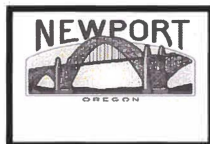


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**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: HMMH Solar Feasibility Study ONP Date: 5/17/2023

Statement of Purpose: Solar Photovoltaic Feasibility Study at the Newport Municipal Airport.

Department Head Signature: [Signature] 5-17-23

Remarks, if any:

City Attorney Review and Signature: See Attached Email Date: 5/16/2023

Other Signatures as Requested by the City Attorney: See Attached Email

Name/Position
Date: _____

Budget Confirmed:

Signature	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A
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Certificate of Insurance Attached:

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A
-----	-------------------------------------	----	--------------------------	-----

City Council Approval Needed:

Yes	<input checked="" type="checkbox"/>	No	<input checked="" type="checkbox"/>	Date: <u>3/20/2023</u>
-----	-------------------------------------	----	-------------------------------------	------------------------

*Discussed + Prof from
committed to
explain
Solar in*

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 05-17-23

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

Lance Vanderbeck

From: David Allen
Sent: Tuesday, May 16, 2023 5:03 PM
To: Lance Vanderbeck; Spencer Nebel
Cc: Erik Glover; Melanie Nelson
Subject: Re: Solar Feasibility Study at Newport Municipal Airport.
Attachments: Professional_Services_Agreement-Solar_Feasibility_Study_HMMHSigned.pdf; 23-0092A_Ins_Cert_23-24_WC.pdf; 23-0092A_Ins_Cert_23-24.pdf

Attached agreement with COIs looks okay, and this e-mail can be used to confirm review for signature. --David

From: Lance Vanderbeck
Sent: Tuesday, May 16, 2023 2:52 PM
To: Philip M. DeVita; David Allen
Cc: Spencer Nebel; Erik Glover; Contracts
Subject: RE: Solar Feasibility Study at Newport Municipal Airport.

Good afternoon Phil,

Thank you for the quick response. Once City Attorney provides the ok to sign, I can get City Manager Spencer Nebel to sign off and get the contract back to you.

Thank you for your time,

Lance Vanderbeck
Airport Director
City of Newport
541.867.7422

-----Original Message-----

From: Philip M. DeVita <pdevita@hmmh.com>
Sent: Tuesday, May 16, 2023 11:57 AM
To: David Allen <D.Allen@NewportOregon.gov>; Lance Vanderbeck <L.Vanderbeck@NewportOregon.gov>
Cc: Spencer Nebel <S.Nebel@NewportOregon.gov>; Erik Glover <E.Glover@NewportOregon.gov>; Contracts <contracts@hmmh.com>
Subject: RE: Solar Feasibility Study at Newport Municipal Airport.

Great thanks. Attached is a copy of the signed service agreement as well as the COIs.

Please let us know if there are any questions. If you could send back a signed copy of the service agreement for our files that would be great.

Phil

* * * * *

CITY OF NEWPORT, OREGON PROFESSIONAL SERVICES AGREEMENT

Solar Photovoltaic Feasibility Study – Newport Municipal Airport

THIS AGREEMENT is between City of Newport, an Oregon municipal corporation (City), and Harris Miller Miller & Hanson Inc., a Massachusetts corporation, which is registered to practice Civil Engineering in the State of Oregon (Consultant).

RECITALS

- A. Pursuant to public contracting rule 137-048-0200 the City of Newport (City) solicited proposals for professional Consulting services to assist the City in a Solar Photovoltaic Feasibility Study at the Newport Municipal Airport.
- B. After reviewing all proposals, City has selected through direct appointment Harris Miller Miller & Hanson Inc. (Consultant) to provide the proposed services.
- C. Consultant is willing and qualified to perform such services.

TERMS OF AGREEMENT

1. Consultant's Scope of Services

Consultant shall perform professional Consulting services related to a Solar Photovoltaic Feasibility Study at the Newport Municipal Airport. City is free to utilize other consultants as it deems appropriate.

2. Effective Date and Duration

This agreement is effective on execution by both parties and shall expire, unless otherwise terminated or extended, after one year. The parties may extend the term by mutual agreement.

3. Consultant's Fee and Schedules

A. Fee

Fees for services under this Agreement shall be based on time and materials and pursuant to the rates shown in Exhibit A, up to a maximum amount payable of **\$17,000**. Consultant may increase the rates shown in Exhibit A on an annual basis, subject to the written approval of the City. Consultant will alert the City when Consultant is increasing its fees. Consultant will bill for progress payments on a monthly basis. In order to determine the maximum monetary limit for each task, Consultant will submit a schedule and a labor hour estimate based on the rates shown in Exhibit A. Consultant will invoice monthly progress payments based on actual time worked on the project. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially completed may be paid for in proportion to the degree of completion.

Consultant will be reimbursed for direct charges such as the cost of printing, postage, delivery services, and subconsultant fees. Unless specifically noted in the Task Order, direct charges will be billed at cost without any markup. Office expenses such as computer cost, telephone calls, and overhead expenses are incidental and are included in the hourly rates shown in Exhibit A.

B. Payment Schedule for Basic Fee

Payments shall be made within 30 days of receipt of monthly billings based on the work completed. Payment by the City shall release the City from any further obligation for payment to the Consultant for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Contingency Tasks

When agreed to in writing by the City, the Consultant shall provide services described as Contingency Tasks in a Task Order.

D. Certified Cost Records

Consultant shall furnish certified cost records for all billings to substantiate all charges. Consultant's accounts shall be subject to audit by the City. Consultant shall submit billings in a form satisfactory to the City. At a minimum, each billing shall identify the Task Order under such work is performed, work completed during the billing period, percentage of work completed to date, and percentage of budget used to date for each task.

E. Identification

Consultant shall furnish to the City its employer identification number.

F. Payment – General

- 1) Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) Consultant shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime. Any subcontractors utilized by Consultant under this Agreement will be paid according to the then prevailing wage.
- 3) Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other

needed care and attention incident to sickness or injury to the employees of Consultant or all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 4) Consultant shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Consultant, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Consultant. The payment of the claim in this manner shall not relieve Consultant or its surety from obligation with respect to any unpaid claims.

G. Schedule

Consultant shall provide services under this Agreement in accordance with the Project Schedule.

4. Ownership of Plans and Documents: Records; Confidentiality

A. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

- 1) Consultant Intellectual Property means any intellectual property owned by Consultant and developed independently from this Agreement that is applicable to the Services or included in the Work Product.
- 2) Third Party Intellectual Property means any intellectual property owned by parties other than City or Consultant that is applicable to the Services or included in the Work Product.
- 3) Work Product means the Services Consultant delivers or is required to deliver to City under this Agreement. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

B. Work Product

- 1) Except as provided elsewhere in this Agreement, all Work Product created by Consultant pursuant to this Agreement, including derivative works and

compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of City. City and Consultant agree that such original works of authorship are “work made for hire” of which City is the author within the meaning of the United States Copyright Act. To the extent that City is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City’s reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in City. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- 2) In the event Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of City to authorize contractors, Consultants and others to use Consultant Intellectual Property, for the purposes described in this Agreement.
- 3) In the event Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on City’s behalf and in the name of City, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of City to authorize contractors, Consultants and others to use the Third-Party Intellectual Property, for the purposes described in this Contract.
- 4) In the event Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of City to authorize contractors, Consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Agreement.
- 5) In the event Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Consultant shall secure on City’s behalf and in the name of City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property, including the right to authorize contractors, Consultants

and others to use the pre-existing elements of the Third Party Intellectual Property, for the purposes described in this Agreement.

- 6) To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, Consultant shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was not specifically contemplated and agreed to by the Parties in this Agreement.
- 7) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

C. Confidential Information

- 1) Consultant acknowledges that it or its employees, Sub-Consultants, subcontractors or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City or City's residents. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, SubConsultants, subcontractors or agents in the performance of this Agreement shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information; or (g) is required to be disclosed by law, subpoena, or other court order.
- 2) Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this Agreement, and to advise each of its employees, Sub-Consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist City in identifying and preventing any

unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 3) Consultant acknowledges that breach of this Section 4, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 4, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

5. Assignment/Delegation

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other. If City agrees to assignment of tasks to a subcontractor, Consultant shall be fully responsible for the acts or omissions of any subcontractors. Any approval of a subcontractor does not create a contractual relationship between the subcontractor and City.

6. Consultant is Independent Contractor

- A. The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this Agreement, but Consultant is not subject to the direction and control of the City. Consultant shall be an independent contractor for all purposes and shall not be entitled to compensation other than the compensation provided for under Section 3 of this Agreement. The City's acceptance of the work product as satisfactory does not relieve the Consultant from responsibility for any errors in the work product.
- B. Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Consultant to provide services under this Agreement are employees of Consultant and not of City.

Consultant acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of the Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make as a result of the finding.

- C.** The Consultant represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D.** Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System.
- E.** Consultant certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F.** Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

- A.** The City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant represents to the City that the work under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the Civil Engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Consultant's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Consultant of any responsibility for design deficiencies, errors or omissions.
- B.** Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions to the extent caused by the alleged negligent or otherwise wrongful acts or omissions of Consultant or its subcontractors, subConsultants, agents or employees under this Agreement. This indemnification does not extend to indemnification for negligent or otherwise wrongful acts or omissions of the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

- C.** Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent caused by the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees in performance of professional services under this Agreement. Any design work by Consultant that results in a design of a facility that does not comply with applicable laws including accessibility for persons with disabilities shall be considered a professionally negligent act, error or omission.
- D.** As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Consultant, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Consultant unrelated to the quality of professional services provided by Consultant.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement as detailed in this section. The insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Consultant and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form with policy limits of at least per occurrence. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement in an amount not less than \$2,000,000.

B. Professional Liability

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per claim shall not be less than \$1,300,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claimsmade" form.

C. Commercial Automobile Insurance

Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

D. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage.

E. Additional Insured Provision

The Commercial General Liability and Automobile Liability Insurance Policies shall include the City its officers, directors, and employees as additional insureds with respect to this Agreement. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Consultant's insurer will provide if less than 24 months. Consultant will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days' written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Consultant shall furnish a Certificate of Insurance to the City. No Agreement shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

The parties agree that Consultant's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Copy of Policy or Certificate of Insurance

A cross-liability clause or separation of insureds clause will be included in the general liability policy required by this Agreement. Consultant shall furnish City with at least 30-days written notice of cancellation of, or any modification to, the required insurance coverages. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City Manager
City of Newport
169 SW Coast Highway Newport,
OR 97365

Thirty days' cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance. The procuring of the required insurance shall not be construed to limit Consultant's liability under this agreement. The insurance does not relieve Consultant's obligation for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Consultant. If City terminates the Agreement pursuant to this section, Consultant shall be entitled to payment for services provided prior to the termination date.

10. Termination with Cause

A. City may terminate this Agreement effective upon delivery of written notice to Consultant, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of Agreement) to Consultant, may terminate this Agreement:

- 1)** If Consultant fails to provide services called for by this Agreement within the time specified, or

2) If Consultant fails to perform any of the other provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

C. If City terminates this Agreement, it shall pay Consultant for all undisputed invoices tendered for services provided prior to the date of termination.

D. Damages for breach of Agreement shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Notice

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

IF TO CITY OF NEWPORT

City Manager
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-0603
s.nebel@newportoregon.gov

IF TO CONSULTANT

Director of Air Quality
HMMH
700 District Avenue, Suite 800
Burlington, Massachusetts 01803
781-229-0707
pdevita@hmmh.com

The date of deposit in the mail shall be the notice date for first class mail. All other notices, bills and payments shall be effective at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Force Majeure

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractors or supplies due to such cause; provided that the parties so disenabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. Non-Discrimination

Consultant agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations. By way of example only, Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. Errors

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

17. Extra Work

Extra work or work on Contingency Tasks is not authorized unless the City authorizes the additional or contingency work in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to unauthorized extra work and Consultant shall be entitled to no compensation for the performance of any extra work not authorized in writing.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

19. Compliance with Applicable Law

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including but not limited to those set forth in ORS 279A, 279B and 279C. While all required

contractual provisions are included in Exhibit B, Consultant shall be familiar with and responsible for compliance with all other applicable provisions of the Oregon Public Contracting Code.

20. Conflict Between Terms

This document shall control in the event of any conflict in terms between this document and the RFP and/or Consultant's proposal (Exhibit A).

21. Access to Records

City shall have access to the books, documents, papers and records of Consultant that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

22. Audit

Consultant shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. Consultant agrees to permit City or its duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

24. Industrial Accident Fund Payment

Consultant shall pay all contributions or amount due the Industrial Accident Fund that Consultant or subcontractors incur during the performance of this Agreement.

25. Arbitration

All claims, disputes, and other matters in question between the City and Consultant arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lincoln County Circuit Court will establish rules to govern the arbitration.

A claim by Consultant arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by

the City Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the Consultant may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the City Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Board's decision being binding upon the City and Consultant.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Consultant to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

26. Attorney Fees

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Consultant agrees to pay City's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party

27. Complete Agreement

This Agreement and any exhibit(s) hereto and any and all Task Orders executed by the parties constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The following exhibits are attached to and incorporated into this Agreement:

- A. Exhibit A – Consultant's Fee Schedule and Proposal
- B. Exhibit B – Oregon Public Contracting Code/required contractual provisions

28. Miscellaneous

- A. Consultant agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of City.
- B. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access

to, or creating systems for any of City's computers, data, systems, personnel, or other information resources.

- C. Consultant will include in all contracts with subcontractors' appropriate provisions as required by ORS 279C.580.
- D. Consultant will comply with environmental and natural resources regulations as set forth in ORS 279B.225 and regulations relating to the salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris as set forth in ORS 279B.225 and 279C.510.

By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:

CITY OF NEWPORT:



Spencer R. Nebel, City Manager

Date: 5/17/23

Harris Miller Miller & Hanson Inc.

By: 

Its: Diana Wasiuk, President / CEO

Date: 05/16/2023

EXHIBIT A
CONSULTANT'S FEE SCHEDULE AND PROPOSAL

HMMH

700 District Avenue Suite 800
Burlington, Massachusetts 01803
781.229.0707
www.hmmh.com

March 9, 2023

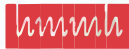
Lance Vanderbeck
Airport Director
City of Newport
L.Vanderbeck@NewportOregon.gov

Subject: Proposal for City of Newport, Solar Photovoltaic Feasibility Study Reference: HMMH

Proposal Number P23-0092

Dear Lance:

Thank you for contacting HMMH regarding the City of Newport interest in assessing solar photovoltaic (PV)



opportunities to supply clean electricity at the Newport Municipal Airport (ONP). It is our understanding that ONP is evaluating the feasibility of developing a solar PV project on a vacant parcel of land owned by the airport and have requested that a study answer the following questions:

1. Is a solar farm a good fit for the area identified?
2. Will the location provide enough sun for electricity production?
3. What would be the cost to build and return on investment?

For this project, we will be supported by Stephen Barrett of Barrett Energy Resources Group (BERG). Mr. Barrett is a former HMMH staff member and is well versed in the solar energy field and was the lead investigator on numerous renewable energy projects at HMMH including the Federal Aviation Administration (FAA) Solar Guide and numerous ACRP research projects.

HMMH is pleased to provide you with the following scope of work and budget based on your inquiry. The proposed scope of work would more broadly assess the technical and financial feasibility of solar at the Newport Municipal Airport.

Scope of Work

Task 1- Site Identification: use the Airport Layout Plan and other desktop information to confirm the viability of the proposed project site for solar, and to identify any other potential project sites. Run PVWatts to estimate electricity generating potential of projects identified.

Task 2 – Interconnection Feasibility: use Google Earth to look at electricity infrastructure near the airport to determine concept for interconnecting a solar project at Newport Airport to the electricity grid. Assess whether there is any advantages or disadvantages to sites identified given airport's proximity to existing electrical infrastructure.

Task 3 – Regulatory Process: describe local, state, federal, and FAA regulatory process for developing a solar project at the airport including a review of the airport layout plan (ALP), airspace safety Part 77, and NEPA applicability.

Task 4 – Financial Feasibility: specify the characteristics of the preferred project and prepare two financial analyses of that project – (1) airport owned project, and (2) third-party owned project. The analysis will consider funding options including new incentive programs in the recently enacted infrastructure and inflation reduction laws passed by Congress. Discuss with airport the availability of FAA grants.

Task 5 – Feasibility Study Report: HMMH will prepare a Draft Technical Feasibility Study Report for review by the City of Newport. It will consolidate the work completed in the above tasks. Incorporating comments from City, HMMH will prepare a final report documenting our methodologies, assumptions and recommendations.

Lance Vanderbeck
HMMH Proposal Number P23-0092
March 9, 2023
Page 2

Assumptions

This scope of work assumes the following assumptions:

- Scope does not include structural analysis, wind loading, or geotechnical analysis.
- Scope does not include a detailed interconnection study and compatibility with existing infrastructure or utility requirements.
- Costs will include installed costs and lifecycle costs and does not include Airport management or local permitting costs.
- Assumes a desk top analysis and no travel is required.

PRICE ESTIMATE, CONTRACT AND SCHEDULE

HMMH will provide the services described on a time and materials basis for a not-to-exceed cost of \$17,000 in accordance with our agreed up on Standard Terms and Conditions.

The HMMH team is prepared to schedule our resources (staff and equipment) and begin work immediately upon receiving your authorization to proceed. The schedule will also depend on receipt of all relevant project information (e.g. ALP, GIS files, AutoCAD files, etc.) which will be requested after a kick off meeting.

I will serve as project manager. We very much look forward to the opportunity to assist you with this interesting project. Please feel free to contact me at 781-852-3144 if you have any questions or concerns about this proposal.

Sincerely yours,

Harris Miller Miller & Hanson Inc.



Philip M. DeVita
Director of Air Quality

HMMH

700 District Avenue, Suite 800
Burlington, Massachusetts 01803
781.229.0707
www.hmmh.com

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:

Employee Classification	Hourly Rates	
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:
 - a. HMMH's actual expenses for travel and subsistence, subcontractor services, supplies obtained from third parties, plus ten percent (10%);
 - b. 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;
 - c. 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
 - a. may be updated by HMMH from time to time). Then-current instrument usage rates and other direct cost sheets are provided as applicable.
2. **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.

HMMH STANDARD TERMS AND CONDITIONS
For Professional Services

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.

3. **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.
4. **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.
5. **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.

HMMH STANDARD TERMS AND CONDITIONS
For Professional Services

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.

EXHIBIT B

Oregon Public Contracting Requirements ORS CHAPTERS 279B AND 279C REQUIREMENTS

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1); 279C.505(1)(a)
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2); 279C.505(1)(b)
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3); 279C.505(1)(c)
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. ORS 279B.220(4); 279C.505(1)(d)
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid. ORS 279C.515
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1); 279C.530(1)
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2); 279C.530(2)
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3); 279C.520(3)
- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that

the employees may be required to work. ORS 279B.235(2); 279C.520(2)

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women, service-disabled veterans, or emerging small business or disadvantaged business enterprises in obtaining any required subcontractors. ORS 279A.110
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120
- (15) If the contract price exceeds \$50,000 and this contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. The applicable prevailing rate of wage may be accessed online at: <https://www.oregon.gov/boli/employers/Pages/prevaling-wage-rates.aspx>. ORS 279C.830
- (16) If the project is subject to both the Davis-Bacon Act and state prevailing rate of wage, Contractor and every subcontractor shall pay workers not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830
- (17) Contractor and every subcontractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). ORS 279C.830