs	\$42,500	\$51,889
I. TOTAL COSTS (G&H)	\$42,500	\$51,889