

September 13, 2022

Ms. Jacki Byerly, Town Planner
Town of Andover
36 Bartlett Street
Andover, MA 01810

**RE: Amendment #2 for Traffic Peer Review
3000 Minuteman Road – Andover, MA**

Dear Ms. Byerly,

Environmental Partners, LLC (EP) is pleased to submit this proposed amendment to the original letter contract (dated April 14, 2022) to provide additional traffic peer review services associated with the phased redevelopment of the former Philips Healthcare Campus located at 3000 Minuteman Road in the Town of Andover (“the Town”). The original letter contract provided peer review of Phase I of the redevelopment only; this amendment is intended to provide review of key components of the full buildout of the proposed laboratory/current Good Manufacturing Practice (cGMP) facility.

Scope of Services

This amendment is based on the following additional item made available to EP:

- Transportation Impact Assessment (TIA) titled “Philips Healthcare Campus Redevelopment” prepared by Vanasse & Associates, Inc (VAI); dated July 2022 (submitted under Appendix D of the Expanded Environmental Notification Form (EENF) for “Alexandria Real Estate Equities, Inc., 3000 Minuteman Road, Andover Massachusetts”, prepared by SMMA; dated August 1, 2022)

It is our understanding that a full review of the TIA or a review of the site plans are not requested by the Planning Board at this time. This amendment is limited to the following services:

Traffic Review:

1. Review vehicle crash data and crash rates provided for the additional intersections provided in the expanded study area under the full buildout. Review of the crash data at the intersections provided in the Phase I study area is not included.
2. Review trip generation methodology of the full buildout and compare to standard Institute of Transportation Engineers (ITE) data as appropriate.
3. Review traffic volumes for the full buildout condition only. It is assumed that the Phase I review adequately verified the methodology used in establishing the future no-build conditions, and that discrepancies in the reported traffic volumes for the existing and no-build conditions, if any, will be minor and not expected to significantly impact the findings of the study.

4. Review traffic analysis for the full buildout condition, including input data for the study area intersections and the interpretation of analysis results (level of service (LOS), delays, volume-to-capacity, and queue).
5. Review and assess reasonableness of proposed mitigation measures and identify opportunities for additional mitigation measures.
6. Given the limited review of key components in combination with previously reviewed items as part of Phase I, a review of existing conditions, site layout, and sight distance are not included.

Meetings, Deliverables and Coordination:

1. Prepare a memorandum summarizing the traffic review and describing findings and recommendations.
2. Attend up to one (1) virtual meeting to discuss comments with Town staff and/or the Applicant's design team to review/clarify comments.
3. Attend up to one (1) virtual hearing with the Planning Board to discuss the project and findings.

Additional Services:

The following services are not included as part of this proposal but may be provided upon request by the Town for additional compensation:

1. Attending additional meetings or hearings not specifically described above.
2. Coordinating with Town staff, the Applicant and/or their consultants beyond that outlined above.
3. Performing reviews of additional components, traffic studies, or Applicant responses not specified above.
4. Performing reviews of additional documents that are subsequently made available.

Fee

The above services are anticipated to be performed for an estimated fee of **\$6,700** to be billed on a time and expense basis based on Environmental Partners billing rates in effect at the time the services are performed; this budget assumes a project duration of four (4) weeks. All conditions outlined in the original letter contract (dated April 14, 2022) are still in effect. Unless otherwise provided for hereinbefore or within the original contract, this agreement is subject to the attached "General Terms and Conditions" dated July 2021.

We appreciate the opportunity to provide our professional services; please do not hesitate to contact us with any questions.

Sincerely,
Environmental Partners Group, LLC



James D. Fitzgerald, PE, LEED AP
Director of Transportation / Principal
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Jane R. Davis, PE
Project Manager
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Attachment: Environmental Partners Group, LLC Terms and Conditions

1. References herein to "EP" refer to Environmental Partners Group, LLC. References herein to "Project" mean the project as defined in EP's written proposal to the client. Any proposal submitted by EP for the performance of a proposed Project is subject to renegotiation if acceptance is not received within thirty (30) days or as stated in the proposal. Upon the expiration of such period, EP reserves the right to modify the proposed basis of payment and fees to allow for changing costs and to adjust the time of performance to conform to changing workloads.
2. Unless EP's proposal provides otherwise, the proposed fees constitute EP's estimate of the probable cost required to complete the proposed Project. The estimated probable cost identified in EP's proposal is an estimate and shall not be deemed to be either a guaranteed maximum or "guaranteed not-to-exceed" amount with respect to the cost of performing the Project identified in any such proposal.
3. Cost and schedule commitments contained in EP's proposal shall be subject to re-negotiation for unreasonable delays caused by the client's failure to provide specified facilities or information or for delays caused by unpredictable occurrences such as fires, floods, strikes, riots, unavailability of labor or materials or services, process shutdown, acts of God or of the public enemy, or acts or regulations of any governmental agency. Work stoppage or interruption caused by any of the above may result in additional cost (requiring a change in scope) beyond that identified in EP's proposal for performance of the Project, entitling EP to an adjustment to the cost and schedule.
4. Where the method of payment for EP's services is on a time-and-material or cost reimbursable basis, the following commercial terms shall apply:
 - a. The minimum time segment for charging of field work is four (4) hours. For work done at any of EP's offices, the minimum time segment for charging is one-half hour. There is no premium charge for overtime.
 - b. Where any agreement is based on the salary cost of specific individuals, normal and customary salary increases will become effective immediately upon EP authorization and will be reflected in the next invoice submitted to the client.
 - c. Expenses properly chargeable to the Project shall include: travel and living expenses of EP personnel on business connected with the Project; shipping costs; reproduction, bindery and fax costs at EP's standard rates; computer usage and record processing time and software; equipment rental charges; professional, analytical and technical subcontractors and advisors retained in connection with the Project; identifiable drafting and stenographic supplies; and expendable materials and supplies purchased specifically for the Project. Subcontractor and other project expenses will be charged at 115% of EP's cost. Laboratory services will be charged in accordance with the rate schedule contained in the accompanying proposal. If the services covered by any EP proposal are subject to local or state taxes or fees, such additional costs will be charged to the Project and reimbursed by the client. Because of the unique nature of environmental construction, these percentages do not apply to any environmental remediation or construction activities; those percentages will be addressed in separate terms and conditions applicable to construction projects.
5. Invoices will be submitted on a monthly basis payable upon receipt. Unpaid balances shall be subject to interest at the rate of 1.5 percent per month or the maximum permissible under state law, whichever is less, starting 30 days from the invoice date. Payments received will be applied first to any accrued interest, with the balance of the payment then applied to any unpaid fees. In

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addition, EP may, after giving seven (7) days written notice, suspend services under any agreement without liability until all past due accounts (including fees and accrued interest) have been paid. Timely payment is a substantial condition of client's performance of any

6. Except as provided in Paragraph 5, any agreement may be terminated in whole or in part in writing by either party in the event of substantial or material failure by the other party to fulfill its obligations under such agreement through no fault of the terminating party, provided that no such termination shall be effective unless the other party is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with the terminating party and an opportunity to cure prior to the effective date of such termination. A final invoice will be calculated on the first or fifteenth of the month (whichever comes first) following the effective date of termination.
 - a. Where the method of payment is based on a "lump sum" the final invoice will be based on the percentage of the work completed up to the effective date of termination.
 - b. Where the method of payment is based on time and materials, the final invoice will be based on reimbursement for all services and expenses associated with the Project up to the effective date of termination.
 - c. Where the method of payment is based on cost plus a fixed fee, the final invoice will be based on reimbursement for all costs up to the effective date of termination and a pro-rata share of the fixed fee.

For each of the above methods of preparing the final invoice, there shall be an additional charge for Project close-out equal to three percent of all Project billings up to the effective date of termination. This close-out charge shall not be considered a penalty but represents an allowance for recovery of costs for demobilization and reassignment of personnel

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agreement between EP and client. In the event EP must take legal action to be paid for its services and prevails, all collection and legal costs associated with such action shall be reimbursed by the client.

7. Insurance. EP shall maintain policies of insurance for the following types of coverage, each (with the exception of Workers' Compensation) with a limit of liability of \$1,000,000, combined single limit: Workers' Compensation (statutory) and Employer's Liability; Commercial General Liability; and Automotive Liability and Professional Liability Insurance. EP shall, at the client's request, provide the client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and that such policies are maintained in force throughout the period in which EP provides services to the client under any agreement. Upon the mutual agreement of EP and the client, EP shall procure and maintain one or more policies of insurance in addition to the types of insurance described above or procure policies of insurance coverage of the same types described above with increased policy limits, to the extent that such insurance is available. Additional premiums and costs incurred by EP in connection with obtaining such additional or different policies of insurance shall be reimbursed by the client as an additional Project expense.
8. Indemnification. To the fullest extent permitted by law for claims covered by EP's Commercial General Liability policy, EP agrees to indemnify and hold harmless the client and its directors, officers and employees, from and against all liability, claims, suits, losses, damages, costs and demands, including reasonable legal expenses and attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to any agreement between EP and client and arising out of or connected with the performance of such agreement, to the extent such injury, death or damage is caused by

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the sole or contributory negligence or willful misconduct of EP or its subcontractors or their respective employees, officers and agents in the performances of this Project. EP's obligation hereunder shall not extend to indemnification or holding harmless of a party indemnified hereunder for any claims of loss of profits or any other indirect, special, incidental or consequential damages of any nature whatsoever.

To the fullest extent permitted by law, Client agrees to indemnify and hold harmless EP and its directors, officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands, including reasonable legal expenses and attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to any agreement between EP and client and arising out of or connected with the performance of such agreement, to the extent such injury, death or damage is caused by the sole or contributory negligence or willful misconduct of client or its contractors or their respective employees, officers and agents; provided that such injury, death or damage is not occasioned by the sole negligence of EP or its subcontractors or their respective employees, officers and agents in the performance of this Project. Client's obligation hereunder shall not extend to indemnification or holding harmless of a party indemnified hereunder for any claims of loss of profits or any other indirect, special, incidental or consequential damages of any nature whatsoever.

Client acknowledges that EP has neither created nor contributed to the creation or existence of any type of hazardous or toxic waste, material, chemical, compound, or substance, or any other type of environmental hazard, contamination, or pollution, whether latent or patent, or the release thereof or the

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violation of any law or regulation relating thereto, at the site of the Project or in connection with the performance of the Project, and it is understood that EP shall have no liability for any such condition, and client shall indemnify EP for any and all loss, cost, or damage actually sustained and incurred by EP in connection therewith. The provisions of this Paragraph 8 shall survive the completion of the Project or the expiration, cancellation or termination of any agreement between EP and client.

9. Standard of Care. The Client acknowledges that the Services provided by EP in this Agreement may require EP to make decisions based on experience and professional judgment, rather than on precise scientific or empirical criteria. In performing its Services, EP shall use that degree of care and skill ordinarily exercised by competent members of the engineering profession as of the date of the performance of the Services, in the same locality as the site, and under the same or similar circumstances and conditions. EP shall perform its Services as expeditiously as is consistent with the orderly progress of the Project. No other representations or warranties, whether express or implied, are applicable with respect to the Services rendered hereunder.

In no event shall EP and EP's officers, directors, employees, agents and independent professional consultants, and any of them, be liable to client and/or anyone claiming by, through or under client, including client's insurers, for any lost, delayed, or diminished profits, revenues, or opportunities; losses by reason of shutdown or inability to utilize or complete work at the site of the Project; or any other incidental, special, indirect, or consequential damages of any kind or nature whatsoever resulting from EP's performance or failure to perform services pursuant to any agreement.

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To the fullest extent permitted by law, the Client agrees to limit EP's liability to the Client and anyone claiming by, through, or under the Client, for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of EP's performance of its Services, such that the total aggregate liability of EP for any and all claims and/or damages of any nature whatsoever, arising out of the performance of EP's Services on the Project, whether arising in tort, breach of contract, contractual indemnification pursuant to paragraph 8, breach of express or implied warranty, or any other theory of liability, shall not exceed \$20,000 or the total fee for Services rendered under this Agreement; whichever is greater.

The provisions of this Paragraph 9 providing for limitations of and protections against EP's liability shall survive the completion of the Project or the expiration, cancellation, or termination of any agreement between EP and client, and such provisions shall apply to the full extent permitted by law.

10. Client recognizes that, when it is known, assumed or suspected that hazardous materials exist on or beneath the surface of the site of the Project or within any structure thereon, certain sampling materials, such as drill cuttings and drilling fluids or asbestos removed for sampling, should be handled as if hazardous or contaminated. Accordingly, when sampling is included in the scope of services and when determined by EP in its sole and exclusive judgment to be necessary based on EP's assessment of the degree of contamination, hazard and risk, EP will promptly inform client that containerization and labeling will be performed; will appropriately contain and label such materials; and will leave the containers on site for proper, lawful removal, transport and disposal by client. Client waives any claim against EP, and

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agrees to indemnify, defend and hold EP harmless from any claim or liability for injury or loss which may arise as a result of the drill cuttings, drilling fluids or other assumedly hazardous materials being left on the site of the Project after their containerization by EP.

11. Client agrees that EP has authority to use its name as a client and a general description of the Project as a reference for other prospective clients.
12. If EP personnel are called or subpoenaed for depositions, examination, or court appearances in any dispute arising out of the Project, EP shall be reimbursed on a time and material basis in accordance with EP's then current, standard billing rates for such matters, including all out-of-pocket costs incurred in connection with such matters.
13. If any of these General Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the contract between them to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.
14. Once the client has signified its acceptance of EP's proposal, the express terms of EP's proposal to client and these General Terms and Conditions shall constitute the complete and exclusive statement of the terms of the agreement between the parties and are intended as a final expression of the terms of such agreement and will supersede all prior and contemporaneous agreements, representations or conditions, express or implied, oral or written. No provision of EP's proposal or these General

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Terms and Conditions may be waived, altered, or modified in any manner, unless the same shall be set forth in writing and signed by a duly authorized officer of EP. Client may use its standard business forms (such as purchase orders) to administer any agreement between EP and client, but use of such forms shall be for convenience purposes only, and any typed provision in conflict with the terms of EP's proposal or these General Terms and Conditions and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.

15. General LSP Clauses

- a. If the Project is performed on a site (or sites) in the Commonwealth of Massachusetts that involves the actual or suspected presence of hazardous materials or oil on or beneath the site or within any structure thereon, the Project may require the engagement of a Licensed Site Professional ("LSP") in accordance with the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c.21E, and the Massachusetts Contingency Plan ("MCP"), 310 C.M.R. 40.0001-40.1600. In the event that the Project requires the services of an LSP, EP will employ one or more of its staff LSPs unless otherwise instructed in writing by the Client. In some instances, EP may also subcontract with an LSP not otherwise regularly employed by EP. LSPs are registered in the Commonwealth of Massachusetts in accordance with M.G.L. c.21A, §§19-19J and the regulations of the Board of Registration of Hazardous Waste Site Cleanup Professionals, 309 C.M.R. 4.00-4.05 (the "LSP Program").
- b. The MCP requires the application of the "Response Action Performance Standard (RAPS)" to assessment, remediation and other response actions. The client further agrees to compensate EP for reasonable charges incurred in connection with EP's compliance with LSP requirements. In the

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event that the LSP's legal obligations conflict with the terms and conditions of this Agreement or the wishes or intentions of the Client, the Client hereby agrees that the LSP shall at all times comply with the requirements of the LSP Program. Client covenants not to sue or to otherwise hold or seek to hold liable the LSP or EP for any action taken in accordance with the LSP Program or the MCP. Client agrees to hold harmless the LSP and EP from any claims, losses, damages or penalties incurred in connection with the LSP's fulfillment of his or her obligations under the LSP Program or the MCP.

- c. Client acknowledges that any opinion issued by an LSP as part of the Project is issued solely for Client's benefit in connection with satisfying the requirements of the MCP. Client agrees not to use an LSP opinion for any other purpose unless authorized in writing by the LSP and EP.
 - d. LSP opinions issued as part of the Project are based solely upon applicable laws and regulations and information known to the LSP at the time of issuance. CLIENT AGREES THAT UNDER NO CIRCUMSTANCES SHALL AN LSP OPINION BE RELIED UPON AS A GUARANTEE OR AN EXPRESS OR IMPLIED WARRANTY OF PERFORMANCE. LSPs employed in the Project shall exercise that degree of care and skill ordinarily exercised under similar circumstances by other registered LSPs and as required by the LSP Program.
16. Client Disclosure Clause. Client agrees to make diligent efforts to locate and disclose to EP and to any LSP engaged on the Project (the "LSP") and all documents and information about the identity, locations, quantity, and nature of any hazardous materials or oil at or under the Project site or in any structure thereon. Client further agrees to furnish or cause to be furnished to EP and the LSP all existing reports, data, studies and documents including, without limitation, any

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existing LSP opinions containing information about surface and subsurface site conditions. All Client- provided documents will remain the property of the Client.

EP shall exercise reasonable efforts, to the extent consistent with the Standard of Care, to comply with all applicable zoning and codes for the Project required by those governmental agencies having jurisdiction over the Project. The Client acknowledges that some zoning and code requirements are subject to interpretation. The proposed language of certificates, affidavits or certifications requested of EP or EP's consultants shall be submitted to EP for review and approval at least fourteen (14) days prior to execution. The Client shall not request certification and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of EP. EP shall not be required to sign any document(s), that would result in EP having to certify, guarantee or warrant the existence of conditions EP cannot ascertain.

All documents including drawings and specifications, design concepts, inventions, proprietary information developed for the Project, including electronic documents prepare or furnished by EP under this Agreement are instruments of service for use solely with respect to the Project ("Documents"). As author, EP shall retain the ownership and property interest in those instruments of service, including copyright, common law and statutory law interest in the Documents whether or not the Project is completed; however, if the Project is completed, the Client may retain a license to use copies of eth Documents solely for information and record reference purposes in connection with the completed Project. These Documents are not intended or represented to be suitable for

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reuse by Client or any other party in connection with (a) the completion of the Project if EPG otherwise is not involved in the Project; (b) extensions of the Project; and /or (c) any other project. Any reuse without written approval, verification or adaptation by EP for the specific purpose intended will be at the Client's sole risk and without any liability or legal exposure to EP or its consultants. The Client accordingly waives all claims and shall defend, indemnify and hold harmless EP, and its consultants, from any and all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from the unauthorized use. At EP's sole discretion, it may allow the Client to reuse the Documents with written approval, verification or adaptation of the Documents by EP, which will entitle EP to additional compensation to be mutually agreed upon by the Client and EP.

Further, EP agrees to provide materials to the Client stored electronically. The Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media ("CADD Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the CADD Documents provided to the Client are for informational purposes only. EP makes no warranties, either express or implied, regarding the accuracy, fitness or suitability for any purpose of the CADD Documents. Accordingly, the Client agrees to waive any and all claims against EP resulting in any way from the any use, reuse, reliance on, or alteration on the CADD Documents.

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

July 2021