

COOPERATIVE SERVICE AGREEMENT
between
CITY OF COMMERCE CITY (COOPERATOR)
and
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
WILDLIFE SERVICES (WS)

ARTICLE 1 – PURPOSE

The purpose of this agreement is to facilitate wildlife damage management (WDM) program activities for City of Commerce City (CCC), located in various sites throughout Commerce City, Colorado to manage conflicts caused by wildlife, specifically damage to property, and any associated maintenance problems caused by black-tailed prairie dogs. The activities will include employing available technologies in an operational program as well as information transfer. (7 USCA 8351)

ARTICLE 2 - AUTHORITY

APHIS-WS is the federal agency authorized by Congress to protect American resources from damage associated with wildlife. This authority is provided by The Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 8351), commonly referred to as the Animal Damage Control Act. This Act states:

“The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program....”

The [Animal Damage Control] Act was amended in 1987 (Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 8353) to further provide:

“On or after December 22, 1987, the Secretary of Agriculture is authorized, except for urban rodent control, to conduct activities and to enter into agreements with State, local jurisdictions, individuals, and public and private agencies, organizations, and institutions in the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases, and to deposit any money collected under such agreement into the appropriation accounts that incur the costs to be available immediately and to remain available until expended for Animal Damage management activities.” The implementation of this authority is delegated to Wildlife Services (WS).

Authority exists under provisions of Title 33, including section 33-1-105(1) (e), Colorado Revised Statutes, for the Colorado Division of Parks and Wildlife (CPW) to enter into Agreements for the development and promotion of wildlife programs. CPW's authority includes the authority to manage bear, lion and other predators in Colorado, both on an individual animal and population basis including control of damage by each predator as a necessary element of and contribution to the achievement of State Wildlife Management goals. This Agreement is to engage WS in the implementation of said authority with the CPW to conduct a statewide cooperative program to control damage caused by wildlife, especially bears and mountain lions, and to otherwise properly manage wild predator species.

ARTICLE 3 - MUTUAL RESPONSIBILITIES

The cooperating parties mutually understand and agree to/that:

- a. Confer and plan a WDM program that addresses the need for managing conflicts caused by black-tailed prairie dogs causing damage to CCC property in Commerce City, CO. Based on this consultation, WS-CO will formulate, in writing, the program work plan and associated budget and present them to the

Cooperator for approval.

- b. Develop a mutually agreed upon Work Plan and Financial Plan which are incorporated into this Agreement by reference. It is understood and agreed that any monies allocated for the purpose of this Agreement shall be expended only towards the activities and related expenses outlined therein.
- c. When either of the Cooperating parties address the media or incorporate information into reports and/or publications, both Cooperating parties must agree, in writing, to have their identities disclosed when receiving due credit related to the activities covered by this agreement.
- d. WS-CO 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 WS-CO provide wildlife management services as stated under the terms of this Agreement.
- e. All equipment with a purchase price of \$5,000 or more per unit, purchased directly with funds from the cooperator for use solely on this project shall be subject to disposal according to APHIS policy, and shall be specifically listed in the Work and Financial Plan. Property title/disposal shall be determined when the project (including all continuations and revisions of this agreement) terminates, or when the equipment is otherwise directed to other projects, whichever comes first. If the equipment is sold prior to the project end, the proceeds should be allocated according to APHIS Policy. Continuations and revisions to this agreement shall list any equipment with a purchase price of \$5,000 or more per unit, carried over from a purchase directly with funds from the cooperator for use solely for this project. All other equipment purchased for the program is and remain the property of WS-CO.
- f. WS-CO will provide overall direction and control of the program.

ARTICLE 4 - COOPERATOR RESPONSIBILITIES

The Cooperator agrees to/that:

- a. Designate Uriel Akiva, Parks Program Coordinator; 303-289-8112; 7887 E 60th Ave, Commerce City, CO 80022 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;
- b. Reimburse WS-CO 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 WS-CO. 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 WS-CO, 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, WS-CO will immediately cease to provide the respective service associated with the submitted service costs. WS-CO 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 Martin Lowney, Colorado WS State Director; 303-328-9041; 12345 W Alameda Pkwy, Suite 204, Lakewood, CO 80228 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-CO that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. WS-CO 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 law and regulations.

ARTICLE 6 – CONTINGENCY STATEMENT

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 – NON-EXCLUSIVE SERVICE CLAUSE

Nothing in this agreement shall prevent any other country, State government or its political subdivisions, local government, university, or college, organization, association, or individual from entering into separate agreements with WS for same or similar activities provided under the terms of this Agreement.

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 – NON-DISCRIMINATION CLAUSE

The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. Not all prohibited bases apply to all programs.

ARTICLE 12 – FAILURE TO PAY FEES

The cooperator is liable for fees assessed for services performed under this agreement. APHIS will assess a late payment penalty for failure to pay fees when due. In addition, the overdue fees shall accrue interest as required by 31 U.S.C. 3717.

ARTICLE 13 – AGREEMENT EFFECTIVE DATE

This Agreement shall become effective April 25, 2019, and shall continue to April 24, 2020. Further, this Agreement may be amended or extended at any time by mutual agreement of the parties in writing. The Cooperator must submit a written request to extend at least 30 days prior to expiration of the agreement. It may be terminated by either party upon 60 days notice in writing to the other party.

END OF AGREEMENT – WORK AND FINANCIAL PLAN ATTACHED

WORK and FINANCIAL PLAN
between
CITY OF COMMERCE CITY
and
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
WILDLIFE SERVICES (WS)

COOPERATOR ADDRESS	City of Commerce City 7887 E 60 th Ave Commerce City, CO 80022
COOPERATIVE CONTACT	Uriel Akiva Phone: (303) 289-8112
COOPERATIVE AGREEMENT NUMBER	19-7308-7021-RA
ACCOUNT NUMBER	AP.RA.RX08.73.0159
LOCATION	Commerce City, CO
AGREEMENT PERIOD	April 25, 2019 to April 24, 2020

Pursuant to Cooperative Service Agreement No: 18-7308-7021-RA between the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services Colorado (WS-CO) and City of Commerce City (CCC), this Work and Financial Plan defines the objectives, plan of action, and budget for the Wildlife Services program to be conducted from April 25, 2019 through April 24, 2020.

I. OBJECTIVES/GOALS

To conduct wildlife damage management (WDM) activities of black-tailed prairie dogs for City of Commerce City in order to maintain native habitat and protect property.

II. PLAN OF ACTION

WS-CO will assign three Wildlife Specialists to complete the requested project by CCC and will provide a vehicle, field supplies and equipment to treat approximately 200 acres of prairie dog colonies throughout Commerce City.

Black-tailed Prairie Dogs:

WS-CO will conduct management activities for black-tailed prairie dogs for CCC in Commerce City, CO. Operations will be conducted using the most effective method available, and will include the use of pesticide applications. Direct management methods/techniques will include application of toxicants by a qualified pesticide applicator using aluminum phosphide, zinc phosphide, and gas cartridges, in accordance with all pesticide use labels. WS-CO will adapt a plan of action in concurrence with CCC to address any change in the parameters of the management actions.

WS-CO will also provide direct management or technical assistance at times and places for CCC located in Commerce City, CO where it is determined there is a priority need to resolve problems or conflicts caused by wildlife. Method selection will be based on an evaluation of selectivity, humaneness, human safety, effectiveness, legality, and practicality.

All wildlife damage management efforts will be focused on areas delineated by the CCC or his designee(s). All wildlife damage management operations will be coordinated with CCC staff and appropriate personnel will be notified before operations begin.

III. REPORTS

WS-CO will be responsible for the preparation of annual reports as specified in the Cooperative Service Agreement.

IV. STIPULATIONS AND RESTRICTIONS

- a. All operations shall have the joint concurrence of WS-CO and CCC and shall be under the direct supervision of WS-CO.
- b. Wildlife Damage Management: A Work Initiation Document for Wildlife Damage Management (WS Form 12A) will be executed between WS-CO and the landowner, lessee, or administrator before any WS-CO work is conducted.
- c. WS-CO will use only WS-CO employees and APHIS Volunteer Program participants. All WS-CO employees and APHIS volunteers have successfully met APHIS firearm safety standards and have received official National Rifle Association certifications. Certificates are available upon request.
- d. The program will be supervised by Kendra Cross, CO District Supervisor (303-328-9048) and monitored by Martin Lowney, CO State Director (303-328-9043).

V. COST ESTIMATE FOR SERVICES

The cooperator will reimburse WS-CO for expenses incurred. Such costs include, but are not limited to, salary/benefits, vehicle use, supplies/equipment and administrative costs. An estimated itemization of expenses is listed below; however funds may be distributed between itemized categories at the discretion of WS-CO if required. Any equipment and supplies purchased under the terms of this agreement will remain the property of WS-CO.

Estimated Cost for Wildlife Management for CCC	
Salary/Benefits	14,952.13
Travel Expenses	.00
Equipment and Supplies	3,372.68
Services	.00
Subtotal	18,324.81
Overhead 16.15%	2,959.46
Pooled Job Costs 11%	2,015.73
Total	23,300.00

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days be forwarded to debt collection centers or commercial collection agencies for more aggressive action. Debtors have the option to verify, challenge and compromise claims, and have access to administrative appeals procedures which are both

reasonable and protect the interests of the United States.

***DEFINITIONS:**

Personnel: personnel costs including salary, benefits, annual and sick leave.

Supplies: includes items of less than one year shelf life including ammunition, bird scare cartridges, some animal traps, gasoline for ATV's, and office supplies.

Equipment: includes durable items with a useful life greater than a year including animal traps (if needed), firearms, and ATV's.

Services: contracted services for program support.

Pooled Job Costs: expenses that may not be particularly identified with a particular project or program and is distributed to all identifiable projects or programs to which it pertains. We use Pooled Job Cost funds to recover the cost to operate, maintain, repair and replace a vehicle(s).

Program Support: expenses incurred for a common objective not readily identifiable with a particular project or program. Examples of this expense are some administrative personnel costs, environmental compliance, Family and Medical Leave Act, or uniforms.

VI. AUTHORIZATION

CITY OF COMMERCE CITY
7887 E 60th AVE
COMMERCE CITY, CO 80022
Tax Identification Number:

Brian McBroom, City Manager

Date

ATTEST:

APPROVED AS TO FORM:

Laura J. Bauer, MMC, City Clerk

Robert Sheesley, City Attorney

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION
SERVICE WILDLIFE SERVICES
Tax Identification Number:

Martin Lowney, State Director, Colorado

Date

Jason Suckow, Director, Western Region

Date