

GRANT AGREEMENT
BETWEEN TOWN OF WELLFLEET AND FRIENDS OF HERRING RIVER
(NRCS FUNDING)

THIS GRANT AGREEMENT (this “Agreement”) is entered into on this _____ day of _____, 2023, by and between the **Town of Wellfleet** (the “Town”), a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, and acting by and through its Selectboard, having a usual place of business at 300 Main Street, Wellfleet, MA 02667 and **Friends of Herring River, Wellfleet/Truro, Inc.** (the “Grantee” or “FHR”), a Massachusetts nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, having a usual place of business at 1580 Route 6, South Wellfleet, MA 02663, collectively the “Parties.”

WHEREAS, the Town, in collaboration with the Cape Cod National Seashore, is undertaking restoration of approximately 890 acres of salt marsh in the Herring River Watershed which shall include removal of multiple tidal restrictions and replacement with water control structures, including construction of a bridge with sluice gates, elevation of low-lying road segments and replacement of associated culverts, various mitigation measures on low-lying private properties to prevent flood impacts to structures, and vegetation and marsh management on the floodplain (the “Project”), and FHR has worked to facilitate the Town and the Cape Cod National Seashore’s work on the Project;

WHEREAS, a financial and technical assistance grant of up to \$27,200,000 from the Natural Resources Conservation Service, United States Department of Agriculture (No. NRCS-ADS-093) have been awarded to the Town as recipient agency to pay eligible Project costs, and a copy of such grant is attached hereto as Exhibit A and incorporated herein (the “NRCS Grant”);

WHEREAS, the NRCS Grant includes technical assistance funding in the amount of \$3,200,000 for non-construction eligible Project costs, which assistance includes \$2,600,000 for the Chequessett Neck Bridge and \$200,000 for low-lying road elevation, culvert replacements and one water control structure (the “Eligible Project Elements”), and the NRCS Grant may be used for final design and engineering services for the Eligible Project Elements;

WHEREAS, in order to assist the Town and to help advance the Project, FHR has entered into contracts with consultants Fuss & O’Neill, Inc. to develop design plans for the Chequessett Neck Bridge and with WSP USA Solutions, Inc. (formerly Louis Berger U.S., Inc.) (together, Fuss & O’Neill and WSP USA Solutions are referred to as “the Consultants”) to develop design plans for low-lying road elevation, culvert replacements and one water control structure;

WHEREAS, in the past, engineering design services under contracts between FHR and the Consultants (the “Prior Contracts”) have been funded by grants from Massachusetts Division of Ecological Restoration (MA DER) and US Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), which funding has supported development of plans needed to secure permits and funding for the Herring River Restoration Project, Phase 1;

WHEREAS, additional funding is needed to complete final design plans and bid documents for construction of the Eligible Project Elements; and

WHEREAS, the Town desires to sub-grant to Grantee a portion of the available technical assistance funds from the NRCS Grant to fund the Consultants' completion of final design plans and bid documents for the Eligible Project Elements in accordance with terms of this Agreement (as described herein and in Section 3(a) and Exhibits B and C below, the "Work"), and Grantee desires to facilitate the Project and receive the Grant Amount (defined below) to fund the Consultants' completion of the Work in accordance with the terms of this Agreement.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

Agreement

1. **Recitals.** The recitals above are true and accurate and are incorporated herein by reference.
2. **Funding.** The Town shall sub-grant a portion of the NRCS Grant to Grantee in an amount not to exceed three hundred and seventy-five thousand dollars (\$375,000.00) (the "Funds" or the "Grant Amount") on the condition that Grantee shall use the Funds only for eligible expenses associated with the purposes of undertaking the work in accordance with the terms of this Agreement.
3. **Conditions.** The award and release of the Grant Funds to Grantee is conditioned upon the following:
 - a) The Work shall be comprised of, and completed by the Consultants in accordance with, the detailed scopes of work incorporated in this agreement as Exhibit B (for Fuss & O'Neill, Inc.) and Exhibit C (for WSP USA).
 - b) Any remaining Funds shall be returned to the Town if the Work has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause in writing.
 - c) Grantee agrees that, prior to the receipt of any Funds, Grantee shall provide the Town an opportunity to review and approve the plans, products and contract documents relevant to the Work (the "Contract Documents"), such approval not to be unreasonably withheld or delayed.
 - d) **Town Contact.** Grantee shall seek the approval of, and work closely with, the Town Administrator or their designee, in the implementation of the Work.
 - e) **Grantee Contact.** Grantee's authorized representative is Christa Drew, Executive Director, who can be reached at 508-214-0656 and christa@herringriver.org.
4. **Budget/Other Sources of Funding.** Grantee must submit the scopes of work and budgets for the Work that account for: (a) the expenditure of all Funds awarded under this

Agreement, and (b) all other sources of funding, if necessary, to complete the Work as described herein. If the Town determines that funds have been spent in a manner inconsistent with the budgets and scopes of work, reimbursement may not be authorized or, if the Grant Amount has already been granted, Grantee shall repay such Grant Amount to the Town. The Parties acknowledge that if sources of funding other than the Grant Amount have contributed to payment for the Work, this Agreement shall not apply to those other sources of funding.

5. The Work. The Work shall be performed in a good and workmanlike manner, by contractors who are licensed in their respective disciplines and shall conform to all applicable laws, bylaws, rules and regulations. The Grantee shall ensure that the Consultants be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals prior to commencing the Work, and comply with the terms of the Contract Documents. No local permit or license or fee is waived by the award of the Funds. The Town shall have the right to review plans and specifications showing the Work to be done for compliance with the Exhibit B and Exhibit C.

6. Payment. The Town shall reimburse Grantee an amount not to exceed 100% of the Grant Amount (or three hundred and seventy-five thousand dollars (\$375,000.00)) for the cost of performing the Work, which disbursements shall be apportioned based on the Work done and made no more than once a month and paid only upon the presentment of invoices from Grantee listing in detail the Work performed by the Consultants and the cost thereof. The Town shall have the right to ask for supplementary information. Prior to any payment, the Town shall have the right to inspect the Work and/or ensure that Grantee is in compliance with this Agreement. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with legal and regulatory requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described herein. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess.

7. Progress Reports. Grantee shall provide the Town with progress reports (in a form to be agreed upon by the Parties) at three (3)-month intervals beginning sixty (60) days from the date of the signing of this Agreement for as long as the Funds remain unexpended, and with final notification within thirty (30) days after the Work has been completed. The Town reserves the right to require supplementary information from Grantee. Grantee shall submit a final report to the Town, including digital photographs and other documents, if applicable, within thirty (30) days from the Work completion date.

8. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Work is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. The Town shall have full and free access to such records and may examine and copy such records during normal business hours, with at least two days' notice to Grantee.

9. Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement, as reasonably determined by the Town, and such failure is attributable to the Grantee and not the Consultants, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 10 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 9, 10, 11, 12 and 18 shall survive said expiration or earlier termination. If either party takes legal action under this Agreement, each shall be responsible for its own costs.

10. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 9, any funds paid to Grantee under this Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the amount of the Grant Amount provided under this Agreement related to such negligent or intentional acts, and the Town may take such steps as are necessary, including legal action, to recover such funds.

11. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 6 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.

12. Indemnification. Grantee shall indemnify, defend, and hold the Town and its departments, officers, employees, representatives and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including reasonable attorneys' fees, arising as a result of Grantee's actions or omissions concerning the administration of this Grant Agreement. For clarity, Grantee's indemnification shall not apply to actions or omissions by the Consultants. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an instrumentality, employee, or agent of the Town for any purpose.

14. Successors and Assigns. This Agreement is binding upon the parties hereto and their successors and permitted assigns. Grantee shall not assign, subcontract or otherwise transfer this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the Town, which may be withheld in its sole and absolute discretion.

15. Compliance with Laws. Grantee shall comply, with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement. Grantee's contractors (including the Consultants) shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of Grantee to comply with the previous sentence.

16. Notice. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: NRCS Grant

Exhibit B: Fuss & O'Neill scope and budget

Exhibit C: WSP scope and budget

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

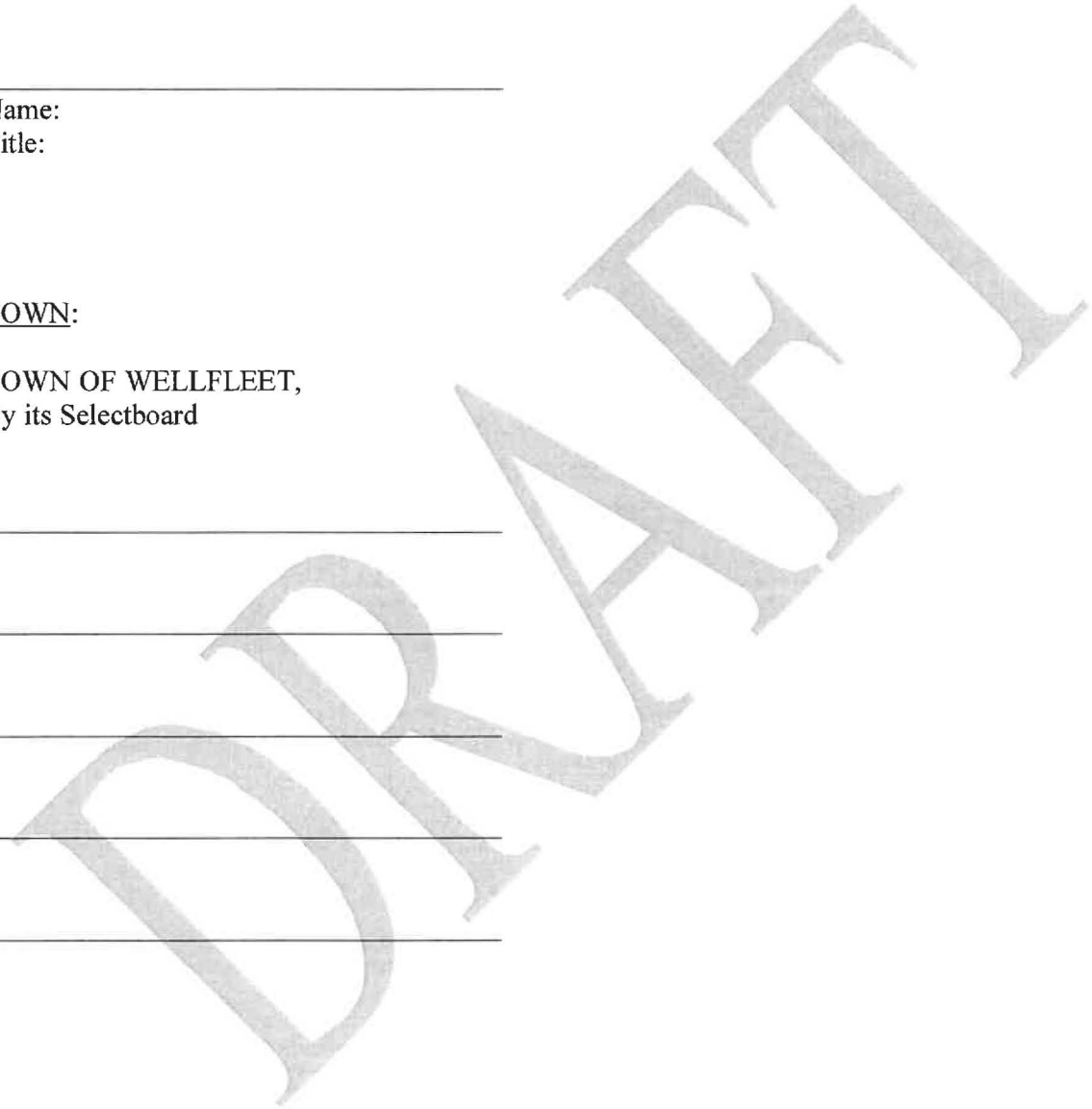
GRANTEE:

FRIENDS OF HERRING RIVER, WELLFLEET/TRURO, INC.

Name:
Title:

TOWN:

TOWN OF WELLFLEET,
By its Selectboard



GRANT AGREEMENT
BETWEEN TOWN OF WELLFLEET AND FRIENDS OF HERRING RIVER
(NOAA FUNDING)

THIS GRANT AGREEMENT (this “Agreement”) is entered into on this _____ day of _____, 2023, by and between the **Town of Wellfleet** (the “Town”), a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, and acting by and through its Selectboard, having a usual place of business at 300 Main Street, Wellfleet, MA 02667 and **Friends of Herring River, Wellfleet/Truro, Inc.** (the “Grantee” or “FHR”), a Massachusetts nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, having a usual place of business at 1580 Route 6, South Wellfleet, MA 02663, collectively the “Parties.”

WHEREAS, the Town, in collaboration with the Cape Cod National Seashore, is undertaking restoration of approximately 890 acres of salt marsh in the Herring River Watershed which shall include removal of multiple tidal restrictions and replacement with water control structures, including construction of a bridge with sluice gates, elevation of low-lying road segments and replacement of associated culverts, various mitigation measures on low-lying private properties to prevent flood impacts to structures, and vegetation and marsh management on the floodplain (the “Project”), and FHR has worked to facilitate the Town and the Cape Cod National Seashore’s work on the Project;

WHEREAS, a grant of up to \$14,690,000 from the US Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), (No. NA23NMF4630089) have been awarded to the Town as recipient agency to pay eligible Project costs, and a copy of such grant is attached hereto as Exhibit A and incorporated herein (the “NOAA Grant”);

WHEREAS, the NOAA Grant includes funding for a sub-award to the FHR in the amount of \$350,000 over the three-year grant term to undertake permit compliance and associated data collection, modeling and analysis necessary for permit compliance, as well as other non-construction implementation support including external communications in support of Project implementation, Project documentation, data management and data sharing, and archiving of plans, studies, permits and other records in support Project implementation and data sharing (the “Work”). Some of the Work is to be performed by FHR, and some is to be performed by consultants, as described in Exhibit A;

WHEREAS, the Town does not otherwise have the staff or consultant capacity to undertake the Work to be performed under the scope of this agreement, and FHR is uniquely positioned to oversee the Work due to its prior work to develop and administer permit applications, stature in the community, oversight of engineering design plans, established relationships with Project partners and unmatched familiarity with all aspects of the Project. WHEREAS, in order to undertake the permit compliance and implementation support work authorized under this agreement, to assist the Town and help advance the Project, FHR has entered into contracts with several consultants to accomplish the scope of work described in Exhibit B (collectively, the “Consultants”). These contracts and associated work scopes may be modified and other contracts and associated work scopes may be added as needed to perform the Work authorized by this agreement;

WHEREAS, in the past, certain services under some contracts between FHR and the Consultants (the "Prior Contracts") have been funded by grants from Massachusetts Division of Ecological Restoration (MA DER) and NOAA, which funding has supported development of plans needed to secure permits and funding for the Project; and

WHEREAS, the Town desires to sub-grant to Grantee the funds, and Grantee desires to receive the Grant Amount (defined below) to fund the completion of the Work in accordance with the terms of this Agreement.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

Agreement

1. Recitals. The recitals above are true and accurate and are incorporated herein by reference.
2. Funding. The Town shall sub-grant a portion of the NOAA Grant to Grantee in an amount not to exceed three hundred and fifty thousand dollars (\$350,000.00) (the "Funds" or the "Grant Amount") on the condition that Grantee shall use the Funds only for eligible expenses associated with the purposes of undertaking the work in accordance with the terms of this Agreement. Details regarding the mechanics of payment are described below in Section 6.
3. Conditions. The award and release of the Grant Funds to Grantee is conditioned upon the following:
 - a) The Work shall be comprised of, and completed by the Consultants in accordance with, the scopes of Work per their agreements with FHR, which are available for Town's reference at any time.
 - b) Any remaining Funds shall be returned to the Town if the Work has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause in writing.
 - c) Grantee agrees that, prior to the receipt of any Funds, Grantee shall provide the Town an opportunity to review and approve the plans, products and contract documents relevant to the Work (the "Contract Documents"), such approval not to be unreasonably withheld or delayed.
 - d) Town Contact. Grantee shall seek the approval of, and work closely with, the Town Administrator or their designee, in the implementation of the Work.
 - e) Grantee Contact. Grantee's authorized representative is Christa Drew, Executive Director, who can be reached at 508-214-0656 and christa@herringriver.org.
4. Budget/Other Sources of Funding. Grantee must submit the scopes of work and budgets for the Work that account for: (a) the expenditure of all Funds awarded under this Agreement, and (b) all other sources of funding, if necessary, to complete the Work as described herein. If the Town determines that funds have been spent in a manner inconsistent

with the budgets and scopes of work, reimbursement may not be authorized or, if the Grant Amount has already been granted, Grantee shall repay such Grant Amount to the Town. The Parties acknowledge that if sources of funding other than the Grant Amount have contributed to payment for the Work, this Agreement shall not apply to those other sources of funding.

5. The Work. The Work shall be performed by contractors who are experienced in their respective disciplines, and have any applicable license or certification as may be required by law, and shall conform to all applicable laws, bylaws, rules and regulations. The Grantee shall ensure that the Consultants be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals, if applicable, prior to commencing the Work. No local permit or license or fee, if applicable, is waived by the award of the Funds. The Town shall have the right to review all approved consultant work scopes and deliverables to confirm that Work is done in compliance with approved scopes.

6. Payment. The Town shall, within 30 days of receipt, reimburse Grantee an amount not to exceed 100% of the Grant Amount (or three hundred and fifty thousand dollars (\$350,000.00)) for the cost of performing the Work, which disbursements shall be apportioned based on the Work done and paid only upon the presentment of invoices from Grantee listing in detail the Work performed by the Consultants and the cost thereof. FHR shall submit invoices from the Consultants to the Town, and the Town shall in turn draw down funds from the NOAA Grant funds and issue a check or wire transfer to the FHR to reimburse for the amount of that Consultant invoice to FHR. FHR shall, in turn, promptly make payment to the appropriate Consultant. Prior to any payment, the Town shall have the right to inspect the Work and/or ensure that Grantee is in compliance with this Agreement. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with legal and regulatory requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described herein. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess.

7. Progress Reports and Information Sharing. Grantee shall provide the Town with progress reports (in a form to be agreed upon by the Parties) if the Town so requests. The Town reserves the right to require supplementary information from Grantee. Grantee shall submit a final report to the Town, including digital photographs and other documents, if applicable, within thirty (30) days from the Work completion date. The Town shall provide relevant information and support in a timely fashion to Grantee and the Consultants to facilitate completion of the Work.

8. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Work is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. The Town shall have full and free access to such records and may examine and copy such records during normal business hours, with at least two days' notice to Grantee.

9. Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement, as reasonably determined by the Town, and such failure is attributable to the Grantee and not the Consultants, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole

discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 10 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 9, 10, 11, 12 and 18 shall survive said expiration or earlier termination. If either party takes legal action under this Agreement, each shall be responsible for its own costs.

10. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 9, any funds paid to Grantee under this Agreement for reimbursement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the amount of the Grant Amount provided under this Agreement related to such negligent or intentional acts, and the Town may take such steps as are necessary, including legal action, to recover such funds.

11. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 6 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.

12. Indemnification. Grantee shall indemnify, defend, and hold the Town and its departments, officers, employees, representatives and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including reasonable attorneys' fees, arising as a result of Grantee's actions or omissions concerning the administration of this Grant Agreement. For clarity, Grantee's indemnification shall not apply to actions or omissions by the Consultants. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an instrumentality, employee, or agent of the Town for any purpose.

14. Successors and Assigns. This Agreement is binding upon the parties hereto and their successors and permitted assigns. Grantee shall not assign, subcontract or otherwise transfer this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the Town, which may be withheld in its sole and absolute discretion.

15. Compliance with Laws. Grantee shall comply, with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement. Grantee's contractors (including the Consultants) shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of Grantee to comply with the previous sentence.

16. Notice. Any and all notices, or other communications required or permitted under this

Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: NOAA Grant

Exhibit B: Summary of Consultant Scopes of Work

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

GRANTEE:

FRIENDS OF HERRING RIVER, WELLFLEET/TRURO, INC.

Name:
Title:

TOWN:

TOWN OF WELLFLEET,
By its Selectboard

DRAFT