

Work/Financial Plan

Number: 11-158

The parties to this work/financial plan are the State of North Dakota, acting through its North Dakota Department of Agriculture (STATE), and the United States Department of Agriculture – Animal and Plant Health Inspection Service – Wildlife Services (WS);

1. SCOPE OF SERVICE

WS, in exchange for the compensation paid by STATE under this work/financial plan, shall:

- a. Provide services and otherwise do all things necessary - or incidental thereto - to mitigating wildlife conflicts with humans and human activities and wildlife damage to agriculture, natural resources, property, and human health and safety caused by beaver, coyote, raccoon, badger, red fox, other state-managed furbearers, and blackbird. Services are defined as basic operational damage control methods including: 1) technical advice 2) trapping; 3) aerial hunting; 4) ground shooting; 5) snaring; 6) use of the M-44 device and other EPA registered chemicals; and 7) use of various combinations and degrees of intensity of the foregoing, depending on local condition and history of specific damage situations. In this work/financial plan the word "Services" refers to terms and descriptions used in subsection "a."
- b. Provide Services upon request and approval by private individuals and the STATE. WS shall provide Services based on a "1-2-3" priority rating. More particularly, WS shall classify each service request with a priority of 1, 2, or 3. A "1," or High, priority involves either confirmed and/or chronic conflicts to human health and safety, agriculture, property, or to natural resources, or a high economic impact to individual interests. A "2," or Medium, priority involves an emerging threat of conflict to human health and safety, agriculture, property, or to natural resources, or a medium economic impact to individual interests. A "3," or Low, priority involves no threat of conflict to human health and safety, agriculture, property, or to natural resources but involves low or no economic impact to individual interests. WS shall provide Service to all "1" or High rated requests of Services before providing Services to requests rated as "2" or "3."
- c. Provide Services for 24 months, starting July 1, 2011 and ending June 30, 2013.
- d. Provide Services in accordance with applicable Federal, State, and local laws and regulations.
- e. Provide Services to assure application of the most efficient and effective controls available.

July 1, 2011

STATE agrees:

- f. That WS has advised the STATE that private sector service providers may be available to provide services and notwithstanding these other options, STATE requests that WS provide services as stated under the terms of this agreement.
- g. To reimburse WS for expenses WS incurs while performing the Services, not to exceed the quarterly approved amounts specified in Section 3. Such expenses will be limited to salaries and benefits and operating expenses for personnel conducting Services. Reimbursement for benefits will be directly proportionate for personnel providing Services. The STATE will not reimburse replacement costs for vehicles used to provide Services. The STATE shall pay approved Service expenses within 30 days of being invoiced by WS for the first three quarters of each STATE fiscal year and will pay for the fourth quarter only after the STATE's approval of the annual report required by Section 2(b). If the STATE is delinquent in paying the full amount of Service expenses submitted by WS, and/or is delinquent in paying the due late payments, WS will immediately cease to provide the respective Service associated with the submitted Service expenses. WS will not reinstate or provide the respective Service until all due Service expenses, and due late payments, are paid in full.
- h. That this work/financial plan is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate WS upon failure of Congress to so appropriate.
- i. That the performance of Services by WS is contingent upon a determination by WS that such actions comply with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. WS will not make a final decision to perform Services until it has made the determination of such compliance.
- j. That this work/financial plan is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this work/financial plan WS provides services on a cost recovery basis to nonfederal recipients.
- k. That nothing in this work/financial plan shall prevent any other STATE agency, organization or individual from entering into separate agreements with STATE or WS for the purpose of managing human/wildlife conflicts.

2. WORK DEADLINES

- a. WS shall submit the following information within 30 days following the end of each quarter:
 - i. Number of individuals assisted.
 - ii. Description of individual issue and/or resource losses.
 - iii. Number of Services completed by priority ranking.
 - iv. Number and species of animals taken by method.
 - v. Reasonable estimate of financial damages individuals suffered due to wildlife damage.
 - vi. Detailed report of Services covered by federal funds and other funding sources.

July 1, 2011

- vii. The amount of monies received for the disposition of furs, skins, and specimens taken during official work activities used by WS to fund its program activities as stated in North Dakota Century Code Section 4-01-17.3.
- b. WS shall provide, by July 15, 2012 and July 15, 2013, an annual report describing all Services provided.

3. SERVICE COMPENSATION

- a. Maximum 2011-2013 Biennium Service Compensation
 - i. For the period of July 1, 2011 through June 30, 2013, STATE will reimburse a maximum of \$1,416,400 for Services, of which a maximum of \$1,304,512 will be made available for general wildlife conflict management and up to \$111,888 may be used for blackbird conflict management.
- b. Maximum State Fiscal Year 2012 Service Compensation
 - ii. For the period of July 1, 2011, through June 30, 2012, STATE will reimburse WS a maximum of \$691,958 for Services, of which \$641,258 will be made available for general wildlife conflict management and up to \$50,700 may be used for blackbird conflict management. The maximum reimbursement is the following:
 - a. July 1, 2011 through September 30, 2011
 - (1) General wildlife: **\$108,398**
 - (2) Blackbird: \$25,350
 - b. October 1, 2011 through December 31, 2011
 - (1) General wildlife: **\$161,116**
 - (2) Blackbird: \$25,350
 - c. January 1, 2012 through March 31, 2012
 - (1) General wildlife: **\$184,798**
 - (2) Blackbird \$0
 - d. April 1, 2012 through June 30, 2012.
 - (1) General wildlife: **\$186,946**
 - (2) Blackbird: \$0
- c. Maximum State Fiscal Year 2013 Service Compensation
 - iii. For the period of July 1, 2012, through June 30, 2013, STATE will reimburse WS a maximum of \$724,442 for Services, of which \$663,254 will be made available for general wildlife conflict management and up to \$61,188 may be used for blackbird conflict management. The maximum reimbursement is the following:
 - a. July 1, 2012 through September 30, 2012
 - (1) General wildlife: **\$131,214**
 - (2) Blackbird: \$30,594
 - b. October 1, 2012 through December 31, 2012
 - (1) General wildlife: **\$158,812**
 - (2) Blackbird: \$30,594
 - c. January 1, 2013 through March 31, 2013
 - (1) General wildlife: **\$183,822**

July 1, 2011

- (2) Blackbird: \$0
- d. April 1, 2013 through June 30, 2013
 - (1) General wildlife: **\$189,406**
 - (2) Blackbird: \$0
- c. Any services conducted for individuals or in areas under jurisdiction of cities and towns are not eligible for reimbursement.
- d. WS shall submit a quarterly invoice for expenses as agreed upon in this work/financial plan. Invoices will be submitted within 15 days of the ending date of the quarter. All invoices must clearly indicate salary and benefit and operating expenses for general wildlife and blackbird conflict management and must include an accounting of all expenditures for all services provided from all funding sources.
- e. WS shall maintain all original invoices for 3 years or until the STATE's records have been audited, whichever is less.

4. TERMINATION OF WORK/FINANCIAL PLAN

- a. Termination without cause. This work/financial plan may be terminated by mutual consent of both parties, or either party upon 30 days' written notice.
- b. Termination for lack of funding or authority. STATE by written notice of default to WS, may terminate the whole or any part of this work/financial plan, under any of the following conditions:
 - i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the Services in the indicated term.
 - ii. 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 work/financial plan or are no longer eligible for the funding proposed for payments authorized by this work/financial plan.
 - iii. If any license, permit, or certificate required by law or rule, or by the terms of this work/financial plan, is for any reason denied, revoked, suspended, or not renewed.

Termination of this work/financial plan under subsection "b" is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- c. Termination for cause. STATE may terminate this work/financial plan effective upon delivery of written notice to WS, or any later date stated in the notice:
 - i. If WS fails to provide Services required by this work/financial plan within the time specified or any extension agreed to by STATE; or

July 1, 2011

- ii. If WS fails to perform any of the other provisions of this work/financial plan, or so fails to pursue the Services as to endanger performance of this work/financial plan in accordance with its terms.

The rights and remedies of STATE provided in subsection "c" are not exclusive and are in addition to any other rights and remedies provided by law or under this work/financial plan.

5. FORCE MAJEURE

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

6. MERGER AND MODIFICATION

This work/financial plan may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

7. SEVERABILITY

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

8. ASSIGNMENT AND SUBAGREEMENTS

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

9. NOTICE

All notices or other communications required under this work/financial plan must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

July 1, 2011

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

OR

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

Notice provided under this provision does not meet the notice requirements for monetary claims against the NDDA found at N.D.C.C. § 32-12.2-04.

10. APPLICABLE LAW AND VENUE

This work/financial plan is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this work/financial plan must be adjudicated exclusively in the Federal District Court for the District of North Dakota.

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.

11. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

WS shall promptly notify STATE of all potential claims that arise or result from this work/financial plan. WS shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

12. INDEMNITY

July 1, 2011

STATE and WS 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.

WS 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).

13. INSURANCE

WS, 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).

14. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this contract, and STATE is the prevailing party, WS shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

15. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

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. STATE does not waive any right to a jury trial.

16. COMPLIANCE WITH PUBLIC RECORDS LAW

WS shall contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE's instructions on how to respond to the request.

17. INDEPENDENT ENTITY

WS is an independent entity under this work/financial plan and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. WS retains sole and absolute discretion in the manner and means of carrying out WS's activities and responsibilities under this work/financial plan, except to the extent specified in this work/financial plan.

18. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

WS shall comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. WS shall timely file all required reports, make required payroll

July 1, 2011

deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. WS shall have and keep current at all times during the term of this work/financial plan all licenses and permits required by law.

19. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of WS relevant to this work/financial plan are subject to examination by the North Dakota Agriculture Commissioner or the Commissioner's designee and the North Dakota State Auditor or the Auditor's designee. WS shall maintain all such records for at least three years or until the STATE's records have been audited.

20. PREPAYMENT

STATE will not make any advance payments before performance by WS under this work/financial plan.

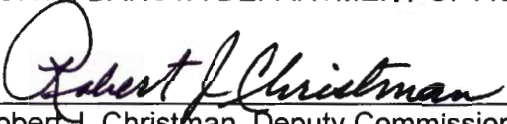
21. PAYMENT OF TAXES BY STATE

STATE is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

22. EFFECTIVENESS OF WORK/FINANCIAL PLAN

This work/financial plan is not effective until fully executed by all parties.

NORTH DAKOTA DEPARTMENT OF AGRICULTURE


Robert J. Christman, Deputy Commissioner

1-20-2012
Date

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES


Jeffery S. Green, Regional Director

1/4/12
Date

July 1, 2011