

State of New Hampshire
Site Evaluation Committee

www.nhsec.nh.gov

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August 31, 2022

Via Electronic Mail Only

Daniel C. Goldner
Chairman
Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301

RE: Docket No. 2021-02, Investigations of Complaints Regarding Antrim Wind Energy Facility

Dear Chairman Goldner,

In Chairwoman Martin's April 2, 2021 Order, she directed the Subcommittee to provide quarterly reports. This is the Subcommittee's third quarterly report for 2022.

The Subcommittee is currently working on Charge 2 in the April 2, 2021 Order, reviewing and investigating Complaints filed through December 31, 2021 regarding Facility operations. As previously reported, the Subcommittee has completed most aspects of its investigation concerning sound complaints including site visits, and information received through investigatory requests.

The Complainants have not provided access to their properties for the Subcommittee's independent expert, HMMH, to conduct sound measurements. Nevertheless, HMMH has completed field sound measurements near the facility. The Subcommittee will most likely hold an organizational public meeting this quarter to discuss the procedure for reviewing the HMMH results and recommending a disposition of the existing complaints. Following that organization meeting, my current hope is to hold one or more meetings before the end of the year to decide actual recommended disposition of the complaints filed through December 31, 2021.

I have also attached a copy of the HMMH contract.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Evans".

Jonathan Evans
Presiding Officer
Site Evaluation Subcommittee in Docket No. 2021-02

Email jonathan.a.evans@dot.nh.gov

Phone: (603) 271-4048

cc: John Duclos, NHDES (via e-mail)
Tom Eaton (via e-mail)
Michael Haley, NHDOJ (via e-mail)
Andrew Biemer, SEC Administrator (via email)
John-Mark Turner (via e-mail)

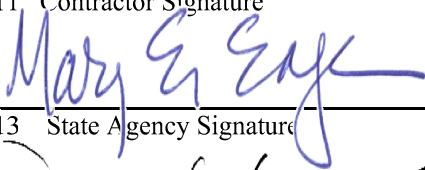
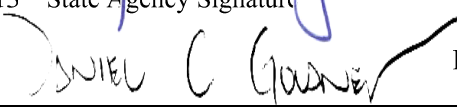
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Site Evaluation Committee		1.2 State Agency Address 21 South Fruit St., Suite 10 Concord, New Hampshire 03301-2429	
1.3 Contractor Name Harris Miller Miller & Hanson Inc.		1.4 Contractor Address 700 District Avenue, Suite 800 Burlington, MA 01803	
1.5 Contractor Phone Number (781) 229-0707	1.6 Account Number 18930000/500464	1.7 Completion Date December 31, 2022	1.8 Price Limitation \$100,000
1.9 Contracting Officer for State Agency Daniel C. Goldner		1.10 State Agency Telephone Number 603-271-2431	
1.11 Contractor Signature  Date: 1/26/2022		1.12 Name and Title of Contractor Signatory Mary Ellen Eagan President and CEO	
1.13 State Agency Signature  Date: 3/1/2022		1.14 Name and Title of State Agency Signatory Daniel C. Goldner, Chairman	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (<i>if applicable</i>) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (<i>if applicable</i>) By: _____ On: _____			
1.17 Approval by the Governor and Executive Council (<i>if applicable</i>) G&C Item number: _____ G&C Meeting Date: _____			

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR’S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A
SPECIAL PROVISIONS

EXHIBIT B
SCOPE OF WORK

A. LOCATION AND DESCRIPTION OF THE SITE

On March 17, 2019, the Site Evaluation Committee (COMMITTEE) granted a Certificate of Site and Facility (Certificate) for the construction, operation, and ultimate decommissioning of a wind energy facility in Antrim, NH, known as the Antrim Wind Energy Facility (Facility). The Facility consists of 9 Siemens SWT-3.2-113 direct drive wind turbines capable of generating 3.2 megawatts (MW) of energy each for a total nameplate capacity of 28.8 MW and associated civil and electrical infrastructure. The facility is located in the Town of Antrim on the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain (Site). The site was constructed primarily on the ridgeline that starts approximately 0.75 miles south of NH Route 9 and runs south-west, for approximately 2 miles. The site is located in the rural conservation zoning district on private lands owned by six landowners and leased by Antrim Level LLC. (Owner) (Formerly Antrim Wind LLC.) This facility began commercial operations on December 24, 2019. Since commercial operations began, the COMMITTEE has received multiple complaints that the facility is not in compliance with all of the terms and conditions contained in its Certificate. On April 2, 2021, the COMMITTEE issued an Order Appointing a Subcommittee (Docket 2021-02) to investigate complaints regarding the Antrim Wind Energy Facility.

B. SCOPE OF WORK

1. The Contractor shall perform, as necessary, tasks required to assess the potential effect of the Facility
2. At the COMMITTEE's request, the Contractor must be responsible for, but not be restricted to, the following items:
 - a. Reviewing the law, administrative rules, the Facility's Certificate of Site and Facility, applicable American National Standards Institute, Inc. (ANSI)/Acoustical Society of America (ASA) standards and all other relevant documentation related to post construction noise monitoring methodology applicable to the Site.
 - b. Providing report(s) to the COMMITTEE regarding that aforementioned review.

- c. Reviewing and providing guidance to the COMMITTEE when addressing noise complaints and inquiries related to the Site. This task may require the Contractor to review post-construction noise monitoring studies which have been previously prepared by the Facility owner or other stakeholders. This task may also require the Contractor to conduct multiple short term and/or long term noise measurements at the sight using ANSI Type I sound level meter(s) and report their findings in a report or memorandum including visual aids.
- d. Attendance at COMMITTEE meetings either at the site or in Concord, NH to observe the proceedings or to present findings and other relevant information gathered during the above tasks.

C. TASK ORDERS

As needs develop, the COMMITTEE will issue specific Task Orders to the Contractor. A Task Order is an individually funded order with its own unique scope of work issued against the basic contract scope of work, terms and conditions, to carry out a specific project for the COMMITTEE. These Task Orders will be initiated by a written or oral Request for Proposal (RFP) that may include a detailed description of the project or elements of work, an outline of the services required, responsibilities of the parties, materials to be supplied by the COMMITTEE, specified accuracy requirements, and other information necessary to complete the work for the Task Order. The Contractor shall then submit to the COMMITTEE for approval a scope of work and fee proposal and a tentative work schedule and completion date for each Task Order assigned. The COMMITTEE will review the Contractor's proposal and schedule negotiations, if necessary, to clarify the proposed scope of work, the number of work hours needed, and any other associated proposed costs in order to establish the final not-to-exceed or lump-sum amount for the Task Order. Upon approval of the Contractor's proposal by the COMMITTEE, the COMMITTEE will issue a Task Order Authorization to Proceed Letter. The Contractor shall sign the Authorization to Proceed Letter and return it to the COMMITTEE. A conference may be required to turn over a Task Order to the Contractor. Costs associated with the Contractor's preparation of a scope of work and fee for a Task Order are non-reimbursable.

D. WORK SCHEDULE

The Contractor shall be aware that the services to be performed under this Agreement will be on an as-needed basis. In addition, the Contractor shall realize that situations may arise that will require immediate response/action.

Following execution of the Agreement, the Contractor shall be available to begin performance of the services designated in the Contract promptly upon receipt from the COMMITTEE of a Notice to Proceed Letter. Upon receipt of a Task Order Authorization to Proceed Letter, the Contractor shall complete the services required for each Task Order without delay unless unable to do so for causes not under the Contractor's control.

It is imperative that close coordination between the Contractor and the COMMITTEE be maintained at all times so as to ensure compliance with the COMMITTEE's requirements for specific Task Orders.

The Contractor's sequence of operation and performance of the work under the terms of this AGREEMENT shall be varied at the direction of the COMMITTEE to give priority in critical areas so that schedules and other COMMITTEE commitments, either present or future, can be met.

E. QUALITY CONTROL

The Contractor is expected to perform in a professional manner and all work shall be neat, well organized, fully comply with the requirements of this AGREEMENT and Task Orders, and meet the specified accuracy requirements. The COMMITTEE will reject any data that does not comply with the above. The COMMITTEE will decide when the data and services have fully met the project requirements. The Contractor will not be paid for insufficient work.

F. SUBMISSION OF REPORTS, PLANS AND DOCUMENTS

Each submission shall be supplemented with such drawings, illustrations and descriptive matter as are necessary to facilitate a comprehensive review of proposed concepts.

Upon completion of the Agreement, the Contractor shall turn over all documentation, including, but not limited to, all reports, test results, drawings, plans, and all financial supporting documentation in their original format and in the format submitted to the COMMITTEE.

**EXHIBIT C
PAYMENT TERMS**

A. AGREEMENT GENERAL FEE

In consideration of the terms and obligations of this Agreement, the State of New Hampshire, through the COMMITTEE, hereby agrees to pay and the Contractor agrees to accept as full compensation for the combined total cost of all work, expenses, and profit for Task Orders issued under this Agreement, an amount not to exceed **\$100,000.00**. (The Contractor shall note that no payments will be made for work, expenses, or profit, whether authorized or not, exceeding the **\$100,000.00** total amount.)

B. METHOD OF COMPENSATION FOR TASK ORDERS

The method of compensation for Task Orders issued under this agreement will be in a **Cost-Plus-Fixed-Fee** format with method of payment as described in Section C. A **Task Order Fee Summary** will be included in the COMMITTEE-issued Authorization to Proceed for a Task Order.

C. COST-PLUS-FIXED-FEE FORMAT

1. **Task Order Cost Development** - The negotiated not-to-exceed cost of each cost-plus-fixed-fee format Task Order will be computed as follows:

Labor Costs [hours x average rates* + indirect cost rate x (hours x rates)]
+Fixed Fee (negotiated amount)
+Direct Expenses (estimated amount)
+Subcontractor Costs (estimated amount or lump sum)

=Negotiated Task Order Cost

- * The average rates are the Average Rates from the most-current version of the **Salary Rate Table** submitted for staff anticipated to work on the Task Order (see –EXHIBIT D).

2. **Task Order Cost Reimbursement** - In consideration of the terms and obligations of this Agreement, the State of New Hampshire, through the COMMITTEE, hereby agrees to pay and the Contractor agrees to accept as full compensation for all services rendered to the satisfaction of the COMMITTEE for each Task Order an amount equal to the sum of the following costs (a)+(b)+(c)+(d)+(e):

- a. Actual salaries approved by the COMMITTEE paid to technical and other employees by the Contractor, including salaries to principals, for the time such employees are directly utilized on work necessary to fulfill the terms of this Agreement.
- b. Overhead costs applicable to the direct salary costs. The indirect cost rate of **200.3%**, as submitted to and approved by the COMMITTEE, will be applied to the direct salary costs. The Contractor agrees that the indirect cost rate shall

be extended at that rate for the duration of the Contract. An overtime premium of one and one half times the direct labor rate for non-exempt employees working beyond the standard 40 hours per workweek may be allowed for special circumstances when approved by the COMMITTEE in writing in advance. The overhead portion of non-exempt employees' salary rates shall not be adjusted.

- c. A fixed fee amount based on the estimated risk to be borne by the Contractor [maximum 10.00% of Labor Costs (including overhead costs)] for profit and non-reimbursed costs.
- d. Reimbursement for direct expenses, including, but not limited to, subcontractors, printing, reproductions and travel not included in normal overhead expenses. The reimbursable costs for mileage and for per diem (lodging and meals) shall be that allowed by the Contractor's established policy but shall not exceed that allowed in the Federal Acquisition Regulation (Subpart 31.205-46) and in the Federal Travel Regulation. Mileage and per diem costs shall be subject to approval by the COMMITTEE.
- e. Reimbursement for actual cost of subcontractors.

The amount payable under categories (a), (b), (d), and (e) may be reallocated within the not-to-exceed Task Order amount upon mutual agreement of the COMMITTEE and Contractor. The fixed fee (c) shall only change when there has been a significant increase or decrease in the scope of work. The estimated amounts for (a), (b), (d), and (e) and the actual amount for (c) are listed in the Fee Summary section of the Authorization to Proceed for each Task Order.

- 3. **Task Order Limitation of Costs** – The total amount to be paid for any Task Order shall not exceed the sum of the amounts shown in the Task Order Fee Summary limits contained in the Authorization to Proceed Letter. It is expected that the Contractor agrees to use best efforts to perform the work specified in the Task Order Scope of Work and all obligations under this contract within such limiting amount.
- 4. **Task Order Payments** - Monthly payments on account may be made upon submission of invoices by the Contractor to the COMMITTEE. The fixed fee shall be invoiced during the billing period based upon the overall percent complete.

D. SUBCONTRACTOR SUPPORTING SERVICES

Subcontractors can be engaged at any time if needed for a Task Order, whether they were included in the Contractor's Technical Proposal or not. Subcontractors costs may be either negotiated as a not-to-exceed amount for each Task Order and reimbursed at actual cost or negotiated as a lump-

sum amount. See Article IV.G – SUBLETTING for subcontractors Professional Liability Insurance information.

E. TASK ORDER AMENDMENTS

If revisions to a Task Order scope of work, and/or the fee summary or completion date included in the Task Order Authorization to Proceed is/are required, it shall be documented in writing by an COMMITTEE amendment. The amendment will be filed with the Authorization to Proceed in the Agreement.

F. RECORDS, REPORTS, AND FINAL AUDIT

The Contractor shall maintain adequate cost records for all work performed under this Agreement. All records and other evidence pertaining to cost incurred shall be made available at all reasonable times during the Agreement period, and for three (3) years from the date final payment is made and all other pending matters are closed, for examination by the COMMITTEE or other authorized representatives the State of New Hampshire, and copies thereof shall be furnished if requested.

All costs are to be determined by actual records kept during the term of the Agreement, which are subject to Final Audit by the COMMITTEE. The final payment, and all partial payments made, may be adjusted to conform to this Final Audit. In no case will any adjustments exceed the negotiated amount for any Task Order.