



South Coast Sanctuaries
1280 Horseneck Rd
Westport, MA 02790

COASTAL WATERBIRD MANAGEMENT AGREEMENT -DRAFT

East Beach, New Bedford MA

COASTAL WATERBIRD MANAGEMENT AGREEMENT dated as of June 18, 2022 (the “Agreement”), by and between Massachusetts Audubon Society, Inc., a Massachusetts nonprofit corporation (“Mass Audubon”) exempt from Federal taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the CLIENT, City of New Bedford, (the “CLIENT”).

WHEREAS, Mass Audubon, through its Coastal Waterbird Program, has expertise in coastal nesting bird monitoring and management; and

WHEREAS, the CLIENT desires the services of Mass Audubon to assist the CLIENT in monitoring and management of coastal nesting birds in conjunction with proposed beach management; and

WHEREAS, Mass Audubon, through its Coastal Waterbird Program, desires to perform such services for the CLIENT:

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Mass Audubon and the CLIENT, Mass Audubon and the CLIENT hereby agree as follows:

(1) Term: The term of this Agreement, unless earlier terminated as provided in Section (2)(c) below, shall commence on June 18, 2022 and shall end on November 1, 2022

(2) Services:

(a) During the term of this Agreement, the CLIENT hereby engages Mass Audubon, through its Coastal Waterbird Program, to perform the services described in Exhibit A attached hereto (the “Services”).

(b) Mass Audubon hereby agrees to devote its best efforts to the performance of the Services. All Services shall be performed by Mass Audubon at times that are mutually agreeable to Mass Audubon and the CLIENT.

- (c) During the term of this Agreement, either Mass Audubon or the CLIENT may terminate the engagement of Mass Audubon under this Agreement at any time for any reason without recourse to any party hereto by giving written notice at any time to the other party stating its election to terminate this Agreement thirty (30) days after the date of receipt by the other party of such written notice. In the event of such termination, Mass Audubon shall be entitled to be paid through such thirty (30) day period and any compensation paid to Mass Audubon for services to be performed by Mass Audubon beyond such thirty (30) day period shall be promptly returned by Mass Audubon to the CLIENT. The terminating party shall promptly provide written notice of such termination to Massachusetts Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program and US Fish and Wildlife Service.
- (3) Compensation: For the performance of the Services by Mass Audubon, the CLIENT hereby agrees to pay to Mass Audubon the compensation set forth in Exhibit A attached hereto in accordance with the payment schedule and procedures set forth therein.
- (4) Indemnification: Each party hereto will indemnify, defend, and hold harmless the other party, and its officers, directors, employees, volunteers, and agents, from and against any and all claims, actions, losses, damages, liabilities, obligations, costs, expenses, and reasonable attorneys' fees in connection with the loss of life, personal injury, and/or damage to property arising from or out of (a) the negligence or intentional acts or omissions of the indemnifying party or (b) the failure of the indemnifying party to comply with or perform any of its obligations under this Agreement.
- (5) Insurance: During the term of this Agreement, Mass Audubon shall have issued in its name, at its sole cost and expense, commercial general liability insurance in the amount of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate, and shall provide to the CLIENT upon request, an up-to-date certificate of insurance listing such insurance policy, and which shall name the CLIENT as an additional named insured on such insurance policy.
- (6) Notice: Any and all notices under this Agreement shall be in writing and shall be duly given if sent by registered or certified mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service, such as Federal Express, providing evidence of delivery, if

to Mass Audubon addressed to Massachusetts Audubon Society, Inc., 1280 Horseneck Road, Westport, MA 02790 with a copy to Bancroft R. Poor, Assistant Treasurer/CFO, Massachusetts Audubon Society, Inc., 208 South Great Road, Lincoln, MA 01773, and if to the CLIENT, addressed to: _____, Attention: _____, with a copy to _____.

(7) Miscellaneous: This Agreement and any of the rights and obligations under this Agreement may not be assigned or transferred in whole or in part by any party hereto. The provisions of Exhibit A shall be incorporated in this Agreement by reference as if set forth in their entirety in this Agreement. This Agreement constitutes the entire agreement of the parties hereto as to the subject matter hereof and supersedes all previous oral or written agreements between the parties hereto as to the subject matter hereof. This Agreement may be changed or amended only in writing signed by both parties hereto. This Agreement shall be governed by, and construed in accordance with, the internal laws of The Commonwealth of Massachusetts without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as an instrument under seal, all as of the day, month, and year first written above.

MASSACHUSETTS AUDUBON SOCIETY, INC

By: _____

By: Bancroft R. Poor

Title: Assistant Treasurer/CFO

CITY OF NEW BEDFORD, MA

By: _____

By:

Title:

Exhibit A
2022 Coastal Waterbird Program (CWP) Monitoring Agreement
East Beach, City of New Bedford, MA

Mass Audubon responsibilities:

Not Included in 2022 - Level 1:

Preliminary site management: March 25 – June 17

Preseason meeting with Beach Manager(s) to review Beach Management Plan and Permit Orders

Provide and erect symbolic fencing and signage as required by Federal regulation

Check site twice weekly beginning April 1 for presence of territorial or nesting Piping Plovers

Complete state census during census period

Complete necessary vehicle use prior to Time of Year Restriction (April 1)

Level 2:

Shorebird management: June 18 – August 21

Maintain and adjust symbolic fencing and signage as needed

Monitor site to determine status of nest or brood at least 4 times/week until chicks have fledged

Schedule “Chick-Sitting” sessions to protect a habitat corridor for broods to forage and find refuge during peak hours of public beach use, minimum of 3 hours per week for 4 weeks.

Help City Staff, including Lifeguards, install equipment, remove trash, and address other operational site needs; guide actions based on bird responses.

Communication: Reporting, Outreach and Education: June 18 – November 30

Provide Beach Managers:

Bi-weekly updates on breeding and site management activity until chicks have fledged

Informational material as requested to distribute to Staff, Partners, Community Leaders

Year-end report and maps noting activity and recommendations

Educate Lifeguards and other City Staff about best management practices

Conduct Outreach Programs: minimum of once weekly for 6 weeks

Consult on sign development, program opportunities and future management practices

Submit data and reports to State and Federal wildlife agencies as specified in Guidelines

All non-CWP inquiries or concerns from beach users will be directed to the Beach Manager

City of New Bedford responsibilities:

Ensure that all permits are in place for beach maintenance and public recreation activities

Work with City departments and community leaders to promote awareness of and compliance with restrictions (i.e. no entry inside fencing, no vehicles on beach without monitor present, lifeguard chair adjustments coordinated with monitors, dog and kite rules enforced)

Support CWP Staff by:

Providing contact information for key people

Providing a parking location for Monitor and a second parking spot for Educator

Communicating with CWP Crew Leader if fencing violations or other disturbances occur and to coordinate for monitoring during management actions such as equipment adjustments.

Support compliance of beach users by:

Installing signs about dog, kite, trash, and fenced-area rules

Distributing and/or posting informational materials for City Residents and beach visitors

Level 2 Fee: \$3,500

Fee includes staff time and equipment, transportation expenses, and educational materials

Hourly Rate for additional, necessary activities as requested: \$50/hour/person

Coastal Waterbird Program FAQ's

Why do we need to monitor Coastal Waterbirds:

- On beaches that are mapped priority habitat for coastal waterbirds, beach managers have a special responsibility in using the regulatory guidelines developed by Massachusetts Dept. of Fisheries & Wildlife (MDFW) and United States Fisheries & Wildlife Service (USFWS) to protect nesting plovers and terns on recreational beaches.
- Expectations under the guidelines are that suitable nesting habitat will be protected with symbolic fencing and signs, habitat will be surveyed for nesting activity by qualified shorebird monitors, and census data will be submitted to MDFW.
- Non-compliant management increases the risk of “take” (harm, disturbance to birds) and exposes the town/ landowner to liability/fines under state and federal endangered species laws.
- Protection of rare species habitat is a legal requirement under the Wetlands Protection Act which is administered by the town.
- A record of good faith compliance according to the agency guidelines will facilitate permit approval for coastal projects.
- Professional monitoring of nesting beaches provides opportunities for outreach to beach users to better understand and enjoy the presence of coastal birds in their communities.

What's Happening on the Beach:

Early April – Piping Plovers and American Oystercatchers return to New England beaches and (re-) establish territories and pair bonds.

Late April/early May – Piping Plover and American Oystercatcher nesting begins.

Late May/June – Common Terns and Least Terns return and set up nesting colonies on appropriate habitat; Piping Plovers are incubating eggs; American Oystercatcher eggs are hatching.

June/July – Piping Plover eggs are hatching with chicks on the beach; Piping Plovers that lost early nests are re-nesting and incubating the new eggs; Terns are nesting.

July into August – Piping Plover broods (families) of varying ages are on the beach, oldest chicks are fledging (able to fly to safety and feeding areas), tiny chicks are hatching in later nests; Least Tern chicks have hatched and are being fed on the beach.

August/early September – Birds are gathering and getting ready to migrate south.

What Does Monitoring Entail:

- Mass Audubon hires seasonal biologists to fulfill fencing and monitoring agreements with local towns and landowners to support beach compliance
- All monitors participate in ongoing training and are supervised by the local Program Manager, as well as staff within the statewide Mass Audubon Coastal Waterbird Program
- Monitors: install fencing and signage to meet guidelines of state and federal agencies and modify as needed throughout the season; check the site at least three times each week until all chicks have fledged; and collect, enter, and summarize data.
- Monitors complete the required state census and submit all data to state and federal agencies
- Monitors work closely with site officials, communicating issues and activity
- Monitors interact with beach goers and provide educational information about local wildlife, habitats, conservation practices, and beach rules.