

## **ATTACHMENT A**

### **AMENDMENT NO. THREE TO PROFESSIONAL SERVICES AGREEMENT WITH HARRIS MILLER MILLER & HANSON INC. FOR JOHN WAYNE AIRPORT- AIRCRAFT NOISE ABATEMENT DEPARTURE PROCEDURE (NADP) ANALYSIS**

THIS AMENDMENT NO. THREE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Three") is made and entered into as of this 24th day of March, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and HARRIS MILLER MILLER & HANSON INC., a Massachusetts corporation ("Consultant"), whose address is 700 District Avenue, Suite 800, Burlington, Massachusetts 01879, and is made with reference to the following:

#### **RECITALS**

- A. On February 19, 2018, City and Consultant entered into a Professional Services Agreement ("Agreement") to engage Consultant to provide aircraft noise abatement departure procedure (NADP) analysis for John Wayne Airport. ("Project").
- B. On September 25, 2018, City and Consultant entered into Amendment No. One to the Agreement ("Amendment No. One") to reflect additional services not previously included in the Agreement, and to increase the total compensation.
- C. On June 28, 2019, City and Consultant entered into Amendment No. Two to extend the term of the Agreement to June 30, 2020.
- D. The parties desire to enter into this Amendment No. Three to reflect additional Services not included in the Agreement, as amended, to extend the term of the Agreement to April 1, 2021, increase the total compensation, update the Conflicts of Interest section, and update Insurance Requirements.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### **1. TERM**

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on April 1, 2021, unless terminated earlier as set forth herein."

#### **2. SERVICES TO BE PERFORMED**

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement, Exhibit A to this Amendment No. One, Exhibit A to Amendment No. Two, and this Amendment No. Three shall collectively be known as

"Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

### 3. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, Exhibit B to Amendment No. One Exhibit B to Amendment No. Two, and this Amendment No. Three shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Two Hundred Thirty Five Thousand Dollars and 00/100 (\$235,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. Three, including all reimbursable items and subconsultant fees, in an amount not to exceed **Ninety Five Thousand Dollars and 00/100 (\$95,000.00)**.

### 4. CONFLICTS OF INTEREST

Section 24 of the Agreement is amended in its entirety and replaced with the following:

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

**5. INSURANCE**

Exhibit C of the Agreement shall be deleted in its entirety and replaced with Exhibit C, attached hereto and incorporated herein by reference. Any reference to Exhibit C in the Agreement shall hereafter refer to Exhibit C attached hereto.

**6. INTEGRATED CONTRACT**

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Amendment No. Three to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 03.17.20

By:   
Aaron C. Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Will O'Neill  
Mayor

**CONSULTANT:**

Harris Miller Miller & Hanson Inc., a  
Massachusetts corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Ellen Eagan  
Chief Executive Officer\  
Chief Financial Officer

**[END OF SIGNATURES]**

Attachments:                      Exhibit A – Scope of Work  
   Exhibit B – Schedule of Billing Rates  
   Exhibit C – Insurance Requirements

## **EXHIBIT A**

### **Scope of Work**

Upon written request from the Project Administrator Consultant shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

- A detailed description of the Services to be provided;
- The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;
- The estimated number of hours and cost to complete the Services; and
- The time needed to finish the specific project.

No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

On an as-needed basis, Haris Miller Miller & Hanson Inc. ("HMMH" or "Consultant") will provide aircraft noise consulting support services. Tasks shall include:

- Providing advisory and technical consultation service to the City of Newport Beach ("City").
- Gathering and analyzing data (flight track, noise monitoring, etc.).
- Noise modeling of various alternatives.
- Reviewing data or reports from John Wayne Airport ("SNA"), Airport Working Group ("AWG"), airline operators, etc.
- Preparing technical memorandums, letters or reports to support any additional modeling, analysis or review.
- Participating and presenting information at meetings, in person and/or teleconference or web conference, as requested by the City.
- Participating in weekly conference calls.

Work performed by Diverse Vector Aviation Consulting LLC, working as a subconsultant to HMMH, shall include:

- Providing advisory and technical consultation services to the City on matters related to air space, air traffic control and procedures, noise, routes, airport operations and air carrier relations.
- Participating in and presenting information at meetings as requested by the City including but not limited to meetings of the Aviation Committee and its subcommittees, meetings with air carriers, project team meetings, task force meetings and weekly conference calls.
- Working with the City on projects and proposals related to quieter and cleaner departures, the light dispersion of flights, air carrier fleet transition, and fly quiet programs.
- Advising the City and serving as a representative of the City at meetings with the Federal Aviation Administration and Air Traffic Control.
- Reviewing the City's current aviation strategy and assisting with the development of a cohesive, long-term strategy.

## **EXHIBIT B**

### **Schedule of Billing Rates**

The amended Scope of Work, effective March 24, 2020, shall be performed for a not-to-exceed amount of \$95,000.

#### Hourly Rates

The following hourly rates will be utilized:

- Supervisory Consultant                      \$300.00
- HMMH Principal Consultant                \$280.00
- HMMH Senior Consultant                  \$165.00
- HMMH Staff Consultant                    \$130.00
- Diverse Vectors Consultant                \$150.00

#### Expenses and Reimbursable Items

Consultant shall be reimbursed for expenses related to providing services that require local engagement with the City of Newport Beach and its community representatives, John Wayne Airport officials, County of Orange officials, air carrier representatives and state or federal government officials.

#### Invoices

In addition to Section 4 of the Agreement, Consultant's invoices shall describe the work performed, the name of the person performing the work, a brief description of the services performed, the date the services were performed, the number of hours spent on all work billed on an hourly basis and a description of any reimbursable expenses.

## EXHIBIT C

### INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:



- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.