

AN ORDINANCE AUTHORIZING A COOPERATIVE SERVICE AGREEMENT
BETWEEN THE CITY OF AVON LAKE AND THE UNITED STATES DEPART-
MENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION
SERVICE RELATED TO THE DEER MANAGEMENT PLAN AND DECLARING
AN EMERGENCY.

WHEREAS, the overpopulation of white-tailed deer within the City of Avon Lake negatively impacts public health and safety primarily due to an excessive number of deer-related vehicular accidents, as well as destruction of natural habitats and biodiversity, increases the risk of disease transmission to humans from deer parasites, and damage to private and public property; and

WHEREAS, it has been determined that it is in the best interest of the City to implement a comprehensive deer management plan to reduce the deer population of the City to a level that is acceptable from a safety and nuisance perspective and thereafter to maintain the deer population at such level; and

WHEREAS, as part of the City's comprehensive deer management plan, it is necessary to authorize a cooperative service agreement with the United States Department of Agriculture, Animal and Plant Health Inspection Service, as recommended by the Environmental Committee of City Council.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor be, and he hereby is authorized and directed to enter into a Cooperative Service Agreement with the United States Department of Agriculture, Animal and Plant Health Inspection Service as part of a comprehensive deer management plan at a cost not to exceed \$41,342.00, a copy of which proposed agreement is attached hereto and incorporated herein by reference.

Section No. 2: That the Mayor be, and he hereby is authorized to execute and deliver on behalf of the City any and all instruments he may deem necessary or advisable to implement the Cooperative Service Agreement

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were conducted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal actions, were in meetings open to the public, in accordance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure necessary to protect the health and safety of the City's residents, the emergency being the necessity to begin the process of reducing the deer population while conditions are favorable. Therefore, this Ordinance shall be in full force and effect immediately after its passage and approval by the Mayor.

1st reading: 9/11/2023

2nd reading:

3rd reading:

PASSED: 9/25/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 9/29/2023

APPROVED: 9/26/2023

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor

COOPERATIVE SERVICE AGREEMENT
between
THE CITY OF AVON LAKE (COOPERATOR)
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 allow for reimbursement of funds expended by the APHIS-WS program while assisting the Cooperator with their White-tailed Deer Management Plan as detailed in the attached work plan and financial plan.

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;

COOPERATOR:

Kevin Brubaker, Public Works Director
The City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012
Phone: (440) 930-4126
Email: kbrubaker@avonlake.org

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 annually approved amount 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. 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). 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. To obtain the appropriate permits for removal activities for species listed in the Work Plan and list USDA, APHIS, Wildlife Services as subpermittees if applicable.
9. The Cooperator will not be connected to the USDA APHIS computer network(s).

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:

Andrew J. Montoney, State Director

USDA, APHIS, WS

4469 Professional Parkway

Groveport, Ohio 43125

Phone: (614) 993-3444

Email: Andrew.j.montoney@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 WDM 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 Cooperator **monthly** for actual costs incurred by APHIS-WS during the performance of services agreed upon and specified in the Work Plan. 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 the Cooperator with an estimate of APHIS WS deer damage management expenditures prior to May 1, 2021.

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.

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 on **October 1, 2023** and shall continue through **September 30, 2024**. This Cooperative Service Agreement may be amended by mutual agreement of the parties in writing. 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 30 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.

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.: 34-6000166

APHIS-WS's Tax ID: 41-0696271

COOPERATOR:

Gregory J. Zilka, Mayor
City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012
Phone: (440) 930-4100
Fax: (440) 930-4107

Date

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

Andrew J. Montoney, State Director
USDA, APHIS, WS
4469 Professional Parkway
Groveport, Ohio 43125
Phone: (614) 993-3444
Email: Andrew.j.montoney@usda.gov

Date

Keith P. Wehner
Director, Eastern Region
USDA, APHIS, WS
920 Main Campus Drive; Suite 200
Raleigh, NC 27606

Date

WORK PLAN

In accordance with the Cooperative Service Agreement between the City of Avon Lake 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.

Program Objective

To assist the CITY OF AVON LAKE with meeting the objectives of their White-tailed Deer Management Plan.

Plan of Action

This work plan is contingent upon an approved deer management plan between the CITY OF AVON LAKE and the Ohio Division of Wildlife, and the resulting permit issued by the Ohio Division of Wildlife and the issuance of an Avon Lake Municipal Deer Control Permit (MDCP) by the Avon Lake Chief of Police or his/her designee.

Through the implementation of management measures described below, APHIS WS will assist the CITY OF AVON LAKE with the sharpshooting and baiting portion of their White-tailed Deer Management Plan. These objectives are to help reduce damage and public safety threats caused by white-tailed deer in the CITY OF AVON LAKE.

APHIS WS employees will be used to assist with the baiting and sharpshooting portion of the White-tailed Deer Management Plan of the CITY OF AVON LAKE. WS will coordinate with the CITY OF AVON LAKE project coordinator to inspect, propose and certify baiting and shooting zones to be used. APHIS WS personnel will prepare and arrange any necessary deer damage management equipment. WS will conduct removal of white-tailed deer from the CITY OF AVON LAKE using rifles equipped with noise-suppression devices. WS will collect and transport whole carcasses to a predetermined CITY OF AVON LAKE facility and process deer (eviscerate/gut). WS will collect all data; live weight, sex, age, fetus counts. WS will obtain a processor/butcher to prepare and package the meat for donation to a charity of the CITY OF AVON LAKE'S choice. WS will invoice the CITY OF AVON LAKE as part of this agreement for a predetermined rate negotiated by WS with the processor/butcher for up to 80 deer. The 80 deer referenced may not represent the number of deer that will be removed for a given year and instead is used as a place holder to estimate processor/butcher costs. The ODW permitted number of deer to be removed could be less than 80 deer for the year and the CITY OF AVON LAKE would only be invoiced for the deer removed. If more than 80 deer are requested for processing and available funds can not cover the cost, a written/signed revision to this agreement would be needed to cover those additional processor/butcher costs. WS will deliver deer to the processor/butcher the following morning after removal efforts. WS will conduct removal activities between October 1, 2023 and March 31st 2024. Every effort will be made to conduct removal activities during this time period but activities are contingent upon weather conditions and site availability.

CITY OF AVON LAKE will be responsible for the following:

- Obtain Deer Permits from ODW and any other necessary authorizations naming APHIS WS as subpermittee.
- Provide a Project Coordinator during all phases of the project. The Project Coordinator shall be present and reachable via cellular phone during removal activities.
- Provide a centralized site for the storage of carcasses during nightly operations with the following minimum specifications: Enclosed garage or outbuilding with cement floor, drain, running water with standard hose connection, electricity and table or writing surface.
- Provide yearly white-tailed deer population estimates.
- CITY OF AVON LAKE law enforcement shall verify that shooting areas are closed and empty of visitors ½ hour prior to removal operations.
- CITY OF AVON LAKE law enforcement shall be available during removal operations and in direct communications with APHIS WS.
- CITY OF AVON LAKE will ensure the Lorain County Metroparks is aware of sharpshooting activities in Kopf Family Reservation and will provide that notification in writing or by email and a copy of that correspondence shall be provided to APHIS WS.
- CITY OF AVON LAKE shall obtain a signed WS WID form or Lorain County Metroparks permit from the Lorain County Metroparks as needed for sharpshooting activities occurring within or near the perimeter of Kopf Family Reservation and shall provide a copy to APHIS WS.
- CITY OF AVON LAKE understands that work inside Kopf Family Reservation is contingent upon enough area for APHIS WS to operate without having to utilize lands owned by Lorain County Metroparks and that those sites must be agreed upon by APHIS WS and the CITY OF AVON LAKE before sharpshooting activities can begin.
- CITY OF AVON LAKE ensures a plan is in place to retrieve deer from properties in Kopf Family Reservation owned by Lorain County Metroparks in the rare event that deer removed by sharpshooting expire on their property and shall provide a copy of the agreed upon document to APHIS WS . If permits or permission is needed to accomplish the plan the CITY OF AVON LAKE will obtain the permits or permission (WS WID forms and/or other) and provide a copy to APHIS WS prior to any sharpshooting activities within or near the perimeter of Kopf Family Reservation.
- CITY OF AVON LAKE shall arrange for donation of the meat and provide WS with that information to provide to the processor/butcher.

- CITY OF AVON LAKE shall maintain records as required by ODW and report results to ODW and APHIS WS upon completion of the program.

Monitoring of Accomplishments

APHIS WS will provide a final annual report to the City of Avon Lake no later than April 30 of the removal year.

FINANCIAL PLAN

Cost Element		Full Cost
Personnel Compensation		\$21,232
Travel		0
Vehicles		\$737
Other Services		\$8,880
Supplies and Materials		\$665
Equipment		\$1,000
Subtotal (Direct Charges)		\$32,514
Pooled Job Costs [for non-Over-the Counter projects]	11.00%	\$3,577
Indirect Costs	16.15%	\$5,251
Aviation Flat Rate Collection		
Agreement Total		\$41,342
<p>The distribution of the budget from this Financial Plan may vary as necessary to accomplish the purpose of this agreement, but may not exceed: \$41,342.</p> <p>APHIS WS staff may be compensated at regular time, night-time-differential, and/or overtime pay rates in accordance with programmatic Directives to accomplish the purpose of this agreement. The final monthly invoice is expected to arrive by the end date of this agreement, but due to adjustments and potential delays in final charges clearing the financial process, the final bill may be delayed.</p>		

Financial Points of Contact:

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Carroll, Ohio 43112
Phone: (614) 595-2396
Patricia.a.degraff@usda.gov