

**COOPERATIVE SERVICE AGREEMENT
REIMBURSABLE
between
PORTLAND BUREAU OF TRANSPORTATION
and
UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES (WS)**

ARTICLE 1 - PURPOSE

PURPOSE

The purpose of this Agreement is to conduct wildlife damage management (WDM) activities to control various migratory bird species residing on and around the N. Vancouver Avenue bridge in order to comply with the Migratory Bird Treaty Act.

ARTICLE 2 - AUTHORITY

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.

ARTICLE 3 - MUTUAL RESPONSIBILITIES

The Cooperator and WS agree:

- a. To confer and plan a WDM program that addresses the need for managing conflicts caused by migratory birds on the N. Vancouver Avenue bridge in Multnomah County, Oregon. Based on this consultation, WS will formulate annually, in writing, the program work plan and associated budget and present them to the Cooperator for approval.
- b. If applicable, each year the Cooperator and APHIS-WS must agree to and sign the annual Work and Financial Plans, which upon execution are incorporated into this Agreement by reference.
- c. That APHIS-WS has advised the Cooperator that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, Cooperator requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.

ARTICLE 4 - COOPERATOR RESPONSIBILITIES

The Cooperator agrees:

- a. To designate Portland Bureau of Transportation, Paul Gornick, 1120 SW 5th Avenue, #800, Portland, Oregon 97204 (503)823-7060 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;

- b. To reimburse APHIS-WS for costs, not to exceed the annually approved amount specified in the Work and Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the Work and Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The Cooperator agrees to pay all costs of service submitted via an invoice within 30 days of the date of the submitted invoice or invoices as submitted by APHIS-WS. 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 Cooperator is delinquent in paying the full amount of the due service costs submitted by APHIS-WS, 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-WS will immediately cease to provide the respective service associated with the submitted service costs. APHIS-WS 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. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.
- d. As a condition of this Agreement, The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

ARTICLE 5 – WS RESPONSIBILITIES

WS agrees:

- a. To designate Wildlife Services, David Williams, 6135 NE 80th Avenue, Suite A8, Portland, Oregon 97218 (503)326-2346, as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;
- b. The performance of wildlife damage management actions by WS under this agreement is contingent upon a determination by WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance;
- c. To provide qualified personnel and other resources necessary to implement the approved WDM activities delineated in the Work and Financial Plan referenced in 3.a of this Agreement.
- d. To bill the Cooperator for costs incurred in performing WDM activities as authorized in the approved annual Work and Financial Plan as may be amended.
- e. To notify the Cooperator if costs are projected to exceed the amounts estimated and agreed upon in the Financial Plan. WS will cease providing goods or services until a revision to the Work and Financial Plan, as appropriate, have been agreed to and signed by both parties to this Agreement.
- f. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of WS pertaining to such claims for reimbursement to the extent permitted by Federal laws and regulations.

ARTICLE 6 – WS CONDITIONS

For costs borne by WS, this agreement is contingent upon the passage of the Agriculture, Rural Development, and Related Agencies Appropriation Act for the current fiscal year from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS funds only for a finite period under a Continuing Resolution.

ARTICLE 7 – ASSURANCES

Nothing in this agreement shall prevent any other State, agency, organization or individual from entering into separate agreements with WS the Cooperator for the purpose of managing wildlife damage.

ARTICLE 8 – CONGRESSIONAL RESTRICTIONS

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise therefrom.

ARTICLE 9 – APPLICABLE REGULATIONS

All WDM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations.

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.

ARTICLE 10 – LIABILITY

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

ARTICLE 11 – AGREEMENT EFFECTIVE DATE

This Agreement shall become effective on March 1, 2010 and shall continue through February 28, 2015. This agreement may be amended at any time by mutual agreement of the parties in writing. It may be terminated by either party upon 60 days written notice to the other party. Further, in the event the Cooperator does not for any reason reimburse expended funds, WS is relieved of the obligation to continue any operations under this agreement.

AUTHORIZATION:

Portland Bureau of Transportation
93-6002236:

MAYOR SAM ADAMS

Date

183558

Agreement No: 10-73-41-6249-RA
Accounting Code: 073-7341-086

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

Tax Identification Number: 41-0696271

David Williams, Oregon Wildlife Services

Date

Director, Wildlife Services Western Region

Date

APPROVED AS TO LEGAL SUFFICIENCY:

APPROVED AS TO FORM

AGENCY

Lucia Mungia

CITY ATTORNEY

DATE

2/17/10

DATE

WORK PLAN AND PROPOSED BUDGET
for
N. VANCOUVER AVENUE BRIDGE, PORTLAND, OREGON
MIGRATORY BIRD MITIGATION
with
PORTLAND BUREAU OF TRANSPORTATION

Work Period

From March 1, 2010 until bridge demolition or August 31, 2010, whichever occurs first.

Introduction

In accordance with Cooperative Service Agreement No. 10-73-41-6249 between Portland Bureau of Transportation and the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS), this Work Plan sets forth the objectives, activities and budget for the cooperative wildlife management program with Portland Bureau of Transportation's Portland, Oregon office. The objective of this plan is to provide for migratory bird mitigation in order to allow Portland Bureau of Transportation to meet bridge construction and demolition objectives for said bridge in Portland. Portland Bureau of Transportation's project manager Paul Gornick (503)823-7060 will serve as APHIS-WS's primary contact for activities implemented under this Work Plan.

Program Objectives

The specific objective of APHIS-WS involvement with Portland Bureau of Transportation is to provide professional wildlife management assistance to reduce and minimize migratory bird activity at the N. Vancouver Avenue Bridge in Portland in Multnomah County, Oregon. The objective of these activities is to eliminate the risk of viable bird nests that could cause delay in slated bridge demolition dates. Cooperative efforts between APHIS-WS and Portland Bureau of Transportation will maximize resources to accomplish the goals of this plan. APHIS-WS will provide Portland Bureau of Transportation with swallow and other migratory bird nest removal. APHIS-WS will address the requirements of the National Environmental Policy Act (NEPA).

Plan of Action

The objectives of the wildlife hazard management project will be accomplished in the following manner:

1. APHIS-WS will provide Portland Bureau of Transportation with migratory bird nest removal at the N. Vancouver Avenue Bridge. The WS specialist will conduct 1-3 nest inspections per week from March 1, 2010 until bridge demolition, or until August 31, 2010 whichever occurs first. Nest removal will be conducted using poles, paint balls, or other projectiles as necessary.

2. The APHIS-WS state office in Portland, Oregon will be responsible for day-to-day supervision and monitoring of the program.
3. APHIS-WS will provide vehicles, supplies, and equipment. Supplies and equipment purchased under this agreement will become property of APHIS-WS.
4. APHIS-WS will cooperate with the Oregon Department of Transportation (ODOT), Oregon Department of Fish and Wildlife (ODFW), and the U.S. Fish and Wildlife Service (FWS) to ensure compliance with Federal, State and local laws and regulations.
5. APHIS-WS will bill the Cooperator at the completion of the project. The costs of this wildlife damage management project will not exceed \$7,000.00. In accordance with Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS-WS are due and payable within 30 days of receipt.
6. Portland Bureau of Transportation will provide transient removal prior and during the term of agreement.

Salary/Benefits/	\$4,500
Equipment/Materials/	\$1,000
Administrative/Supervisory Support	\$1,500
Total	\$7,000

Note: Salary, benefits, and vehicle costs charged at actual cost. The distribution of the Budget for this Work Plan may vary as necessary to accomplish the purpose of this Agreement but may not exceed the aggregate total of \$7,000.

Recommended by: _____
State Director, USDA APHIS WS

Date

Approved by: _____
Director, Western Region
USDA, APHIS, WS

Date

Approved by: _____
Paul Gornick, Project Manager
Portland Bureau of Transportation

Date