

AGREEMENT FOR OWNER'S PROJECT MANAGEMENT SERVICES

TOWN OF TRURO

[NAME OF PROJECT]

[Refer to RFQ ID if Applicable]

THIS AGREEMENT made this 24th day of October, 2024, by and between the **Town of Truro**, acting by and through [Town Agency if Applicable], hereinafter referred to as "Owner", with an address of 24 Town Hall Rd Truro and Environmental Partners Group, LLC, a limited liability company duly organized and existing under the laws of the Commonwealth of Massachusetts, having a usual place of business located at 1900 Crown Colony Drive, Suite 402, Quincy, MA 02169, hereinafter referred to as "Project Manager", effective as of the 24th day of October, 2024. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

1.1. Generally.

1.1.1. For the Project, the Project Manager will perform all project management services and duties set forth in and reasonably inferable from **Attachment A** and G.L. c.149, § 44A½(a), and all services customarily performed by an owner's project manager for a project of the size and complexity of the Project ("Project Management Services"), for which the Project Manager shall be paid the fixed fee in Article 4.

1.1.2. In providing the Project Management Services, the Project Manager shall maintain an effective working relationship with the Designer (as hereinafter defined), general contractors and subcontractors, and other parties performing services on the Project.

1.1.3. The Project Manager shall be the Owner's trusted advisor in providing the Project Management Services. The Project Manager accepts the professional relationship of trust and confidence established by this Agreement.

ARTICLE 2: OWNER RESPONSIBILITIES:

2.1. The persons from time to time designated in writing by the Owner as the Owner's representative, shall have the authority to request services of and furnish information to the Project Manager, and render decisions on behalf of the Owner.

2.2. The Owner will retain an architectural design firm (the "Designer") to design and to prepare contract documents for the Project.

ARTICLE 3: TIME OF PERFORMANCE

3.1.1 The Project Manager shall perform all Project Management Services in a prompt and expeditious manner.

3.2 The Project Manager shall not be responsible for delays in the Project work occurring through no fault of the Project Manager or persons for whom the Project Manager is responsible, including, for example, delays caused by an act of the Owner, Designer or Contractor, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or by delay otherwise authorized in writing by the Owner.

ARTICLE 4: COMPENSATION:

4.1. In consideration of the performance of the Agreement, as set forth in Owner's, the Owner shall pay to the Project Manager a fixed fee set forth in the Project Manager Fee Proposal attached hereto as **Attachment B**, payable in equal monthly installments commencing upon the Effective Date and ending on the date that is 90 days after the Substantial Completion Date established in the Project construction contract documents or, if later, the date set forth in **Attachment B** (the "Basic Services End Date").

4.2. The fixed fee in Section 4.1 includes all reimbursable and out-of-pocket costs of the Project Manager with respect to the Project, all of which costs are included in the fixed fee and shall not be otherwise chargeable to or reimbursable by the Owner.

4.3. If additional services, not required under the Agreement, are requested in writing by the Owner, or if the Project Manager performs any services for the Project after the Basic Services End Date, unless such services were made necessary by a negligent act or omission of the Project Manager or any other failure of the Project Manager to perform under this Agreement, including, without limitation, performing in accord with the standards in Article 9, the Owner shall pay the Project Manager at a rate agreed to by the parties. Such rate shall include all salary, benefits, overhead and profit and all expected reimbursable expenses. The Owner reserves the right to request that the Project Manager provide a lump sum fee for any additional services and if such lump sum fee is agreed upon by the parties, the agreed upon lump sum fee shall be the fee for that particular additional service.

4.4. The Project Manager shall provide the Owner with a written estimate of expected costs for any requested additional services prior to undertaking such work.

4.5. Records of reimbursable expenses pertaining to additional services and other cost information with respect to additional services shall be provided to the Owner or the Owner's authorized representatives upon request.

4.6. The Project Manager shall submit monthly to the Owner a statement for its services rendered in the prior month in accordance with the compensation described in this Article 4 for Owner's approval.

4.7. Payment by the Owner to the Project Manager of the approved statement amount shall be made within thirty (30) days after it is submitted.

ARTICLE 5: AGREEMENT DOCUMENTS:

5.1. The following documents form the Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of any conflict in or among the provisions of the Agreement, the provisions resulting in the greater quantity and better quality of Project Management services, as reasonably determined by the Owner, shall control.

ARTICLE 6: AGREEMENT TERMINATION:

6.1. The Owner may suspend or terminate this Agreement by providing the Project Manager with ten (10) days written notice for any of the following reasons:

1. Failure of the Project Manager, for any reason, to fulfill in a timely and/or proper manner its obligations under this Agreement.
2. Violation of any of the material provisions of this Agreement by the Project Manager.
3. A determination by the Owner that the Project Manager has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement, or has otherwise breached the relationship of trust and confidence established thereby.

In addition, the Owner may terminate this agreement without cause (for any, or no, reason) upon thirty (30) days written notice to the Project Manager.

6.2. If the Owner fails to make payment to the Project Manager of undisputed amounts due and owing as provided in Article 4, the Project Manager may terminate this Agreement upon thirty (30) days written notice to the Owner, provided that if the Owner cures the alleged non-performance within the notice period, the Agreement shall not terminate.

6.3. If the Owner fails to perform any of its obligations (other than as provided in Section 6.2), the Project Manager may terminate this Agreement upon forty-five (45) days written notice to the Owner, provided that if the Owner cures the alleged non-performance within the notice period, the Agreement shall not terminate.

6.4. In the event of such termination, the Project Manager shall be compensated for all services properly rendered prior to the date of termination.

ARTICLE 7: INDEMNIFICATION:

7.1. The Project Manager shall indemnify and hold harmless the Owner, its officers, agents, and employees, from and against damages, losses, and expenses, to the extent caused by the negligent acts, negligent errors or omissions of the Project Manager or their employees in the performance of this Agreement. The Project Manager is not liable for Designer or Contractor errors, omissions, losses, liabilities, delays, costs and expenses incurred by the Owner for their work performed under subsequent contracts.

7.2 The Project Manager's liability resulting from any acts, errors or omissions in the performance of services under this Agreement, and any liability for any indemnity agreed to herein, shall not exceed the amount of compensation paid to the Project Manager under this Agreement or \$500,000, whichever is greater.

7.3 The Project Manager shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax laws applicable to it with respect to its duties and obligations under the Agreement.

ARTICLE 8: AVAILABILITY OF FUNDS:

8.1. The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 9: PERFORMANCE STANDARD – COMPLIANCE WITH LAW:

9.1 The Project Manager will provide all Project Management Services in a manner (i) that is prompt, expeditious and economical based on compensation established in this Agreement, (ii) that is consistent with standards set forth in this Agreement and implied by law, and service standards for comparable projects by qualified owner's project managers, and (iii) that is consistent with the established Project schedule, budget and other Owner objectives for the Project.

9.2. The Project Manager represents that all Project Management Services will be performed in accordance with all applicable Federal, State, and local laws, ordinances, by-laws, codes, and regulations and in accordance with prudent project management practice.

9.3. The Project Manager agrees that, in performing the Project Management Services under this Agreement, it shall comply with all of the terms of all governmental approvals in connection with the Project.

ARTICLE 10: ASSIGNMENT:

10.1. The Project Manager shall not make any assignment of this Agreement without the prior written approval of the Owner in the form of an amendment hereto.

ARTICLE 11: AMENDMENTS:

11.1. All amendments, changes or modification to the provisions specified in this Agreement can only occur when mutually agreed upon by the Owner and Project Manager in the form of a written amendment to this Agreement signed by officials with authority to bind the Owner and Project Manager.

ARTICLE 12: INSURANCE:

12.1 The Project Manager shall obtain and maintain throughout the duration of the Project the following insurance coverage:

Commercial General and Automobile Liability Insurance shall be written for not less than the limits of liability as follows:

\$2,000,000	General Aggregate Limit
\$2,000,000	Products-Completed Operations Aggregate Limit
\$1,000,000	Personal Injury and Property Damage Limit

Business Automobile Liability: \$1,000,000 Each Accident - Single Limit

Excess Umbrella Liability: Minimum of \$5,000,000.

Professional Liability: Minimum of \$1,000,000 per claim and \$2,000,000 in aggregate

Workers' Compensation Insurance: The Project Manager shall, at its own expense, obtain and maintain Workers' Compensation Insurance as required by law.

12.2. The Project Manager's Commercial General Liability Insurance shall include premises - operations (including explosion, collapse and underground coverage) independent contractors and completed operations, all including broad form property damage coverage.

12.3. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

12.4. The Owner shall be named as an additional insured party on the Project Manager's insurance policies for the Project excluding Professional Liability and Workers' Compensation Insurance.

12.5. The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, modified or not renewed until at least thirty (30) days prior written notice has been given to the Owner. Certificates of Insurance showing such coverage to be in force shall be filed with the Owner prior to the execution of this Agreement, and upon the renewal of any such coverage during the term of this Agreement. Certificates shall indicate effective dates and dates of expiration of policies. All insurance policies required hereunder shall be written by companies satisfactory to the Owner and licensed to do business in the Commonwealth of Massachusetts and shall be in form satisfactory to the Owner.

12.6. All liability policies shall be written on an occurrence basis, and shall be primary and non-contributory.

12.7 Upon request, the Project Manager shall provide Owner with copies of all insurance policies and endorsements thereto evidencing compliance with this Article 12.

ARTICLE 13: DOCUMENTS AND DELIVERABLES:

13.1. All Project documents, plans, drawings, reports and data prepared by, and/or received by, and/or sent by the Project Manager or its consultants in connection with the Project or this Agreement, including, without limitation, plans and specifications, daily reports, meeting minutes, requests for information, and change orders shall become the property of the Owner and, unless otherwise provided by the Massachusetts Public Records Law, shall be deemed public records. The Project Manager shall promptly provide copies of all such documents, etc., upon request of the Owner.

ARTICLE 14: NOTICE:

14.1. All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

ARTICLE 15: VENUE FOR DISPUTES; CHOICE OF LAW

15.1. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be subject to review by any state court sitting in the county in which the Owner maintains its principal office, to whose jurisdiction the parties consent, waiving any and all objections to venue or forum. In addition, this Agreement shall be enforced and interpreted in accordance with the laws of the

Commonwealth of Massachusetts, without application of any Massachusetts laws relating to conflicts-of-laws.

ARTICLE 16: STAFFING

16.1 It is understood that the unique abilities of the Project Manager have been a substantial inducement for the Owner to enter into this Agreement. Therefore, the Project Manager will perform the work itself and will not assign or subcontract the work to third parties without the prior written consent of the Owner. The Owner shall have the right of approval of Project Management staff assigned to the Project in accordance with Section 16.2, provided that neither the approval or lack thereof shall relieve the Project Manager of responsibility for the acts and omissions of its staff.

16.2. The Project Manager hereby agrees and acknowledges that one of the conditions of this Agreement is that the individuals in charge of the direction and supervision of the Project on behalf of the Project Manager shall be named and approved by the Owner at least one month prior to the commencement of the Pre-Design Feasibility Study on the Project, and such individuals and the members of the Project Manager's project team set forth below (the "Project Manager's Project Team") shall be available to attend meetings and respond to requests, comments, questions and concerns of the Owner and other parties identified by the Owner. This condition is a substantive inducement to the Owner without which the Owner would not have entered into this Agreement with the Project Manager. Notwithstanding the foregoing, the Project Manager shall submit to the Owner as soon as possible information on the credentials of the proposed project manager and assistant project manager. In consideration of the foregoing, the Project Manager agrees that for so long as any such member of the Project Manager's Project Team is employed by (or, as appropriate, a principal of) the Project Manager, such member(s) shall direct, shall be responsible for, and shall be available to provide the Project Management Services in connection with the Project. If at any time any such member of the Project Manager's Project Team is no longer available as aforesaid, then his replacement shall be subject to the prior approval of the Owner. The Project Manager's Project Team will consist of the persons noted below and necessary assistants and other technical and administrative personnel. All of the Project Manager's Project Team shall be experienced in projects similar in size, scope and complexity to the Project. Each member of the Project Team shall be appropriately licensed and certified and qualified by training and experience in their respective fields. No change will be made in the composition of the Project Team without the Owner's approval. No personnel in the Project Team designated as full-time on the Project shall assume additional responsibilities outside of the Project without the written consent of the Owner. The Owner may require replacement of any member of the Project Manager's Project Team upon notice to the Project Manager with or without cause. The members of the Project Manager's Project Team are as follows:

Name:

Title:

16.3. The Project Manager shall provide the Owner with a schedule listing the names, job descriptions and professional biographical information for all other staff expected to work on the Project. The Project Manager shall provide emergency contact information to the Owner for all members of the Project Team.

16.4. The Project Manager will at all times remain an independent contractor and is not an agent of, employee of, or a joint venturer with, the Owner.

16.5. Except as provided in the immediately following sentence, the Project Manager will not have the authority to enter into agreements on the Owner's behalf or otherwise bind the Owner by its decisions and the Project Manager will not hold itself out as the Owner's agent. The Project Manager shall act in the capacity of an agent or representative of the Owner only to the extent expressly authorized by the terms of this Agreement or as the Owner may from time to time otherwise expressly authorize the Project Manager in writing.

ARTICLE 17: CERTIFICATIONS:

17.1. By signing this Agreement, the Project Manager certifies under penalties of perjury that:

1. The wage rates and other costs used to support the Project Manager's compensation are accurate, complete and current at the time of contracting.
2. The original Agreement price and any additions to the Agreement may be adjusted within one year of completion of the Agreement to exclude any significant amounts due to inaccurate, incomplete or non-concurrent wage rates or other costs.
3. It has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.
4. No consultant to or sub-Project Manager for the Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Project Manager of a contract by the Project Manager.
5. No person, corporation or other entity, other than a bona fide full time employee of the Project Manager, has been retained or hired by the Project Manager to solicit for or in any way assist the Project Manager in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Project Manager.
6. It has internal accounting controls as required by M.G.L. c.30, §39R and that the Project Manager filed and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

7. Pursuant to M.G.L. c.62C, §49A, I hereby certify under the penalties of perjury that the respondent named herein has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
8. Its proposal/statement of qualifications submitted to the Owner has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certificate, the word person shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

18. ARTICLE 18: MISCELLANEOUS

18.1. If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall, to the extent possible, be enforceable without such provisions.

18.2. This Agreement represents the entire and integrated agreement between the Owner and the Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

18.3. This Agreement shall be binding upon and inure to the benefit of the Owner and its successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Project Manager and its permitted successors and permitted assigns. The Project Manager may not assign any right or delegate any obligation hereunder without the Owner's prior written approval.

18.4. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

18.5. No employee or official of the Owner shall assume any personal liability pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

PROJECT MANAGER
ENVIRONMENTAL PARTNERS GROUP, LLC
a MASSACHUSETTS LIMITED LIABILITY
Company

By: 
Signature

Ryan Trahan, PE
Print Name
President
Print Title

OWNER
THE TOWN OF "INSERT TOWN NAME"
"INSERT ENTITY IF APPLICABLE,"
By its "BOARD OF SELECTMEN/TOWN
MANAGER/TOWN ADMINISTRATOR"
pursuant to vote of the Town Board of
Selectmen on "INSERT DATE"

By: 
Signature

Darrin Tangen
Print Name
Tawn Mangz
Print Title

Approved to as to form:

Town Counsel

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