

## 10-YEAR PRAIRIE DOG CONSERVATION CONTRACT

THIS CONTRACT is entered into by and between \_\_\_\_\_ a Montana for-profit corporation in good standing, and current Possessor of the Land described in Exhibit(s) A and B, whose address is \_\_\_\_\_ ("Cooperator"), and the Department of Montana Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

### I. RECITALS

A. Whereas the Department recognizes that prairie dog colonies provide habitat conditions required by several Montana Species of Concern, including burrowing owls, swift fox, mountain plover, and especially the black-footed ferret.

B. Whereas the Department and Cooperator recognize that conservation of prairie dog colonies is vital to the existence of black footed ferrets and other wildlife species in Montana,

C. Whereas the Department has pursued a conservation contract by voluntary, cooperative means to conserve this important wildlife habitat,

D. Whereas the Cooperator is the owner of certain real property containing one or more prairie dog colonies in Rosebud xx County, Montana (Project Area), described in Exhibit A, attached hereto and incorporated herein by this reference, and

E. Whereas the purpose of this 10-Year Prairie Dog Conservation Contract ("Contract") is to conserve, protect, and enhance prairie dog colonies on approximately \_\_\_\_\_ acres.

### II. WITNESSETH

NOW, THEREFORE, the Cooperator, for and in consideration of the sum of \$ \_\_\_\_\_ .00 and other good and valuable consideration, as set forth more particularly below, the receipt of which is hereby acknowledged, does hereby voluntarily enter into this contract with the Department, for a term of 10 years, upon the following terms:

1. **PRAIRIE DOG COLONY DEFINED:** Prairie dogs occur in lowland/prairie grasslands throughout eastern Montana. Montana's grasslands are typified by a diversity of native perennial grasses and forbs. A prairie dog colony is defined as an area of land that is composed of a group of associated prairie dog burrows that are no more than 200 meters from the nearest burrow. The colony is mapped by circumscribing the outer boundary of the burrows.

2. **THE PROJECT AREA DEFINED:** The acres to be enrolled in this Contract are described in Exhibit "A" and depicted in Exhibit "B", both attached hereto and incorporated herein (the "Project Area").

3. **PURPOSE:** The purpose of this Contract is to conserve, protect, and permit management activities of prairie dog habitat in the Project Area and grants the Department the right to prevent certain activities on the Project Area that have detrimental impacts to the habitat accompanied with the right of the Department or its assigned agent to enter, monitor and enforce the terms of the Contract. An additional purpose of this Contract is to provide the Department and its assigns the ability to manage prairie dog colonies which activities shall include plague management, via flea control, and annual monitoring of prairie dog colonies. Sylvatic plague management is accomplished annually by either applying deltamethrin (trade name DeltaDust) at the entrance to each burrow or by distributing fipronil grain or an edible pellet (trade name FipBits). The prairie dog population must be monitored annually to assess the density of prairie dogs within the colonies, and the boundary of the prairie dog colonies must be mapped to determine whether expansion is occurring.

4. **ADDITIONAL PURPOSE:** An additional purpose of this Contract shall be to preserve habitat and opportunities during the Contract term for the Department and cooperating agencies, including but not limited to the United States Fish and Wildlife Service (“USFWS”) and United States Department of Agriculture - Wildlife Services (“USDA”), to introduce and maintain a population of black footed ferrets on the Project Area. Any such introduction shall be governed by applicable federal and state laws.

5. **TERM:** The term of this Contract shall be for 10 years, beginning on the first day of \_\_\_\_\_, 2024, and terminating on the last day of \_\_\_\_\_, 2034.

6. **COOPERATOR OBLIGATIONS:** The Cooperator hereby agrees that it will maintain the wildlife habitat existing on the Project Area in conjunction with the current agricultural use. The Cooperator further agrees that it will commit to and cooperate in the release of black-footed ferrets on the Project Area, should the Department and the USFWS elect to do so.

To accomplish the purposes of this Contract, the Cooperator hereby agrees to:

- a. Not to remove, destroy, control, or manipulate prairie dog colonies and associated habitat, including native grassland, sagebrush, and other native vegetation by any means, including, but not limited to, burning, plowing, chemically treating, building development or flooding on the Project Area.
- b. To minimize damage to native plants, sagebrush, and wildlife, by limiting the use and type of pesticides and agrichemicals for noxious weed and insect control on the Project Area. The Landowner will limit use of such chemicals to the minimum amounts and frequency necessary to control noxious weeds and insects.
- c. That there shall be no lethal control of any prairie dog(s) on the Project Area by any means.
- d. To provide the Department with prior notice in writing no later than 30 days after any sale, transfer, or lease of the Project Area.

e. The Cooperator shall grant access to the Department or entities cooperating with the Department, including but not limited to USDA, USFWS, and private contractors, to conduct plague management on the Project Area annually between April and November. Subject to Landowner approval, DeltaDust, fipronil grain, or both, may be applied to prairie dog colonies on the Project Area. The Department or cooperating entity will give the Cooperator \_\_\_\_\_ days' notice prior to each site visit and shall consult with the Cooperator regarding the means of access, such as ATV.

f. The Cooperator agrees to monitor the colonies on the Project Area twice annually per the Department's protocol between April and November. At the Department's or cooperating entity's discretion, monitoring may include counting prairie dogs to estimate density and mapping the boundary of the active prairie dog colonies.

g. The Cooperator agrees to allow the release of black-footed ferrets onto the Project Area, cooperate in governmental efforts to release black-footed ferrets onto the Project Area, including, but not limited to, governmental plague mitigation and public processes, and enter into a USFWS safe harbor agreement for the term of this Contract, which agreement would include access to monitor ferrets where they occur. The consideration paid to the Cooperator under this Contract includes a \$40-per-acre bonus to carry out the terms of this provision. This provision does not obligate the Department to release ferrets onto the Project Area, should the federal or state processes or the circumstances of the prairie dog population make such a release impossible or impracticable.

**7. LIMIT TO COOPERATORS OBLIGATIONS:** It is understood that this Contract imposes no obligations or restrictions upon the Cooperator, as landowner, except as provided herein, and that neither the Cooperator nor Cooperator's successors, assigns, lessees, nor any other person or party claiming under them shall be restricted from using all of the Project Area in the customary manner for agricultural practices except as provided herein. Examples of customary agricultural practices include livestock grazing and land maintenance activities such as fencing, stock water (including dam maintenance), and road maintenance.

It shall not be a violation of this Contract for alterations of the Project Area to occur that result from natural fire, flood, acts of God, or other elements beyond the Cooperator's control. However, after each such event, if damage occurs to the wildlife habitat protected by this Contract, the Cooperator shall notify the Department of the damage as soon as practicable.

**8. REVIEW OF TOWN LOCATION(S):** Cooperator understands and acknowledges that prairie dog colonies may shift and/or expand over time, and that the colonies existing on the Project Area may shift outside the initial acres identified as the Project Area in Exhibits A and B. To accommodate the potential shift in location of the colonies within the term of this Contract, the Department shall inspect the location of the town(s) every 3 years during the term of this Contract. If any colony has shifted but the acreage has not increased, the Department may propose in writing to the Cooperator that Exhibits A and B be amended to reflect this change. In no instance will the total land area increase beyond the initial acreage, except as mutually agreed, and no additional payment shall be paid to the Cooperator. If the acreage has expanded beyond the Project Area, the Department may propose in writing to the Cooperator that Exhibits A and B be amended to reflect this change, and the parties may agree to additional financial

compensation to the Cooperator. As to any areas that are no longer enrolled under any recorded amendment, the terms of this Contract shall terminate, and the unenrolled acres shall no longer be managed or restricted by this Contract.

9. **NOTICES:** The Department designates its Region 7 Wildlife Manager located at 352 I-94 Business Loop, Miles City, MT 59301, as its representative under this Contract. The Cooperator shall deliver all written notices to the Department through the designated representative, via mail or email. The Cooperator shall respond to any requests from the Department to self-certify compliance with this Contract within 30 days of the request or a reasonable time thereafter. All notices from the Department to the Cooperator shall be made in writing to the Cooperator at the address specified on page one of this Contract. The Department may change its designated representative, and the Cooperator may change its address, by either party notifying the other in writing via mail or email of such change. The Department will contact the Cooperator via mail, email, or phone to schedule a mutually acceptable time for the Department or a cooperating entity to access the Project Area for the purpose of management and monitoring compliance with this Contract.

10. **CONTRACT COMPLIANCE:** If the Department determines that the Cooperator did not adhere to the terms of this Contract, the Department must give written notice of the specific breach. If the breach is not satisfactorily addressed within 60 days, the Department may then, at its sole discretion, terminate this Contract. The Department will notify the Cooperator in writing if it has elected to terminate this Contract. If this Contract is terminated under this Section, the Cooperator will be obligated to repay the Department as set forth in DAMAGES, Section 11.

In the event the Cooperator sells a portion or all of the Project Area, or otherwise loses management authority to fulfill the terms of this Contract, the Cooperator will be obligated to repay the Department as described in the DAMAGES, Section 11.

11. **DAMAGES:** If this Contract is terminated due to noncompliance by the Cooperator, the Department will be reimbursed for its costs. Reimbursement will be the amount determined by the following formula:

$$\text{Sum of all FWP payments} \times \frac{\text{Number of years remaining in the Contract}}{\text{Total \# of years in the original term}} +$$

$(\text{Sum of FWP payments} \times 0.25) = \text{Reimbursement to FWP but not more than FWP payments.}$

12. **ASSIGNMENT OF CONTRACT:** This Contract shall be binding upon, and inure to the benefit of, the heirs, personal representatives, administrators, successors and assigns of the Cooperator and the Department. The Cooperator shall give notice to the Department of any partial or entire changes in ownership or possession of the Project Area covered by this Contract. If the Cooperator's ownership or possession of the Project Area ends during the term of the Contract, and the new owner or possessor does not agree to continue this Contract and be substituted as the Cooperator under this Contract, this Contract shall terminate, and the

Cooperator shall repay to the Department a sum computed under the formula set forth in the DAMAGES Section 11, as appropriate. Any obligation of the Cooperator to repay the Department any sum under this Contract shall continue in full force and effect following the termination of this Contract.

13. **INDEMNIFICATION:** The Department agrees to hold harmless, indemnify and defend the Cooperator and the Cooperator's employees, and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising from or connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on the Project Area as a result of the Department's negligence, or willful or wanton misconduct in exercising its rights under the terms of this Contract.

The Cooperator agrees to hold harmless, indemnify and defend the Department and the Department's employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising from or connected with injury to or death of any person, physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on the Project Area as a result of the Landowner's negligence, or willful or wanton misconduct in performing its obligations under the terms of this Contract.

14. **VENUE:** In the event of any litigation between the parties to this Contract, venue shall be in the district court of Lewis and Clark County, Montana. This venue provision shall remain in force and effect following termination of this Contract. Any legal and attorney fees incurred by the prevailing party shall be reimbursed by the opposing party.

15. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties hereto and may be amended only in a writing signed by the parties. No verbal agreements or representations made by either party shall be binding upon the other.

16. This Contract expires on: **xx, 2034.**

17. The signatures below certify that the Department and Cooperator have read the above Contract and willfully agree to these terms and conditions.

IN WITNESS WHEREOF, the Cooperator executes this Contract on the date signed.

**Cooperator:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: President

**Montana Department of Fish, Wildlife & Parks:**

By: \_\_\_\_\_

Ken McDonald

Wildlife Division Administrator

DRAFT

**EXHIBIT A**  
**Legal Description of the Project Area (Enrolled Areas)**

**SAMPLE**

Township 2 North, Range 15 East, P.M.M., Sweet Grass County, Montana

Section 16: All.  
Section 19: All.  
Section 21: All.  
Section 29: All.  
Section 30: 2.44 acres in NE¼, as depicted in Exhibit B.  
Section 32: All.  
Section 33: All.  
Section 34: W½.

Township 2 North, Range 14 East, P.M.M., Sweet Grass County, Montana

Section 24: Tract C-2 of COS #120268, and Tract C-4 of COS #124971.

## EXHIBIT B

### Map of the Project Area

#### Sample map

- Minimum of 1500 ac of active prairie dog towns required.
- Prairie dog towns on adjacent public lands or participating neighbors can be combined to reach the 1500 ac minimum
  - Map shows 1549 acres of active prairie dog towns. Portions are on DNRC and BLM.
  - Active acres are buffered by 200m. The lease agreement would enroll 4431 acres.
  - Only deeded acres are enrolled and eligible for payments.
- Colonies must be within 1.5 km (~ 1 mile) of each other to be included in lease.
  - Map shows 7 buffered towns that will be enrolled.
  - The buffered town in red to the west is too far to be included in the lease.

