

HARRIS MILLER MILLER & HANSON INC.

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November 10, 2014


Ms. Elizabeth Vail, Town Attorney
Town of East Hampton
159 Pantigo Road
East Hampton, New York 11937

Subject: Assistance with Phase 2 of East Hampton Airport Noise Study
Reference: HMMH Proposal P14-20200_R2

Dear Ms. Vail:

In response to your request in our telephone conversation on November 3rd, I am pleased to provide this proposal to assist the Town of East Hampton with “Phase 2” of the noise study addressing disturbance from operations at East Hampton Airport (HTO).

Project Understanding



On October 30, 2014, the East Hampton Town Board held a Special Meeting to hear and consider the “Phase 1 Noise Analysis Interim Report.” The meeting included presentations by consultants and citizen volunteers. One presentation proposed a preliminary draft problem definition and a list of potential alternatives to address that definition. The Town Board reached consensus to proceed with the next study phase, anticipated to culminate in a public presentation on December 2nd, with two related objectives: (1) recommending a final problem definition and (2) recommending a refined list of the alternatives that offer the best promise for addressing the problem. The December 2nd meeting is expected to provide the Board with information necessary to make decisions regarding potential future study phases.

You have requested that HMMH assist with the next project phase and a presentation at the December 2nd meeting. This proposal assumes that we will collaborate with the Town’s outside counsel, Kaplan Kirsch & Rockwell LLP, which has been supporting the Town from strategic, regulatory, and policy perspectives. It also assumes that HMMH will consider and incorporate, as appropriate, technical analyses prepared in the first project phase.

Proposed Scope of Services

We see this assignment involving four tasks, as follow. The tasks are quite focused, because a focused effort is (1) appropriate at this stage and (2) necessary to meet the December 2nd target.

Task 1 – Review Interim Report and Analysis

HMMH will review the summary Phase 1 documentation presented at the October 30, 2014 meeting. I will review the online video of the October 30th presentations. HMMH also will review technical material used for the interim report (i.e., the INM model inputs, application, and assumptions). We do not propose to perform a detailed review of that technical work; e.g., data collection, processing, analysis, modeling, etc., steps. However, we will perform a cursory review to ensure that we properly integrate and apply the associated results and conclusions. This may require us to drill down into the technical work in a very limited, selective fashion.

Task 2 – Collect and Analyze Most Recent 12 Months of Complaint Data

Based on our prior experience at East Hampton and cursory review of the Phase 1 results, we propose to analyze complaint data from HTO’s PlaneNoise system for the 12 months from November 1, 2013 through October 30, 2014, in order to evaluate the most current feedback on aircraft operations. This information will provide a valuable basis for refining the problem definition. Also based on prior experience, we assume that airport staff or the PlaneNoise contractor will be able to download data to us in an efficient manner, and in a format with which we are fully familiar.

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To assist in refining the problem definition, we propose to analyze the complaint data to seek out patterns that reveal the issues of greatest concern to the greatest numbers of residents. We will look for patterns related to combinations of factors, such as season, day of week, time of day, type of operation, type of aircraft, geographic distribution, etc., that elicit the greatest community reaction. To the extent feasible, we will identify the statistical distribution of responses for differing circumstances; for example, the relationship of the numbers of citizen reports to variations in activity level, time of day, day of week, aircraft and operation type, etc. The goal will be to rank order the circumstances that lead to the greatest numbers of reports within a given time period in a given area.

For purposes of preparing for the December 2nd meeting, we will use the citizen-provided information on the operations of concern (e.g., aircraft and operation type), rather than attempting to correlate complaints with flight tracks and identification from the AirScene and Vector systems. Multiple factors support this approach: (1) AirScene data limitations; (2) effort required to investigate known AirScene data lapses; (3) effort required to correlate PlaneNoise, AirScene, and Vector data; and (4) evidence from long-term HTO experience that citizens are able to identify aircraft operations of concern with a high degree of reliability.



In our experience, citizen reports on operations that are sufficiently objectionable to merit registering a complaint are one highly informative basis for researching “noise problems.” Considering patterns within complaint statistics that induce *multiple reports* for an individual operation, time period, or set of circumstances, is a particularly revealing basis for identifying problems of primary concern that are most worthy of addressing. The FAA acknowledged this approach in its Final Rule on the New York North Shore Helicopter Route, when it stated the rule was justified (in part) by “the substantial number and volume of complaints.”¹ HMMH also has successfully used this approach in identifying the noise problem and appropriate remedy in the first phase of the Naples Municipal Airport Part 161 Study, which led to the federally approved Stage 2 jet ban at that airport.

Task 3 – Refine Problem Definition and Identify Most Relevant Alternative(s)

Based on the results of the preceding two tasks, HMMH will work with the Town’s staff and consultants to recommend a final problem definition (or, potentially, definitions) and a refined list of alternatives that offer the most promise for addressing the problem(s). To a large extent, we expect that the problem(s) and alternatives will be based on the collective professional experience of HMMH and your other consultants related to synthesizing issues and identifying appropriate remedies under a broad range of informative precedents. We also will consider problem definitions and alternatives that HTO stakeholders have put forward previously, and those provided in response to the Town’s request for community input at the October 30 meeting.

Task 4 – Prepare for and Participate in December 2nd Town Board Presentation

HMMH will prepare a draft PowerPoint presentation for consideration by the Town’s noise study leadership and discussion via email and teleconference. I will travel to East Hampton on December 1st in order to discuss the draft in person, to conduct a dry run of the presentation, and to ensure it is properly coordinated with any associated complementary presentations. I will assist in making the presentation at the December 2nd meeting. Ideally, we will have time after the meeting on the 2nd to discuss next steps; e.g., the potential scope and schedule for “Phase 3.”

Consulting Terms and Conditions and Anticipated Budget

HMMH will provide the proposed services on a time-and-materials basis, in accordance with the appended HMMH “Standard Terms and Conditions.” I estimate that we can complete the proposed

¹ http://www.faa.gov/regulations_policies/rulemaking/media/NYNShoreHelicopterFinalRule.pdf (accessed November 5, 2014).

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services for a budget of approximately \$40,000, based on the general level-of-effort assumptions summarized in the following table. We will not exceed this budget without prior authorization. We will provide further assistance, as requested, on these same terms.

Task Descriptions		Labor	ODC	TOTAL
0	Project Administration	\$785	\$0	\$785
1	Review Phase 1 Study Results	\$2,740	\$45	\$2,785
2	Collect and Analyze Most Recent 12 Months of Complaint Data	\$19,280	\$45	\$19,325
3	Refine Problem Definition and Identify Most Relevant Alternative(s)	\$4,800	\$45	\$4,845
4	Prepare for and Participate in December 2 nd Town Board Presentation	\$10,860	\$1,349	\$12,209
TOTAL		\$38,465	\$1,484	\$39,949



Please indicate acceptance of this proposal by signing and dating on the lines provided below.

To meet the December 2nd meeting target, this proposal assumes we receive notice-to-proceed and the PlaneNoise data no later than November 10.

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

Sincerely yours,

HARRIS MILLER MILLER & HANSON INC.

Ted Baldwin
 Senior Vice President

enc.

- c: K. Burke-Gonzales, Town of East Hampton
- P. Kirsch, Kaplan Kirsch & Rockwell

Proposal Terms and Conditions Accepted by: Signature: _____
 Printed Name: _____
 Printed Title: _____
 Date: _____

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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	\$220.00 - \$275.00
Principal Consultant/Engineer/Scientist	\$165.00 - \$250.00
Senior Consultant	\$115.00 - \$180.00
Senior Programmer/Software Support	\$145.00 - \$245.00
Consultant	\$95.00 - \$135.00
Graphics/Information Specialist	\$70.00 - \$105.00
Technical/Staff Assistant/Project Support	\$65.00 - \$100.00
Senior Project Support	\$155.00 - \$190.00

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

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(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 be provided in a good and workmanlike manner and shall conform to Proposal in all material respects. 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 within ten (10) business days following the date of completion of the Services for which the claim is asserted. 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 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, except to the extent such claims result from an HMMH Indemnitee's negligence or willful misconduct.
7. **LIMITATION OF LIABILITY; DISCLAIMER:** HMMH SHALL HAVE NO LIABILITY TO CLIENT HEREUNDER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. IN NO EVENT SHALL HMMH'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION EXCEED THE 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 FOR IN THIS SECTION 7, 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.
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.



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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.
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. There are no implied licenses hereunder.
13. **CONFIDENTIALITY:** The term "Confidential Information" means non-public information disclosed (in any form or medium) by a one party to the other party, regardless of whether marked "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 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.

