

HMMH

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January 8, 2019

Ms. Jean Fraser, Planner
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

Subject: Proposal for Review of Sound Measurement Plan for Proposed Hospital Helipad Operations
Reference: HMMH Proposal No. P18-20235

Dear Ms. Fraser:

Harris Miller Miller & Hanson Inc. (HMMH) is pleased to provide the City of Portland (the City) with a proposal for a review of the Sound Measurement Plan (SMP) for Proposed Hospital Helipad Operations associated with the Maine Medical Center (MMC). Although it is understood the MMC will utilize modeling to predict sound levels, the SMP is required in the event that the predicted sound levels are incorrect.

The scope of services below is consistent with our recent email traffic. The sections below detail our proposed: (1) scope of services, (2) consulting terms and conditions and anticipated budget, and (3) project schedule.

Scope of Services

Data Review

HMMH will review the MMC SMP ("MMC Sound Management Plan FINAL.pdf"; 10 pages) document. As stated in the proposed helipad's condition of approval, the SMP should:

- Describe the assessment of actual changes in sound impacts on nearby properties between the helicopter operations at the existing helipad and at the proposed (additional) location. The proposed location is north and east of the existing helipad and therefore is nearer (and higher) to residential and other adjacent properties.
- Include criteria for mitigation where such impacts are severe based on appropriate national standards
- Identify additional study points to account for the proposed helipad location likely not benefitting from the shadow of any MMC or other buildings (the existing helipad enjoys shielding benefits).
- Provide a table of all considered points, their ambient, existing and predicted sound levels and associated explanation of the data and any caveats
- Clarify the process and timetable for making mitigation available to any parties meeting the aforementioned impact criteria and the properties mentioned in an excerpt of the 2005 Conditional Zoning Agreement

The City has provided HMMH with the following background documents:

1. Excerpt of 2005 Conditional Zoning Agreement (paragraph 4 of "Scope of Work for consultant re MMC Heliport sound Meas. Plan review 12.11.18.pdf"; 3 pages).
2. Site Plan ("Plan 5 Site Plan.pdf"; 1 page)
3. Elevation Plan ("PLAN 140 ET Elevations February 22.pdf"; 4 pages)
4. Heliport Application ("WS S-6B Heliport FAA Application February 8.pdf"; 1 page)
5. 2017 Noise Study ("WS S-6 Heliport Noise Study.pdf"; 11 pages)
6. MMC Memo of January 2, 2018 ("WS - S- 6A Heliport Memo January 31.pdf"; 2 pages)
7. MMC Response dated January 22, 2018 ("WS S-6C Heliport Comment Responses 2.23.18.pdf"; 7 pages)
8. Acentech memo dated January 4, 2019 ("from MMC Accentech Memo-MMC Helipad-2019 0104.pdf"; 4 pages)

From the 2017 Noise Study, the City will also provide HMMH a electronic KMZ file for each of the following:

- a) Sound measurement locations shown in the Study's Figure 1
- b) Planned flight tracks shown in the Study's Figure 2 and
- c) Flown tracks shown in the study's Figure 3.

Technical Memorandum

HMMH will prepare a technical memorandum of its review of the SMP. The budget does not allow incorporation of comments from the City, unless they are administrative in nature.

Deliverables: Technical Memorandum

Consulting Terms and Conditions and Anticipated Budget

HMMH will provide these services on a Time and Materials basis in accordance with the attached Terms and Conditions. We estimate we will be able to complete the scope of work for a budget of \$3,000. This budget is for HMMH labor only and assumes no travel, other direct expenses, or subcontractors.

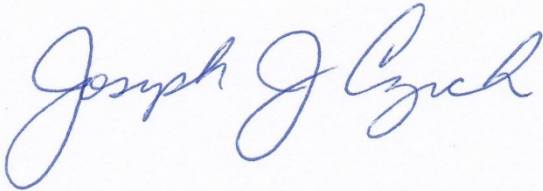
Project Schedule

Following contract execution, HMMH anticipates the Technical Memorandum will be delivered no later than one month from the later of the City's written notice-to-proceed or receipt of data.

We appreciate the opportunity to assist you on this interesting project. Please do not hesitate to contact me with any questions.

Sincerely yours,

Harris Miller Miller & Hanson Inc.



Joseph J. Czech, PE
Principal Consultant

Att: HMMH Standard Terms and Conditions



**STANDARD TERMS AND CONDITIONS
 for Professional Services**

1. **TERMS OF OFFER:** These general terms and conditions ("Terms and Conditions") are part of a letter of proposal or other document ("Proposal") specifying a scope of services and budget ("Services") to be performed by Harris Miller Miller & Hanson Inc. ("HMMH") for client named in the Proposal ("Client") and may be provided separately from the Proposal. Regardless of the format, these Terms and Conditions together with the terms on the face of the Proposal collectively constitute an agreement (the "Agreement") between HMMH and Client. Performance of Services by HMMH is subject to and expressly limited to and conditioned on acceptance of these Terms and Conditions. Client's acknowledgement of these Terms and Conditions or issuance of a purchase order for Services, whichever occurs first, shall constitute acceptance of these Terms and Conditions. Additional or different terms and conditions applicable to a project may be specified by HMMH on the face of the Proposal, which terms and conditions will control and in the event of a conflict between the terms and conditions of shall take precedence over these Terms and Conditions. No modification of these Terms and Conditions shall be effective unless in writing and signed by an authorized representative of HMMH.



2. **PROFESSIONAL SERVICES:** Client will pay HMMH for Services as either (i) fixed price, or (ii) time & materials, as specified in the Proposal. Fixed price work shall be invoiced monthly on the basis of the percent of Services completed, rather than on an hours-spent basis. Time & materials work shall be invoiced on the basis of the number of hours expended by each HMMH employee or contractor providing Services on the project, multiplied by the then-current applicable hourly rate for each such employee or contractor. If Client requests additional services outside of those Services set forth in the proposal and HMMH agrees to provide such services, such services will be "Services" hereunder and, unless otherwise agreed to by the parties, Client shall pay for such additional Services on a time & materials basis. HMMH's current rates for each employee classification are set forth below, and HMMH may adjust the standard rates charged to Client for particular employees from time to time:

<u>Employee Classification</u>	<u>Hourly Rates</u>
Supervisory Consultant	\$285.00 - \$325.00
Principal Consultant/Engineer/Scientist	\$210.00 - \$284.00
Senior Consultant	\$145.00 - \$209.00
Senior Programmer/Software Support	\$265.00 - \$280.00
Consultant	\$110.00 - \$144.00
Graphics	\$100.00 - \$140.00
Technical/Staff Assistant/Project Support	\$100.00 - \$140.00
Senior Project Support	\$190.00 - \$200.00

3. **OTHER SERVICES AND COSTS:** Client shall reimburse HMMH for expenses incurred as a result of performing Services as follows:

- HMMH's actual expenses for travel and subsistence, subcontractor services, supplies obtained from third parties, plus ten percent (10%);
- time spent traveling to and from the location of performance of Services by HMMH personnel will be charged as consulting time at the then-current applicable hourly rate;
- if HMMH personnel are required to assist Client in litigation activities (e.g., courtroom appearances, time spent giving depositions or expert testimony, providing similar litigation support services), time will be charged as consulting time at the then-current applicable hourly rate, plus a premium as identified in the Proposal; and
- other expenses, including but not limited to computer processing time, instrument usage, copier, phone and shipping costs shall be provided at HMMH's then-current standard commercial rates (which rates may be updated by HMMH from time to time). Then-current instrument usage rates and other direct cost sheets are provided as applicable.

4. **INVOICING AND PAYMENT; TAXES:** HMMH shall render invoices for all amounts due hereunder on a monthly basis. Client shall pay all invoices in full, in U.S. dollars, within 30 days of the date of such invoice.

Deposits/retainers may be required and will be held until the Services are completed and then applied to the outstanding balance. Any unused portion of any such deposit or retainer will be returned to Client. HMMH will assess a late charge on amounts not paid when due equal to the lesser of 12% per annum (or 1% per month) or the maximum amount permitted by applicable law. Amounts payable hereunder shall not be subject to deduction or set-off by Client for any reason. Client shall be solely responsible for all sales and use taxes, customs duties, fees for permits, and similar charges arising out of or applicable to Services or to tangible or intangible items purchased for use in connection with providing Services (other than with respect to taxes imposed on HMMH's net income.) Any such payments that must be made directly by HMMH shall be reimbursable as costs pursuant to the terms of Section 3.

5. **WARRANTY:** HMMH represents and warrants that the Services shall: (i) conform to the Proposal in all material respects; and (ii) be performed in accordance with generally accepted professional standards, it being understood and agreed that such standards shall not be limited to the optimum practices, methods, or acts, to the exclusion of all others, but rather a spectrum of practices, methods, or acts that experienced professionals would reasonably be expected to employ in performing the Services. The term of this warranty shall start on the day the applicable Services are performed and expire on the date that is ten (10) business days thereafter. In the event of a breach of this warranty, HMMH shall use commercially reasonable efforts to re-perform the applicable Services within a reasonable time period, provided that Client notifies HMMH prior to the end of the warranty term. The foregoing shall be Client's sole and exclusive remedy, and HMMH's sole and exclusive obligation, for a breach of the warranty set forth in this Section 5.
6. **INSURANCE; INDEMNIFICATION:** HMMH carries Workers Compensation and Employers Liability Insurance, Comprehensive General and Auto Liability Insurance, and Professional Errors and Omissions insurance. Certificates of insurance will be furnished on request. Client agrees to indemnify, defend and hold harmless HMMH, its officers, directors, employees and agents (each an "HMMH Indemnitee") against any and all claims, losses, liabilities, suits, costs and expenses (collectively, "Claims") brought by a third party, including reasonable attorneys' fees for defending such Claims, resulting from, arising out of or in connection with HMMH's performance of the Services or any related dealings between HMMH and Client, except to the extent such Claims result from an HMMH Indemnitee's negligence or willful misconduct. Further, if Client or any third party claiming through Client brings such a Claim against an HMMH Indemnitee, Client shall indemnify and hold harmless such HMMH Indemnitee to the extent that the claimed or adjudicated damages are of an amount or type that exceeds or is otherwise excluded by the limitation of liability terms of Section 7.
7. **LIMITATION OF LIABILITY; DISCLAIMER:** HMMH SHALL HAVE NO LIABILITY TO CLIENT, WHETHER ARISING FROM OR RELATED TO THE SERVICES OR ANY OTHER DEALINGS BETWEEN THE PARTIES, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST OPPORTUNITIES. IN NO EVENT SHALL HMMH'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION, INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER ARISING AT LAW, IN EQUITY, OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE TOTAL AMOUNTS PAID TO HMMH BY CLIENT WITH RESPECT TO THE SERVICES GIVING RISE TO THE LIABILITY. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH HEREIN SHALL REMAIN IN EFFECT. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 5, THERE ARE NO WARRANTIES WITH RESPECT TO THE SERVICES OR ANY WORK PRODUCT PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.
8. **FORCE MAJEURE:** HMMH shall not be in default of its obligations to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to labor disputes, fire, flood, natural catastrophe, military operations, acts of terrorism, computer or other equipment failure or inability to obtain equipment or supplies.
9. **ANNOUNCEMENTS:** Client shall not use HMMH's name or service marks on any announcements concerning the project for which the Services are performed, or for any promotional or advertising purposes without HMMH's prior written approval.



10. **TERMINATION:** This Agreement shall commence on the date as indicated on the Proposal and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement or until completion of the Services. In the event of any material breach of this Agreement by either party, the other party may terminate this Agreement by giving thirty (30) days' prior written notice thereof to the non-breaching party; provided, however, that this Agreement shall not terminate at the end of said thirty (30) days' notice period if the party in breach has cured the breach of which it has been notified prior to the expiration of said thirty (30) days. In the absence of a material breach of this Agreement by HMMH, Client may terminate this Agreement by giving HMMH thirty (30) days prior written notice of its election to terminate. In such case, Client agrees to pay HMMH, within fifteen (15) days from date of termination, for all costs and expenses, whether invoiced or work in process, incurred by HMMH up to the effective date of termination.
11. **GOVERNING LAW:** This Agreement shall be governed by the laws of The Commonwealth of Massachusetts (without reference to conflicts of law provisions thereof) and United States Federal law to the extent applicable. Any controversies or claims arising from, or relating to, this Agreement shall be adjudicated exclusively by the courts of the Commonwealth of Massachusetts or federal courts located in The Commonwealth of Massachusetts, and the parties agree that such courts are a convenient forum. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any such action.
12. **RIGHTS IN WORK PRODUCT:** HMMH shall retain all right, title and interest (including copyrights) in and to all deliverables created and provided to Client hereunder. HMMH hereby grants to Client a royalty-free, nonexclusive, nontransferable license to use and copy such deliverables for Client's internal business purposes, solely with respect to the Services. There are no implied licenses hereunder. Except as specifically set forth above, any transfer of any right, title, or interest in or to any HMMH deliverable or intellectual property, including, without limitation, any improvements or developments thereto, shall be subject to the terms of a separate written agreement between the parties.
13. **CONFIDENTIALITY:** The term "Confidential Information" means all information disclosed by or on behalf of one party to the other party in any manner (including, without limitation, electronically, in writing, orally, or by inspection) such that a reasonable person would understand its confidential or proprietary nature, regardless of whether marked or designated "confidential" or "proprietary," provided that "Confidential Information" does not include information that (a) is known to receiving party at the Effective Date and is not subject to another confidentiality obligation to disclosing party, (b) is publicly known as of or after the Effective Date without breach of this Agreement, or (c) is lawfully and in good faith disclosed to receiving party by a third party who is not subject to a confidentiality obligation to disclosing party. The receiving party acknowledges that the disclosing party is and will remain the sole owner of Confidential Information. During the term of this Agreement and for a period of five (5) years thereafter, receiving party will not disclose the disclosing party's Confidential Information to any third party, and receiving party will not use any Confidential Information of the disclosing party other than for the performance of its rights or exercise of its duties hereunder. If required by law, receiving party may disclose Confidential Information to a governmental authority, provided that reasonable advance notice is given to disclosing party and receiving party reasonably cooperates with Disclosing Party to obtain confidentiality protection of such information.
14. **MISCELLANEOUS:** This Agreement constitutes the complete and exclusive agreement between HMMH and Client with respect to the subject matter hereof, superseding any prior agreements and communications (both written and oral) regarding such subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect and HMMH and Client agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. No failure or delay by HMMH or Client in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy. Client shall not assign this Agreement, in whole or in part, without the prior written consent of HMMH. Nothing in this Agreement will be construed to imply a joint venture, partnership, or agency relationship between HMMH and Client, and HMMH will be considered an independent contractor when performing Services.

