

Agreement Number: 09-73-38-6214-RA  
Accounting Code: 973-7338-014

FY10, 11

**WILDLIFE SERVICES  
COOPERATIVE SERVICE AGREEMENT  
Agreement No. 2009 - 89**

The parties to this Agreement are the State of North Dakota, acting through its Department of Agriculture (STATE), and the United States Department of Agriculture (USDA)-Animal and Plant Health Inspection Service (APHIS)-Wildlife Services (WS) and hereinafter referred to as the APHIS.

**1. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to establish a cooperative relationship between STATE and APHIS to provide reimbursement of services by APHIS for wildlife damage management activities to mitigate wildlife conflicts to agriculture, natural resources, property, and human health and safety.

**2. SCOPE OF SERVICE**

APHIS, in exchange for the compensation/reimbursement paid by the STATE under this Agreement, agrees to:

- a. Designate State Director Phil Mastrangelo as its authorized representative who shall be responsible for collaboratively administering the activities as outlined in this Agreement. (Phil Mastrangelo, State Director, USDA/APHIS/Wildlife Services, 2110 Miriam Circle, Suite A, Bismarck, ND 58501-2502)
- b. Confer with STATE to design and implement a plan for wildlife damage management activities in North Dakota.
- c. Develop an annual Work/Financial Plan that will be incorporated into this Agreement by reference. The Agreement period for the first annual Work/Financial Plan is July 1, 2009 through June 30, 2010. The STATE and APHIS must agree to, and sign a new Work/Financial Plan for the second year of the 2009-2011 state biennium, the period of July 1, 2010 through June 30, 2011.
- d. Coordinate with STATE any media contacts and information incorporated into reports and/or publications, providing the identities of the involved parties when receiving due credit related for the activities covered by this Agreement.
- e. Conduct activities specified in the Work/Financial Plan within APHIS Animal Welfare Standards and Regulations.
- f. Conduct all activities in accordance with applicable Federal, State, and local laws and regulations.

**STATE agrees:**

- a. That APHIS has advised STATE that private sector service providers may be available to provide wildlife management services and notwithstanding these other options, STATE requests that APHIS provide wildlife management services as stated under the terms of this Agreement.
- b. To reimburse APHIS for costs, not to exceed the annually approved amount specified in the Work/Financial Plan. If costs are projected to exceed the amount reflected in the Work/Financial Plan, the Work/ Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The STATE agrees to pay all approved costs of service within 30 days of being invoiced by APHIS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the STATE is delinquent in paying the full amount of the due service costs submitted by APHIS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS will immediately cease to provide the respective service associated with the submitted service costs. APHIS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.
- c. That this Agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate.
- d. The performance of wildlife damage management actions by APHIS under this agreement is contingent upon a determination by APHIS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. APHIS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
- e. That this Agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this Agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients.
- f. That nothing in this Agreement shall prevent any other State agency, organization or individual from entering into separate Agreements with APHIS or the STATE for the purpose of managing human/wildlife conflicts.
- g. That STATE ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

**3. TERM OF AGREEMENT**

The term of this Agreement commences on the 1st day of July, 2009, and terminates on the 30th day of June, 2011.

**4. COMPENSATION**

STATE's financial obligation is a maximum of \$1,067,400. As more fully explained in Exhibit A, at the end of each quarter APHIS will submit to STATE a statement of salaries and expenses for which it seeks STATE's reimbursement. APHIS must prepare and provide to the STATE by July 1, 2011, a report describing all work done under this Agreement. The final payment will be made only if STATE approves the final report.

**5. TERMINATION OF AGREEMENT**

- a. **Termination without cause.** This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination for lack of funding or authority.** The STATE may terminate this Agreement effective upon delivery of written notice to the APHIS, or on any later date stated in the notice, under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The Agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
  - 3) If any license, permit or certificate required by law, rule or terms of this Agreement, is for any reason denied, revoked, suspended or not renewed which prevents APHIS from accomplishing the purpose of this Agreement.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- c. **Termination for cause.** The STATE by written notice of default to APHIS may terminate the whole or any part of this Agreement:
  - 1) If APHIS fails to provide services required by this Agreement within the time specified or any extension agreed to by the STATE; or
  - 2) If APHIS fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of the STATE provided in the above clause related to defaults by APHIS are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

6. **FORCE MAJEURE**

APHIS shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond APHIS's reasonable control and APHIS gives notice to STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

7. **RENEWAL**

This Agreement will not automatically renew.

8. **MERGER AND MODIFICATION**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

9. **SEVERABILITY**

If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.

10. **ASSIGNMENT AND SUBCONTRACTS**

APHIS may not assign or otherwise transfer or delegate any right or duty without the STATE's express written consent. However, APHIS may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. APHIS is solely responsible for the performance of any subcontractor. APHIS shall not have the authority to contract for or incur obligations on behalf of the STATE.

11. **NOTICE**

All notices or other communications required under this Agreement shall be given in writing and are complete on the date mailed when addressed to the parties at the following addresses:

Regional Director, Western Region  
USDA-APHIS-WS  
2150 Centre Avenue, Building B  
Mail Stop 3W9  
Fort Collins, CO 80526



Robert Christman, Deputy Commissioner  
North Dakota Department of Agriculture  
600 East Boulevard Ave  
Bismarck, ND 58505-0020

**12. APPLICABLE LAW AND VENUE**

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), for the Secretary of Agriculture to cooperate with States, individuals, public and private agencies, organizations, and institutions in the control of wild mammals and birds that are reservoirs for zoonotic diseases, or are injurious or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and public health and safety.

This Agreement is governed by and construed in accordance with Federal law and the laws of the State of North Dakota. Any action to enforce this Agreement must be brought in the U.S. District Courts of North Dakota.

**13. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

APHIS shall promptly notify STATE of all potential claims which arise or result from this Agreement. APHIS shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

**14. INDEMNITY**

The State and APHIS each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

APHIS assumes no liability for any actions or activities conducted under this Agreement except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

**15. INSURANCE**

APHIS, as a Federal agency, is self insured for tort liability under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

**16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The STATE does not waive any right to a jury trial.

**17. CONFIDENTIALITY**

APHIS agrees not to use or disclose any information it receives from the STATE under this Agreement that the STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the STATE or unless required by Federal law. The STATE agrees not to disclose any information it receives from APHIS that the APHIS has previously identified as confidential. The duty of STATE and APHIS to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it. The Provisions of this paragraph, however, are subject to federal law.

**18. COMPLIANCE WITH PUBLIC RECORDS LAW**

APHIS understands that, except for disclosures prohibited in Section 17, the STATE must disclose to the public upon request any records it receives from APHIS. APHIS further understands that any records which are obtained or generated by APHIS under this Agreement, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law

**19. WORK PRODUCT, EQUIPMENT AND MATERIALS**

No work products or materials will be purchased under this agreement.

**20. INDEPENDENT ENTITY**

APHIS is an independent entity under this Agreement. APHIS retains sole and absolute discretion in the manner and means of carrying out APHIS's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

**21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

APHIS agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to all Federal law relating to nondiscrimination, accessibility and civil rights. APHIS shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

**22. RECORDS AND STATE AUDIT**

APHIS agrees to maintain all financial records regarding the direct and In Kind expenditures related to this Agreement. All records, regardless of physical form, and the accounting practices and procedures of APHIS relevant to this Agreement are subject to examination by the North Dakota State Auditor or the Auditor's designee to the extent allowed by Federal law. APHIS will maintain all such records for at least three years following completion of this Agreement.

23. **TAXPAYER ID**

North Dakota federal employer ID number is: 45-039764.

24. **SIGNATURES**

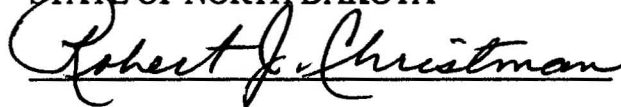
USDA-APHIS-WS

  
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Jeffrey S. Green, Ph. D.  
Regional Director, Western Region

DATE: 8/10/09

STATE OF NORTH DAKOTA

  
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Robert Christman  
Deputy Commissioner

DATE: July 28, 2009