



New Hampshire Fish and Game Department

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Glenn Normandeau
Executive Director

July 6, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a **SOLE-SOURCE** contract with Daniel and Melissa Hayward d/b/a TERNS LLC (Vendor # 208393), Sunapee, NH 03782-2815 to produce a comprehensive operations manual to support ongoing endangered seabird restoration on the Isles of Shoals for a total of \$18,000 from the date of Governor and Council approval through December 31, 2016. Funds are 65% federal and 35% Conservation License Plate.

Funding is available in account Conservation License Plate, for these services:

03-75-75-751520-2139 WILDLIFE PROGRAM – Conservation License Plate

	<u>FY17</u>
20-07500-21390000-304-500841 Research and Management	\$18,000

EXPLANATION

This contract is entered into by New Hampshire Fish and Game and Daniel & Melissa Hayward d/b/a TERNS LLC, herein referred to as NHFG and TERNS LLC, respectively. NHFG proposes to enter into **Sole Source** contract with TERNS LLC to develop an operations manual, to transfer data files and documents, and to provide miscellaneous supplies procured with TERNS LLC or the Hayward's personal funds. Without this contract the Department, research institutions, and seabird conservation groups risk losing the valuable knowledge and insights that the Hayward's have developed during their many years of running the tern restoration project.

Daniel Hayward has been involved with the Seabird Restoration Project since 1998 when just 41 pairs of common terns settled in to nest. Melissa Hayward joined the project in 2003 and by 2011 the tern colony had grown tremendously to over 2,800 pairs, with all three-target species successfully nesting, including roseate terns, a federally endangered species that is struggling for survival throughout its range.

All state funds for this project are from the Conservation License Plate Program. The U.S. Fish and Wildlife Service will provide 65% matching funds for all eligible activities. These federal funds are currently budgeted in the Conservation License Plate operating budget.

Conserving New Hampshire's wildlife and their habitats since 1865.

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

July 6, 2016

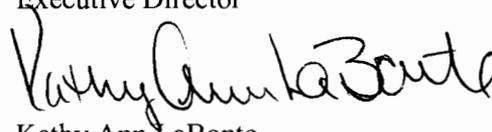
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Upon Governor and Council approval, TERNS LLC will be reimbursed according to completion of tasks that are detailed in exhibits A and B.

Respectfully submitted,



Glenn Normandeau
Executive Director



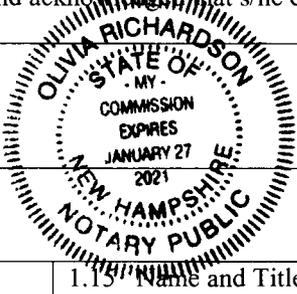
Kathy Ann LaBonte
Chief, Business Division

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Fish and Game		1.2 State Agency Address 11 Hazen Drive, Concord, NH 03301	
1.3 Contractor Name Daniel & Melissa Hayward d/b/a TERNS, LLC		1.4 Contractor Address 133 Ryder Corner Road, Sunapee, NH 03782-2815	
1.5 Contractor Phone Number 603-763-5763	1.6 Account Number 2139-304-0841	1.7 Completion Date 12/31/16	1.8 Price Limitation \$18,000.00
1.9 Contracting Officer for State Agency Glenn Normandeau, Executive Director		1.10 State Agency Telephone Number 603-271-2741	
1.11 Contractor Signature <i>Melissa Hayward</i>		1.12 Name and Title of Contractor Signatory Melissa Hayward, Member Daniel G. Hayward, Member	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Sullivan</u> On <u>3rd of August 2016</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <i>Olivia Richardson</i> [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <i>Olivia Richardson</i>			
1.14 State Agency Signature <i>[Signature]</i> Date: <u>8/23/16</u>		1.15 Name and Title of State Agency Signatory Executive Director	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>[Signature]</i> On: <u>8/26/16</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

EXHIBIT A
SCOPE OF SERVICES

Goal: Provide documentation, supplies, and information beneficial to the long-term operation of the tern restoration project in NH.

Objective 1) Develop an operations manual for the tern restoration project on White and Seavey Islands. This manual will provide the following information:

- Table of Contents
- Recommended staffing details and required equipment
- A timeline for all major activities for May – August, including tern breeding phenology
- A checklist for season opening, including building maintenance and preparation of Seavey Island prior to the arrival of terns
- Written instructions for blind maintenance and construction including timing of setup and end-of-season break down and storage.
- Written instructions on marine rail system, pre-season set up, maintenance, troubleshooting, and post-season storage
- Overall instructions for maintenance and troubleshooting of solar and electrical systems, water cistern, plumbing, and composting system
- Daily maintenance activities for project staff living on White island
- Written instructions for colony management, including the methodology used for June census and productivity plots
- Written instructions for banding, including safe capture and handling procedures
- Written instructions on management of gulls and other tern predators, including past events of significance and problem-solving strategies
- Description of building closing procedures and winterizations and of supplies and equipment

Cost: \$7,500

Objective 2) Transfer data and documents that have been collected and written by project staff beginning with 2006, including but not limited to:

- Excel spreadsheets and other data forms
- Word documents
- Protocol manuals
- Binders and notebooks
- Cost: \$5,500

Objective 3) Allow state to retain miscellaneous supplies for tern restoration project including: laptop, banding tools, spotting scopes and tripods, gun cabinet, stove, electric dog fencing, medicine cabinet, portable shower, beds, space heater, printers, lamps, office chair, toolbox (with keys), tools, ammo box (with keys), building, electrical and plumbing supplies, dishware, cooking utensils, vhf antenna, radio antenna, router, and solar array components.

Amount: \$5,000

Date: 8/3/16

Initials: DAH MHT

**EXHIBIT B
METHOD OF PAYMENT**

NHFG agrees to reimburse the contractor up to \$18,000 of approved project expenses upon completion of project tasks and submission of identified reports.

1. Contractor shall apply for reimbursement of actual costs through submission of an invoice for all federally eligible activities to be coded as follows: **Federal Grant T-2-3-R-1, Project 14.**
2. Contractor shall submit invoices to:

Linda Verville
NH Fish and Game
11 Hazen Drive
Concord, NH 03301

The first invoice for \$5,000 shall be payable upon receipt of the supplies listed in objective 3 that are not currently found on project site, along with Fish and Game's 25 hp outboard motor currently in the possession of TERNS LLC. These items will be delivered to NH Fish and Game Headquarters, 11 Hazen Drive Concord, NH 03301 within three weeks of contract approval.

A second invoice of \$5,500 shall be payable upon receipt of historic electronic files including word documents and datasheets collected since 2005 provided along with an itemized list of the files no later than September 1, 2016. Files can be provided via the laptop requested as part of the supply list or on a flash drive or external hard drive with suitable storage space.

A draft operations manual in Microsoft Word or compatible format will be sent to NH Fish and Game by October 1, 2016. New Hampshire Fish and Game will have 3 weeks to review the manual for completeness and quality. TERNS LLC will make requested revisions and submit the final operations manual along with an invoice for the remaining balance of \$7,500.

3. Continuation of this contract for the full project period is subject to availability of federal funds for this purpose. If funding is not available, the contractor will be reimbursed on a prorated basis for the project expenses incurred up to the termination date.
4. The contractor agrees to maintain financial documents necessary to comply with the state and federal regulations.
5. Any publications or publicity regarding these projects must recognize funding sources: USFWS State Wildlife Grants, New Hampshire Fish and Game Nongame and Endangered Wildlife Program, NH Moose Conservation License Plate Program.

Date: 8/3/16

Initials: Duff Mst

**Exhibit C
Special Provisions**

The NH Fish and Game Department agrees to waive the insurance provisions under paragraph 14.

Exhibit D

Federal Award Information and Compliances

This contract is funded by a grant to the New Hampshire Fish and Game Department from the Department of Interior, United States Fish and Wildlife Service, through the "State Wildlife Grants" federal assistance program (CFDA # 15.634).

This contract is subject to Sub-part C of the OMB guidance in 2 CFR Part 180, as adopted and supplemented by 2 CFR Part 1400 Non-procurement Debarment and Suspension.

Certification Regarding Debarment and Suspension: By signing this contract the contractor certifies per Subpart C of 2 CFR Part 180 that neither the contractor nor its principles (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded by any federal department or agency from participating in transactions supported by Federal funds.

Date: 8/3/14

Initials: Duff MH

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Terns, LLC is a New Hampshire limited liability company formed on March 18, 2010. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 10th day of August, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



TERNS

The Ecological Restoration of Native Species



LLC Certification of Authority

I, Daniel G. Hayward hereby certify that I am a Member of TERNS, LLC, a limited liability company under RSA 304-C and that Melissa D. Hayward is also a Member of TERNS, LLC and that I certify that he/she is authorized to bind the LLC.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that I currently occupy the position indicated and that I have full authority to bind the LLC.

Signed: 
Daniel G. Hayward

Signed: 
Melissa D. Hayward

Date: 8/3/16

Date: 8-3-16

State of New Hampshire, County of Sullivan

On this the 3rd day of August 2016, before me Olivia Richardson, the undersigned officer, personally appeared Daniel + Melissa Hayward, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Signature of Notary Public 

Name and Title of Notary Olivia Richardson

