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THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

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William Cass, P.E.  
Commissioner

David Rodrigue, P.E.  
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)  
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Division of Operations  
September 21, 2023

**REQUESTED ACTION**

Authorize the Department of Transportation (NHDOT) and the United States Department of Agriculture Wildlife Services (WS) to enter into a Memorandum of Agreement, in the amount of \$29,700.33 to provide for integrated wildlife damage management services to the NHDOT, effective upon Governor and Executive Council through June 30, 2026.

The USDA WS will provide technical assistance and information as well as wildlife control activities to the NHDOT to reduce property damage and threats to human health and safety caused by mammalian and avian wildlife.

Funding is available in State Fiscal Years 2024 and 2025, and is anticipated to be available in State Fiscal Year 2026 as follows, with the ability to adjust encumbrances through the Budget Office between State Fiscal Years if needed and justified:

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>
04-96-96-960515-3008 Bridge Maintenance			
400-500870 Construction Repair Materials	\$9,900.11	\$9,900.11	\$9,900.11

**EXPLANATION**

USDA-WS has statutory authority under the Acts of March 2, 1931, 46 Stat. 1468-69, 7 U.S.C. §§ 8351-8352, as amended, and December 22, 1987, Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 U.S.C. § 8353. , to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions while conducting a program of wildlife services involving mammal and bird species that are reservoirs for zoonotic diseases, or animal species that are injurious and/or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and human health and safety.

The USDA-WS has assisted the NHDOT in the past to protect public infrastructure by assisting with the control of groundhogs affecting a soundwall and problem beavers at a state-maintained rail trail facility. This agreement serves as a service contract to allow the two entities to generate and execute work plans for specific problem locations statewide. Operational units within the NHDOT will meet

with representatives of the USDA-WS to review and visit specific locations where nuisance wildlife cause a threat to NHDOT property or equipment, public utilities, transportation infrastructure or public health and safety. The work could be completed by NHDOT personnel with technical assistance from the USDA-WS or by USDA-WS personnel under reimbursement from the NHDOT as spelled out in this agreement and work plan. Activities could include animal removal, exclusion activities, trapping, etc. depending on the animal species and situation.

This agreement has been approved by the Attorney General's Office as to form, substance, and execution. Copies of the fully executed agreement are on file at the Secretary of State's Office and

Department of Administrative Services' Office; and subsequent to Governor and Council approval will be on file at the Department of Transportation.

We respectfully request your approval.

Sincerely,



William J. Cass, P.E.  
Commissioner

Attachments

(7/2019 version)

WS Agreement Number: 23-7233-6002-RA

WBS: AP.RA.RX33.72.6002

[optional] Cooperator PO: \_\_\_\_\_

**COOPERATIVE SERVICE AGREEMENT**  
between  
**New Hampshire Dept. of Transportation (Division of Operations)**  
and  
**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)**  
**WILDLIFE SERVICES (WS)**

**ARTICLE 1 – PURPOSE**

The purpose of this Cooperative Service Agreement is to facilitate Wildlife Services (WS) providing an integrated wildlife damage management (IWDM, in which a series of methods may be used or recommended to reduce wildlife damage) service statewide for NHDOT. WS will assist NHDOT with reducing property damage and threats to human health and safety caused by mammalian and avian wildlife. WS activities are described in the Work and Financial Plans (Attachments A & B).

**ARTICLE 2 – AUTHORITY**

APHIS-WS has statutory authority under the Acts of March 2, 1931, 46 Stat. 1468-69, 7 U.S.C. §§ 8351-8352, as amended, and December 22, 1987, Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 U.S.C. § 8353, to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions while conducting a program of wildlife services involving mammal and bird species that are reservoirs for zoonotic diseases, or animal species that are injurious and/or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and human health and safety.

**ARTICLE 3 - MUTUAL RESPONSIBILITIES**

The cooperating parties mutually understand and agree to/that:

1. APHIS-WS shall perform services set forth in the Work Plan, which is attached hereto and made a part hereof. The parties may mutually agree in writing, at any time during the term of this agreement, to amend, modify, add, or delete services from the Work Plan.
2. The Cooperator certifies that APHIS-WS has advised the Cooperator there may be private sector service providers available to provide wildlife damage management (WDM) services that the Cooperator is seeking from APHIS-WS.
3. There will be no equipment with a procurement price of \$5,000 or more per unit purchased directly with funds from the cooperator for use on this project. All other equipment purchased for the program is and will remain the property of APHIS-WS.

4. The cooperating parties agree to coordinate with each other before responding to media requests on work associated with this project.

#### ARTICLE 4 - COOPERATOR RESPONSIBILITIES

Cooperator agrees:

1. To designate the following as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this agreement.

State of NH, Department of Transportation  
Michael Servetas, P.E., Director  
PO Box 483; Concord, NH 03302  
mailto: Michael.J.Servetas@dot.nh.gov

2. To authorize APHIS-WS to conduct direct control activities as defined in the Work Plan. APHIS-WS will be considered an invitee on the lands controlled by the Cooperator. Cooperator will be required to exercise reasonable care to warn APHIS-WS as to dangerous conditions or activities in the project areas.
3. To reimburse APHIS-WS for costs, not to exceed the approved amount for each State Fiscal Year as specified in the Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the agreement with amended Work Plan and Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. No such amendment shall be effective until such amendment is approved by the New Hampshire Governor and Executive Council. The Cooperator agrees to pay all costs of services submitted via an invoice from APHIS-WS within 30 days of the date of the submitted invoice(s). Upon request sufficient documentation to substantiate the invoice amount will be provided. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996.
4. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.
5. 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.
6. To notify APHIS-WS verbally or in writing as far in advance as practical of the date and time of any proposed meeting related to the program.
7. The Cooperator acknowledges that APHIS-WS shall be responsible for administration of APHIS-WS activities and supervision of APHIS-WS personnel.
8. The Cooperator will not be connected to the USDA APHIS computer network(s).
9. To obtain the appropriate permits for removal activities for species listed in the Work Plan and list USDA, APHIS, Wildlife Services as subpermittees. *{As may be required}*

## ARTICLE 5 – APHIS-WS RESPONSIBILITIES

APHIS-WS Agrees:

1. To designate the following as the APHIS-WS authorized representative who shall be responsible for collaboratively administering the activities conducted in this agreement.

USDA, APHIS, WS  
David Allaben, NH/VT State Director  
59 Chenell Drive, Suite 7  
Concord, NH 03301  
(603) 223-6832  
David.j.allaben@usda.gov

2. To conduct activities at sites designated by Cooperator as described in the Work and Financial Plans. APHIS-WS will provide qualified personnel and other resources necessary to implement the approved IWDM activities delineated in the Work Plan and Financial Plan of this agreement.
3. That the performance of wildlife damage management actions 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 federal statutes. APHIS-WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
4. To invoice NH DOT quarterly for actual costs incurred by APHIS-WS during the performance of services agreed upon and specified in the Work Plan. Upon request sufficient documentation to substantiate the invoice amount will be provided. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of APHIS-WS pertaining to such claims for reimbursement to the extent permitted by Federal law and regulations.
5. To provide an annual report to the NHDOT on WS activities conducted under this Cooperative Service Agreement no later than 45 days after the agreement year ends to include a cost/benefit analyses of the service to NHDOT pursuant to this agreement.
6. To provide prompt technical assistance, direct control activities, educational workshops and programs, and WS will liaison with regulatory agencies for consultation on endangered and threatened species and, wildlife management and ecology.

## **ARTICLE 6 – CONTINGENCY STATEMENT**

This agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS-WS upon failure of Congress to so appropriate. This agreement may also be reduced or terminated if Congress only provides APHIS-WS funds for a finite period under a Continuing Resolution.

This agreement is further contingent upon approval by the New Hampshire Governor and Executive Council. All obligations of Cooperator herein are contingent upon the availability and continued appropriation of funds, and in no event shall Cooperator be liable for any payments hereunder in excess of such available appropriated funds.

## **ARTICLE 7 – NON-EXCLUSIVE SERVICE CLAUSE**

Nothing in this agreement shall prevent APHIS-WS from entering into separate agreements with any other organization or individual for the purpose of providing wildlife damage management services exclusive of those provided for under 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 – 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-WS provides goods or services on a cost recovery basis to nonfederal recipients, in accordance with all applicable laws, regulations and policies.

## **ARTICLE 10 – LIABILITY**

APHIS-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).

## **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 - DURATION, REVISIONS, EXTENSIONS, AND TERMINATIONS

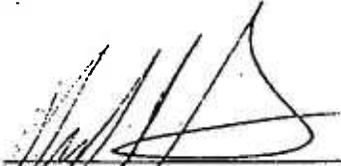
This agreement shall become effective upon approval by the New Hampshire Governor and Executive Council after July 1, 2023, and shall continue through June 30, 2026, not to exceed five years. This Cooperative Service Agreement may be amended by mutual agreement of the parties in writing. No such amendment shall be effective until such amendment is approved by the New Hampshire Governor and Executive Council. The Cooperator must submit a written request to extend the end date at least 10 days prior to expiration of the agreement. Also, this agreement may be terminated at any time by mutual agreement of the parties in writing, or by one party provided that party notifies the other in writing at least 60 days prior to effecting such action. Further, in the event the Cooperator does not provide necessary funds, APHIS-WS is relieved of the obligation to provide services under this agreement.

This agreement is further contingent upon approval by the New Hampshire Governor and Executive Council. All obligations of Cooperator herein are contingent upon the availability and continued appropriation of funds, and in no event shall Cooperator be liable for any payments hereunder in excess of such available appropriated funds.

In accordance with the Debt Collection Improvement Act of 1996, the Department of Treasury requires a Taxpayer Identification Number for individuals or businesses conducting business with the agency.

Cooperator's Tax ID No.: 02-600018  
APHIS-WS's Tax ID: 41-0696271

**NH DEPARTMENT OF TRANSPORTATION**

  
\_\_\_\_\_  
Michael J. Servetas, P.E., Director  
State of NH, Department of Transportation  
PO Box 483; Concord, NH 03302

6/23/23  
\_\_\_\_\_  
Date

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

**DAVID**  
**ALLABEN**  
\_\_\_\_\_  
David Allaben, State Director  
USDA, APHIS, WS  
59 Chenell Drive, Suite 7  
Concord, NH 03301

Digitally signed by DAVID  
ALLABEN  
Date: 2023.05.16 09:16:23  
-04'00'

 June 15, 2023  
\_\_\_\_\_  
Date

(7/2019 version)

WS Agreement Number: 23-7233-6002-RA

WBS: AP.RA.RX33.72.6002

[optional] Cooperator PO: \_\_\_\_\_

## WORK PLAN

### Optional information:

**Cooperator:** NH Dept. of Transportation (Division of Operations)

**Location:** New Hampshire, Statewide

**Dates:** approval of New Hampshire Governor and Executive Council after July 1, 2023– June 30, 2026

In accordance with the Cooperative Service Agreement between NH Dept. of Transportation (Division of Operations) 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 of this project during the period of this agreement.

### Location

New Hampshire (Statewide)

### Purpose

NH DOT requested technical assistance and direct control action in managing mammalian and avian wildlife damage problems throughout New Hampshire to help alleviate flooding problems, property damage, and protect human health and safety on public and private lands.

### Program Objective

To reduce property damage and threats to human health and safety to roads and bridges, railroads, public and private lands, agriculture, timber, wildlife habitat, and endangered or threatened species and their habitats caused by mammalian and avian wildlife. The proposed wildlife management program will be comprised of direct and technical assistance aimed at resolving wildlife causing the damage to specific DOT sites. To facilitate Wildlife Services (WS) providing an integrated wildlife damage management (IWDM) service statewide for NHDOT. Damaging species may include beavers, muskrats, woodchucks, pigeons, starlings, house sparrows, rodents, and other mammals and birds causing damage to property managed by NH DOT.

### Plan of Action

The NHDOT and WS Representative will jointly agree upon priority in which wildlife damage management will be conducted (roads, bridges, public and private lands, agriculture, timber, wildlife habitat, etc.). For wildlife management, WS and or the NHDOT will identify the location of wildlife creating damage within the delineated area, contact landowners with property harboring nuisance wildlife populations to obtain permission to perform control activities.

WS activities under this cooperative effort will be limited to the State of New Hampshire. Techniques will be environmentally sound, safe, and selective and approved under the National Environmental Policy Act (NEPA), NH Bird and Mammal Environmental Assessment (EA). Both Federal and State permits will be secured by WS, if necessary, to perform wildlife damage management activities and these activities will be conducted within compliance of State and Federal regulations. These methods include the alteration of cultural practices as well as habitat and behavioral modification to prevent damage. However, controlling wildlife damage may require that the offending animal(s) are killed or that the population of the offending species is reduced. Disposal of animal carcasses will be compliant with Federal, State, county, and local regulations. Methods of disposal may be through field disposal, burial and/or deposited in approved landfill facilities.

**Effective Dates**

The agreement shall become effective upon approval by New Hampshire Governor and Executive Council after July 1, 2023 and shall expire on June 30, 2026.

**FINANCIAL PLAN**

Cost Element		year 1	year 2	year 3
Personnel Compensation		\$6,687.40	\$6,687.40	\$6,687.40
Vehicles		\$937.33	\$937.33	\$937.33
Supplies and Materials		\$145	\$145	\$145
Equipment		\$0.00	0	0
Subtotal (Direct Charges)		\$7,769.73	\$7,769.73	\$7,769.73
Pooled Job Costs	11.00%	\$865.12	\$865.12	\$865.12
Indirect Costs	16.15%	\$1,265.26	\$1,265.26	\$1,265.26
Agreement Total		\$9,900.11	\$9,900.11	\$9,900.11
The distribution of the budget from this Financial Plan may vary as necessary to accomplish the purpose of this agreement, but may not exceed: <b>\$9,900.11 per state fiscal year</b>				

Financial Point of Contact/Billing Address

Cooperator Name, Address, Phone Number, Email

NHDOT -Bureau of Bridge Maintenance  
Accounting Technician  
PO Box 483 Concord, NH 03302  
Bureau26@dot.nh.gov

APHIS-WS State Office Name, Address, Phone Number, Email

Lori Freeman, Budget Analyst  
59 Chenell Drive, Suite 7  
Concord, NH 03301  
(603) 333-6454 Lori.a.freeman@usda.gov

NH Attorney General



Signature

Samuel Burgess

Name

Assistant Attorney General

Title

Authorized to enter into Agreement as approved by  
Governor and Council on:

\_\_\_\_\_  
Secretary of State

\_\_\_\_\_  
Dated