

Misc. Contracts and Agreements

No. _____

APHIS Agreement #13-73-41-6249
APHIS-WS WBS AP.RA.RX41.73.0086

**INTERGOVERNMENTAL AGREEMENT
WILDLIFE DAMAGE/CONFLICT MANAGEMENT PROGRAM TIME
AND MATERIALS**

THIS AGREEMENT is made and entered into by and between the City of Portland, Bureau of Transportation, hereinafter referred to as "PBOT," and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, hereinafter referred to as "APHIS-WS," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in ORS 190.110 and 366.558, PBOT may enter into cooperative agreements with the United States Federal Government for the performance of work on improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. APHIS-WS has statutory authority under the Animal Damage Control Act (7 U.S.C. §426-426c), the Act of March 2, 1931 (46 Stat. 1468) as amended, and the Act of December 22, 1987 (P.L. 100-202, 101 Stat. 1329-331), 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. APHIS-WS assists with wildlife problems involving urban or natural resources as well as threats to human health and safety.
3. Wildlife Damage and Conflict Management (WDCM) is defined as the alleviation of damage or other problems caused by or related to wildlife.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, PBOT wishes to retain the services of an APHIS-WS Wildlife to provide professional WDCM services to aid in the reduction of wildlife conflicts at PBOT-managed project sites in the City of Portland, hereinafter referred to as "Project" and further identified in Exhibit A, attached hereto and by this reference made a part hereof. The objective of these services is to reduce the risk of viable migratory bird nests or wildlife habitats that could cause delay in scheduled project dates. Payment for said services shall not exceed a maximum amount of \$100,000 in city, state or federal funds.

2. Said services shall be requested in writing in the form of a Task Order Authorization (TOA), a sample of which is attached hereto as Exhibit B and by this reference made a part hereof. Each TOA that is issued pursuant to this Agreement shall become a part of this Agreement. Both Parties shall sign the Task Order Authorization before commencement of work whether by facsimile or otherwise, and a fully signed TOA shall be returned to the originating party.
3. All TOA's shall be issued through this Agreement.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 31, 2013. The Task Order Authorization shall contain beginning and ending dates for the specific work.
5. This Agreement may be modified by mutual consent of the Parties and upon execution of amendments to this Agreement stating said modifications.
6. Any other provision of the Agreement notwithstanding, in no event shall PBOT be liable for payment for services rendered and expenses incurred by APHIS-WS under the terms of the Agreement for any amount in excess \$100,000.00 in total unless the Agreement is amended to increase such amount.
7. When either of the Parties address the media or incorporate information into reports and/or publications, both Parties must agree, in writing, to have their identities disclosed when receiving due credit related to the activities covered by this Agreement.
8. APHIS-WS has advised PBOT that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, PBOT requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.

APHIS-WS OBLIGATIONS

1. The work described in Exhibit A, and as further defined in each executed TOA shall be performed and invoiced under each
2. The performance of WDCM services by APHIS-WS under this Agreement is contingent upon a determination by APHIS-WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. APHIS-WS will not make a final decision to conduct requested WDCM services until it has made the determination of such compliance.
3. For costs borne by APHIS-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-WS

upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS-WS funds only for a finite period under a Continuing Resolution.

4. APHIS-WS 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).
5. APHIS-WS shall meet with PBOT to discuss Projects and availability of needed skills to plan a WDCM program that addresses the need for managing wildlife conflicts at specific PBOT-managed sites as necessary. Based on this consultation, APHIS-WS will formulate, in writing, a Work and Financial Plan, which will become part of the TOA that both Parties shall agree to and which, upon execution, is incorporated into this Agreement by reference.
6. APHIS-WS shall submit quarterly invoices and an itemized expenditure report as to costs for each expenditure account project, to PBOT for reimbursement of actual costs up to the maximum agreed amount of each TOA. These expenditure reports shall contain reasonable detail, broken down by budget category, showing the total cost incurred both currently and cumulatively. Under no conditions shall PBOT's obligations exceed \$100,000, including all expenses.
7. APHIS-WS will submit its invoices and expenditure reports to PBOT's authorized official, or his/her designee, for approval to the mailing address: 1120 SW 5th Avenue #800, Portland, Oregon 97204.
8. APHIS-WS agrees to notify PBOT if costs are projected to exceed the amounts estimated and agreed upon.
9. APHIS-WS is responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to workers' compensation, unemployment taxes, and state and federal tax withholdings.
10. All employers, including APHIS-WS, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Under the Federal Employee Compensation Act §8101, all APHIS-WS specialists are defined as federal employees therefore subject to federal workers' compensation coverage. APHIS-WS shall ensure that each of its subcontractors complies with these requirements.
11. APHIS-WS shall not enter into any subcontracts other than for flaggers for any of the work scheduled under any TOA without obtaining prior written approval from PBOT, unless such subcontractor is clearly identified and separately budgeted in the approved Operating Budget of such TOA.

12. Written approval must be obtained from PBOT whenever significant changes occur in the TOA or any changes occur that will delay the assistance of projects.
13. APHIS-WS designates David E. Williams, the APHIS-WS Oregon State Director as its authorized representative to act on its behalf.
14. APHIS-WS certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of APHIS-WS, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind APHIS-WS.
15. APHIS-WS acknowledges and agrees that PBOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of APHIS-WS which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by PBOT.
16. This Agreement will be signed on behalf of APHIS-WS by the Regional Director or assigned designee. APHIS-WS shall notify the other Party in writing of any contact information changes during the term of this Agreement. TOAs can be signed at the local level by the APHIS-WS State Director. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as either Party hereafter shall specify in writing to the other Party:

Jeffery Green, Regional Director
Western Region Wildlife Services
2150 Centre Ave., Bldg B, MS 3W9
Fort Collins, CO 80526-8117

APHIS-WS Administrative Contact:
Deborah Stalman, Budget Analyst
6135 NE 80th Ave., Suite A-8
Portland, OR 97218
Phone: 503-326-2346
FAX: 503-326-2367
E-Mail: Deborah.h.stalman@aphis.usda.gov

PBOT OBLIGATIONS

1. In consideration for the services performed by APHIS-WS, PBOT agrees to pay APHIS-WS not to exceed a maximum amount of \$100,000. Said maximum amount shall include reimbursement for all approved expenses. Travel expenses shall be reimbursed to APHIS-WS in accordance with the current federal government established travel rates. If costs are projected to exceed the amount reflected in the contracts, they shall be formally revised and signed by both Parties before services resulting in additional costs are performed.
2. All contracts and any subsequent amendments must be fully executed by both Parties prior to the beginning of their required performance. Each TOA will contain two parts: 1) The Scope of Work; and 2) Statement of Work and Operating Budget, itemized by task and budget category.
3. PBOT shall meet with APHIS-WS Liaison to discuss projects and need for services as necessary.
4. PBOT certifies that sufficient funds are available to finance the obligation committed within its current biennial appropriation or expenditure limitation; however, are contingent upon the new appropriation or limitation for the succeeding biennial period.
5. As a condition of this Agreement, PBOT ensures and certifies that it is not currently debarred or suspended and is free of delinquent federal debt.
6. PBOT will send payment to APHIS-WS following the receipt of quarterly invoices and itemized expenditure reports from APHIS-WS. Payments will be sent electronically.
7. PBOT agrees to pay all costs of service submitted via an invoice. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If PBOT is delinquent in paying the full amount of the invoice 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.
8. PBOT designates the Contracts Management Coordinator or assigned designee, as its authorized representative in administering this Agreement. PBOT shall notify the other Party in writing of any contact information changes during the term of this Agreement. PBOT designates the individual listed below or assigned designee as the initial point of contact for matters related to performance and to carry out PBOT's responsibilities under all contracts. Any notice provided for under this Agreement shall be sufficient if in writing and delivered

personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as either party hereafter shall specify in writing to the other party:

PBOT Contact:

Patrick Boyd, Contracts Management Coordinator

1120 SW 5th Avenue, Suite 800

Portland, OR 97204

Phone: 503-823-7031

Fax: 503-865-3453

Patrick.Boyd@portlandoregon.gov

General Provisions for this agreement begin on Page 7. Rest of this page left blank intentionally.

GENERAL PROVISIONS

1. In the event of an inconsistency between this Agreement and a TOA, unless otherwise provided herein, the inconsistency shall be resolved by giving precedent in the following order: the terms and conditions of a TOA; the other provisions of the attachments which were incorporated by reference and attached to a TOA the terms and conditions of this Agreement; and the other provisions of the attachments which were incorporated by reference and attached to this Agreement.
2. All WDCM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations.
3. 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 4. Nothing in this Agreement shall prevent any other state, agency, organization or individual from entering into separate agreements with APHIS-WS or PBOT for the purpose of wildlife damage and conflict management.
5. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person.
6. PBOT may terminate this Agreement effective upon delivery of written notice to APHIS-WS, or at such later date as may be established by PBOT, under any of the following conditions, but not limited to these conditions.
 - a. If APHIS-WS fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If APHIS-WS 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, and after receipt of written notice from PBOT fails to correct such failures within ten (10) days or such longer period as PBOT may authorize.
 - c. If PBOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow PBOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal, state or city laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or PBOT is prohibited from paying for such work from the planned funding source.
7. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
8. The Parties shall not waive, alter, modify, supplement or amend this Agreement without

written agreement signed by the Parties.

9. 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-WS provides goods or services on a cost recovery basis to nonfederal recipients.
10. APHIS-WS agrees to maintain all technical and financial records in support of the services performed under this Agreement. All records must be made available to PBOT within fourteen (14) days of written request. Records may be maintained by APHIS-WS on computer disk if printed records are accessible on request.
11. APHIS-WS acknowledges and agrees that the source of funds for this Agreement are from ODOT; that certain requirements, restrictions and conditions are placed upon the expenditure of said funds; and that APHIS-WS will comply with such requirements, restrictions and conditions which are applicable to APHIS-WS as performing the identified services to PBOT under this Agreement.
12. APHIS-WS shall be responsible to the extent permitted by the Federal Tort Claims Act for the acts, omissions, or negligence of its own officers, employees, or agents. PBOT shall be subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to 30.300), the City of Portland shall be responsible for the acts, omissions, and negligence of its officers, employees, and agents.
13. Notwithstanding the foregoing defense obligations under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each Party may, at any time at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
14. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
15. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral

or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

Tax Identification Number: 41-0696271

By _____
 State Director, Oregon

Date _____

By _____
 Director, Western Region

Date _____

APHIS-WS Contacts:

Deborah Stalman, Budget Analyst
 6135 NE 80th Ave., Suite A-8
 Portland, OR 97218
 503-326-2346
Deborah.h.stalman@aphis.usda.gov

Jeffery Green, Regional Director
 Western Region Wildlife Services
 2150 Centre Ave., Bldg B, MS 3W9
 Fort Collins, CO 80526-8117

**CITY OF PORTLAND, BUREAU OF
 TRANSPORTATION**

Tax Identification Number: 93-6002236

By _____
 Mayor/City of Portland

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By James H. Van Dyle
 City Attorney
 CITY ATTORNEY 1/23/13

PBOT Contact:

Patrick Boyd, Contracts
 PBOT
 1120 SW 5th Ave,
 Portland, OR 97204
 503-823-7031
Patrick.Boyd@portlandoregon.gov

EXHIBIT A
STATEMENT OF WORK AND BUDGET
WORK PLAN
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES (APHIS-WS)
January 1, 2013 through December 31, 2013

Pursuant to Cooperative Service Agreement No. 12-73-41-5947-RA between Portland Bureau of Transportation (PBOT) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS-WS), this Work Plan defines the objectives, plan of action, resources and budget for the time period stated above.

OBJECTIVES/GOALS

1. The overall objective of APHIS-WS involvement with PBOT transportation projects is to provide professional wildlife damage and conflict management assistance to eliminate/reduce/minimize migratory bird and other wildlife conflicts on City projects in the City of Portland, Oregon with the goal of eliminating the risk of project delays due to animal conflicts.
2. APHIS-WS will address requirements of the National Environmental Policy Act (NEPA). Therefore, this Work Plan addresses APHIS-WS activities commencing January 1, 2013 through December 31, 2013.

PLAN OF ACTION

The objectives of the wildlife monitoring and conflict management project will be accomplished in the following manner:

1. APHIS-WS will deter migratory birds from nesting on project bridges and vegetation from approximately February 15, 2013 through August 31, 2013. An extension of these dates may be necessary when early nesting bird species are involved and if nesting occurs in vegetation. Under these circumstances, nest prevention activities may begin as early as mid-January and extend until October.
2. The number of APHIS-WS site visits per week per project will depend upon site conditions and bird activity. Nesting deterrence will occur until project completion or the end of the nesting season, whichever comes first.
3. If warranted on certain bridge projects, APHIS-WS will install, and maintain deterrent equipment to exclude migratory bird access to the structure through the nesting season. Deterrent equipment will be removed by APHIS-WS by September 20, 2013.
4. APHIS-WS will begin planning for and begin scoping 2013 projects requiring bird management assistance in 2012.
5. APHIS-WS will research and when feasible, experiment with harassment and non-net methodologies to refine bird conflict management strategies for the full range of transportation projects.
6. APHIS-WS will assist PBOT with beaver conflicts throughout the year if needs arise.

7. APHIS -WS will exclude bats from project bridges if needs arise.
8. APHIS-WS will provide adequate and appropriately trained staff for all activities identified in this Work Plan.
9. The APHIS-WS State Office, located in Portland, Oregon 503-326-2346 will be responsible for the overall supervision and ministration of the agreement and program activities performed under this agreement.
10. APHIS-WS will bill PBOT for services rendered at quarterly intervals. In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS-WS are due and payable within 30 days of receipt.
11. The 2013 cooperative wildlife damage/conflict management project will not exceed \$100,000 in total aggregate costs. All costs charged to PBOT will be for reimbursement of actual costs incurred by APHIS-WS for the wildlife management program.

PROCUREMENT

APHIS-WS will provide a vehicle, initial supplies and equipment. Cooperator understands that additional supplies and equipment may need to be purchased under this agreement to replace consumed, damaged or lost supplies/equipment. Any items remaining at the end of the work year will remain in the possession of APHIS-WS.

STIPULATIONS AND RESTRICTIONS

APHIS-WS will cooperate with the Oregon Department of Agriculture, Oregon Fire Marshal's Office, 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.

COST ESTIMATE FOR SERVICES (Example Only)

Salary & Benefits	\$64,741.88
Vehicle Costs (GSA Rental/Mileage)	12,386.59
Supplies/Materials	8967.10
Subtotal	\$86,095.57
Overhead 16.15%	13,904.43
Total	\$100,000.00

Note: The distribution of the budget from this Work and Financial Plan may vary as necessary to accomplish the purpose of this project, but may not exceed the total cost of \$100,000 per project year.

EXHIBIT B -SAMPLE PBOT WORK ORDER AUTHORIZATION

PBOT Task Order

Against Contract #

Project: _____ Task Order #: _____

SAP Cost Object: _____ Proposed Consultant: _____

(PDOT)Project Manager: _____ Phone: _____

(Vendor)Work Order Manager: _____ Phone: _____

Bureau and Section: PDOT _____

Funding Source: _____ Fiscal Year Funds come from (Year): _____

Effective date of Work Order: As signed by all _____ Cost (not to exceed): \$ _____

Expiration Date: _____ \$ _____

\$ _____

Total to Date \$ _____

Project Synopsis of Statement of Work (Statement of Work is attached and incorporated by this reference):

The City of Portland pays on a net 30 day basis after receipt of invoice. Please reference Contract & WO number on all invoices.

Approved By:

Acceptance of Terms by Consultant:

Contracts Date

Name/Title Date

Financial Analyst Date

Address

Division Manager Date

City, State, Zip code

E-Mail address: