

Landrum & Brown-HCBF Noise Assessment Contract

This Consulting Agreement (“Agreement”) is made and entered into as of [] by and between the Harbor Community Benefit Foundation, a California nonprofit public benefit corporation (“HCBF”) and Landrum & Brown, Incorporated, an Ohio corporation (“L&B”), each a “Party” and referred to collectively as the “Parties.”

RECITALS

WHEREAS, Project A of Exhibit A of the TraPac MOU (“Project A”) calls for the “installation of sound dampening double paned windows in schools and residences in the zone of greatest impact from TraPac”; and

WHEREAS, HCBF desires to hire a contractor to perform a noise assessment to establish the zones of greatest noise impact from the TraPac terminal and to provide a cost estimate, schedule, and general recommendations on strategic implementation of Project A in Wilmington from operations in and near the Port of Los Angeles (“Port”); and

WHEREAS, L&B has assembled a team capable of performing said noise assessment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SERVICES AND SCOPE OF WORK

A. Services. L&B hereby agrees to render to HCBF, as an independent contractor of HCBF, the services (the “Services”) described in the Noise Assessment Scope of Work, as revised February 21, 2012, attached hereto as Exhibit A (the “Scope of Work”). L&B’s performance of the Scope of Work shall not exceed the Fees, Rates and Delivery Schedule, attached hereto as Exhibit B, without prior written approval of HCBF. L&B further acknowledges and agrees that any services it performs outside the Scope of Work shall not be compensable under this Agreement.

B. Taxes, Assessments, and Fees. L&B, at its sole cost and expense, shall furnish all services, personnel, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between the Parties, L&B is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City of Los Angeles, or any other governmental entity.

C. Subconsultants. The Scope of Work identifies employees of L&B and subcontractors who will perform the Services and L&B’s obligations under this Agreement. Such Services and the obligations of this Agreement, whether undertaken by L&B or third-parties with whom L&B has contracted (“Subconsultants”), are and shall remain the responsibility of L&B. L&B has the sole right to engage, manage and exercise control over subcontracts in accordance with the carrying out of its services and scope of work. Should

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L&B make any change or reassign Subconsultants in any manner inconsistent with the current Subconsultant assignments described in the Scope of Work, L&B shall notify HCBF in writing of such a change or reassignment within ten (10) days. L&B acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to HCBF and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of L&B alone. Upon written request of HCBF, L&B shall supply within ten (10) days of such request copies of all agreements between it and its Subconsultants. For the purposes of this Agreement, the use of such Subconsultants by L&B shall not be deemed an assignment in derogation of Section XI.F hereof.

II. TERM AND TERMINATION

A. Term. The effective date of this Agreement (“Effective Date”) shall be the date of its execution by Executive Director of HCBF upon authorization of the Board of Directors of HCBF. As indicated in the Fees, Rates, and Delivery schedule, Exhibit B anticipates a period of thirty-six (36) weeks. Allowing for a reasonable contingency period, the term of the performance (the “Term”) will be for a period not to exceed forty-four (44) weeks from the Effective Date.

B. Termination. Each Party shall each have the right to terminate this Agreement without cause upon thirty (30) days written notice to the other Party. In the event of a termination without cause by HCBF prior to completion by L&B of all services described in this Agreement, HCBF shall pay only for any electronic reports completed and delivered to HCBF as specified in Exhibits A and B. A Party may also terminate this Agreement for Cause (the “Terminating Party”) at any time immediately upon written notice to the other Party (the “Nonterminating Party”) in accordance with the provisions of Section XI.B. For purposes of this Agreement, “Cause” shall mean that the Nonterminating Party or any of its officers, directors, employees, or Subconsultants (collectively, “Representatives”) has (i) committed an act of willful misconduct or gross negligence against the Terminating Party, or (ii) a Nonterminating Party or its Representatives has committed a material breach of its obligations under this Agreement. In the event of a termination for Cause, the Terminating Party shall not have any further obligations hereunder except as specifically provided in this Agreement.

III. INDEPENDENT CONTRACTOR

A. Independent Contractor. L&B, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of HCBF. L&B shall not represent itself as an agent or employee of HCBF and shall have no power to bind HCBF in contracts or otherwise. The manner in which L&B shall render services to HCBF will be within L&B’s sole control and discretion, subject to the terms of this Agreement. In rendering services for HCBF, L&B may, in its sole discretion, decide to use the services of its own employees or Subconsultants. HCBF will not supervise or instruct any employees or Subconsultants whom L&B decides to retain to perform these services. In addition, L&B has the sole right to discipline or reassign any employees or Subconsultants whom it elects to hire to perform its consultancy duties. HCBF shall effect no withholdings from the compensation payable to L&B hereunder, and L&B shall be solely responsible for all state

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and federal income, payroll and other taxes, social security, disability, and all other assessments related to the compensation and the Services provided hereunder.

B. Conflict of Interest. During the Term hereof, L&B agrees that it will not enter into other contracts or perform any work without the prior written permission of HCBF where the work may conflict with the interests of HCBF or interfere at all with L&B's performance of the Services or its obligations hereunder.

C. Notice to Subconsultants. If L&B chooses to have its employees or Subconsultants assist in performing its obligations under this Agreement, L&B agrees to notify such employees or Subconsultants of all its obligations under this Agreement, and L&B warrants to HCBF that those persons will comply with this Agreement in performing the consultancy services. L&B shall be responsible for the breach of this Agreement by any of its Subconsultants.

IV. COMPENSATION AND PAYMENT

A. Compensation. In consideration for performance of the Services, L&B shall receive the compensation described in Exhibit B to this Agreement.

(a) Funds Directed Toward the Public Benefit. L&B acknowledges and agrees that Services performed under this Agreement are being paid for with funds directed toward the public benefit, and, therefore, L&B shall, and shall direct any Subconsultants to, scrupulously adhere to principles of moderation, frugality, and cost consciousness in the performance of their obligations hereunder.

B. Payment Procedure. HCBF shall make all reasonable efforts to promptly process invoices after receipt of an itemized invoice submitted by L&B to HCBF based on the receipt of specified deliverables in Exhibit B, the Fees and Rates Schedule. HCBF shall not pay interest or finance charges on any outstanding balance(s).

(a) L&B shall submit invoices to HCBF monthly following the Effective Date of this Agreement for Services performed during the preceding month. Costs must be identified on each invoice by line item and budget category in accordance with the actual costs incurred in the performance of this Agreement and in accordance with the rates in Exhibit B, and each invoice must be signed by an authorized representative of L&B certifying that the expenditures claimed represent actual allowable expenses for committed effort and work performed under this Agreement.

(b) As described in the Scope of Work, Appendix A – Sample Local Hire Monthly Report, L&B shall submit with each invoice a monthly report including the total number of staff and consultants employed during the reporting period including the number of Local Hires, as well as their zip codes of residence.

(c) L&B must include on the face of each itemized invoice submitted for payment its Taxpayer Identification Number, as required at Section XI.C of this Agreement. No invoice will be processed for payment by HCBF without this number shown thereon. All invoices shall be approved by HCBF prior to payment.

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(d) L&B shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. Upon request by HCBF, L&B shall provide all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

(e) For payment and processing, all invoices should be mailed to:

Harbor Community Benefit Foundation
Attn: Mary Silverstein, Executive Director
150 West 6th Street, Suite 100B
Los Angeles, CA 90731

V. REIMBURSEMENT OF EXPENSES

A. Approval Required. L&B shall not incur any expense that exceeds Five Hundred Dollars (\$500) without the prior express written approval of HCBF.

B. Reimbursable Expenses. Reimbursable expenses shall include:

(a) Messenger service. Where appropriate, documents should be transmitted via email. Reimbursable expenses shall be limited to actual costs for messenger service;

(b) Facsimile transmission. As a proponent of green business practices, HCBF does not encourage facsimile transmissions. In the event L&B sends a facsimile to Subconsultants or other project participants, L&B shall not bill HCBF for any expense related to facsimile charges beyond L&B's actual net costs for long distance telephone charges actually and reasonably incurred by L&B for the sending of facsimiles. L&B shall indicate in its invoices the number of pages transmitted via facsimile together with the related cost of each charge. L&B shall attach the appropriate receipts, invoices or proof of any expenditure for its charges for facsimiles; and

(c) Travel, Mileage, Parking. L&B shall describe in detail in its billings any travel expenses incurred by L&B, and shall provide evidence in a form satisfactory to HCBF of said expenses. Only coach fare shall be reimbursed for travel. Meal reimbursement shall be limited to: \$ 75 per day. L&B shall provide a detailed log of any mileage incurred, to be reimbursed at the rate of \$0.555 (or the federal rate at the time the expense is incurred) per mile. Requested reimbursement for parking fees must be accompanied by an original receipt. Copies and/or electronic submissions will not be accepted. HCBF reserves the right to audit all travel, mileage and parking expenses. All travel expenses outside the County of Los Angeles shall be subject to HCBF's prior written approval.

Non-reimbursable Expenses. Non-reimbursable expenses shall include:

(a) Staff time or overtime for performing secretarial, clerical, or word processing functions;

(b) Charges for time spent complying with audits or billing inquiries from HCBF;

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(c) Charges for work performed which is not in the Scope of Work. Such work shall not be compensable hereunder;

(d) Expenses that are considered to be part of general overhead, including, but not limited to, administrative time, calendaring, setting up files, indexing, word processing, air conditioning, equipment rental, office supplies, meals, snacks, beverages, seminars, books, or association dues, etc.; and

(e) Time spent for travel.

VI. INDEMNIFICATION AND INSURANCE

A. Indemnity for General Liability. L&B represents that it has the qualifications and ability to perform the Services in a professional manner, and it shall exercise due care in the discharge of its responsibilities and deliverables under this contract. Failure to do so shall constitute a material breach of this Agreement. L&B shall be solely responsible for the professional performance of the Services, and shall receive no assistance from HCBF. To the greatest extent permitted by law, L&B shall indemnify, defend, and hold harmless HCBF and its officers, directors, employees and agents, as well as the City of Los Angeles, from and against any claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies that HCBF may incur or suffer that result from, or are related to, any breach or failure of L&B or its Representatives to perform any of the Services or the representations, warranties or covenants contained in this Agreement.

B. Intellectual Property. L&B warrants that it has good title to all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made during the performance of the Services (“Deliverables”), and the right to assign Deliverables to HCBF free of any proprietary rights of any other party or any other encumbrance. L&B agrees to indemnify HCBF and any of its officers or agents, as well as the City of Los Angeles from any damages, costs, or expenses in law or equity from infringement or alleged infringement of any patent, trademark, service mark, or copyright that may arise from the use by HCBF of any Deliverables or other materials supplied by L&B in the performance its obligations hereunder.

C. General Liability Insurance. L&B shall procure and maintain in effect throughout the Term of this Agreement, without requiring additional compensation from HCBF, Commercial General Liability insurance for its operations, including but not limited to bodily injury and property damage, personal and advertising injury and products & completed operations, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. L&B’s Commercial General Liability insurance shall not contain limitations or exclusions for contractual liability assumed under “insured contracts” or liability arising out of acts of L&B Subconsultants. The liability insurance provided by L&B shall contain a severability of interest clause and shall provide that any other insurance maintained by HCBF shall be excess of L&B’s insurance and L&B’s insurance shall be primary. In all cases, regardless of any deductible or retention, said insurance shall contain a “duty to defend” provision. L&B shall provide an endorsement to its Commercial General Liability insurance naming HCBF, its boards, officers, agents, and employees each as an additional insured for L&B’s ongoing

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operations and its completed operations. Such liability insurance policy shall also provide, by endorsement, that its liability underwriter shall provide HCBF advance written notice of any cancellation, termination or expiration of not less than 30 days; 10 days for non-payment of premium.

D. Waiver of Subrogation L&B hereby agrees to waive all rights of subrogation it may possess, or any rights of subrogation which may pass to, or be possessed by, its Commercial General Liability insurance underwriter(s) or its excess Commercial General Liability insurance underwriters for the payment of any claims.

E. Automobile Liability Insurance. L&B shall procure and maintain at its expense and keep in force at all times during the Term of this Agreement Business Automobile Liability insurance for all owned (if any), hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. Each policy shall provide additional insured status in favor of HCBF, its board, officers, agents, and employees.

F. Workers' Compensation. L&B shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. L&B shall comply with such provisions before commencing the performance of any other obligations under this Agreement. L&B shall submit a certificate of Workers' Compensation insurance for statutory limits and Employer's Liability insurance in amounts not less than One Million Dollars (\$1,000,000) each accident or disease prior to commencing any work under this agreement.

G. Professional liability. L&B shall provide and maintain, at its sole expense, professional liability (errors and omissions) insurance protecting L&B against allegations of wrongful acts arising from its professional activities under this Agreement. L&B's professional liability insurance shall provide a limit of insurance of not less than One Million Dollars (\$1,000,000) combined single limit. If L&B provides this professional liability insurance on a "claims made" policy form, such policy form shall maintain a "retroactive date" not later than the Effective Date of this Agreement and such "retroactive date" shall be maintained until at least one (1) year following the completion of Services under this Agreement.

H. Copies of Policies. L&B shall provide to HCBF certificates of insurance and all required policy endorsements prior to commencing any activities hereunder and again thirty (30) days prior to the natural expiration of any required insurance policy. HCBF shall have the right to request a full copy of each original policy required herein and L&B shall provide such policy copies within ten (10) business days of such a request by HCBF.

I. Modification of Coverage. HCBF, at its discretion, based upon recommendation of independent insurance consultants to HCBF, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the Term hereof by giving thirty (30) days' prior written notice to L&B.

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J. Accident Reports. L&B shall report in writing to the Executive Director of HCBF within fifteen (15) calendar days after it, or its Representatives, have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of One Thousand Dollars (\$1,000.00) to property, occurring in the course of performing the Services by L&B or its Representatives. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to L&B or its Representatives.

VII. RECORDKEEPING AND AUDIT RIGHTS

L&B shall, for three years following the termination of this Agreement, keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to, and open for inspection and copying, at the expense of HCBF, its auditors or other authorized representatives, at the premises of L&B by, HCBF, its auditors or other authorized representatives. L&B's failure to comply with this Article VII shall constitute a material breach of this Agreement and shall entitle HCBF to withhold any payment due under this Agreement until such breach is cured.

VIII. OWNERSHIP OF INTELLECTUAL PROPERTY

L&B agrees that all Deliverables shall be assigned to HCBF as its sole and exclusive property. On HCBF's request, L&B agrees to assist HCBF, at HCBF's expense, in obtaining patents or copyrights for such Deliverables, which assistance shall include the disclosure of all pertinent information and data, the execution of all applications, specifications, oaths and assignments, and all other instruments and papers that HCBF shall deem necessary to apply for, and to assign or convey to it, its successors and assigns or nominees, the sole and exclusive right, title and interest in such Deliverables. Upon request by HCBF, L&B shall obtain written assurances from its employees and Subconsultants of their agreement to these terms.

IX. CONFIDENTIALITY

L&B agrees, for itself and on behalf of its Representatives, both during and after the Term, not to use or disclose, and to maintain in strict confidence, any Confidential Information, except only to the extent that such information enters the public domain through no action of L&B, was known to L&B prior to its disclosure to L&B by HCBF, or as otherwise required by court order. "Confidential Information" shall mean any information about HCBF, its clients, their respective products, services, technology, procedures, plans and any other confidential or proprietary matters disclosed to L&B during the course of the performance of this Agreement.

X. RESOLUTION OF DISPUTES

Except, as provided otherwise by applicable law, L&B and HCBF hereby agree that any controversy, dispute or claim arising out of or relating to this Agreement shall first be

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settled through good faith negotiation. If the dispute cannot be settled through negotiation, it shall be submitted to binding arbitration administered by the American Arbitration Association, or other mediation service agreed to by the L&B and HCBF. In addition to agreeing to the American Arbitration Association's rules or the rules of another agreed-upon mediation service, the Parties agree:

A. Claims. The claims covered by this Section X. include but are not limited to: breach of contract or covenant, whether express or implied, torts, including but not limited to defamation, fraud, intentional interference with contractual relations, discharge in violation of public policy, or intentional or negligent infliction of emotional distress; discrimination, including, but not limited to, race, sexual harassment, pregnancy, sexual orientation, religion, national origin, age, jury, military, marital status, physical or mental disability or medical condition discrimination;

B. Initiation of Arbitration. Once either Party determines that efforts at good faith negotiation have failed, within 60 days of notifying the other Party of this determination, either Party may initiate arbitration proceedings by submitting to the American Arbitration Association, or other agreed-upon mediation service, a written demand for arbitration listing the name and contact information for both Parties, along with a copy of this Agreement, and providing the other Party a copy of the written demand;

C. Fees and Costs of Arbitration. If arbitration is initiated, the Parties agree initially to evenly divide all forum fees and all fees and expenses charged or incurred by the arbitrator and any other expenses that would not have been incurred if the case were litigated in the judicial forum having jurisdiction over it. Each Party shall pay her/its own attorneys' fees, witness fees, and other expenses incurred by the Party for her or her own benefit.

At the conclusion of the arbitration, the arbitrator may award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration.

If the arbitrator(s) determines a Party to be the prevailing Party under circumstances where the prevailing Party won on some but not all of the claims and counterclaims, the arbitrator(s) may award the prevailing Party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration.

D. Arbitrator Selection. This Agreement does not provide for the pre-selection of a specific arbitrator. A neutral arbitrator will be selected according to the normal rules and procedures of the American Arbitration Association, or other agreed-upon mediation service;

E. Discovery. The arbitrator will determine the appropriate scope of discovery as governed by the normal rules and procedures of the American Arbitration Association, or other agreed-upon mediation service, and will in any case be sufficient to permit each Party to fully investigate and present their claims and defenses;

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F. Place of Arbitration. The arbitration will be conducted within thirty (30) miles of the offices of HCBF, or as otherwise mutually agreed to by the Parties;

G. Written Decision. The arbitrator will provide all Parties with a written decision that details the arbitrator's findings of law and fact, as well as the arbitrator's reasoning in making those findings. The arbitrator is expressly authorized to award either Party any and all remedies to which either Party would otherwise be entitled under state or federal law, as if the matter were brought in a civil court of competent jurisdiction;

H. Binding Judgment. Judgment on any award made by the arbitrator may be entered in any court having jurisdiction. The Parties each expressly waive the right to a jury trial, and agree that the arbitrator's award shall be final and binding on the Parties, provided that any award shall be reviewable by a court of law to the fullest extent allowed by law, including for any error of law by the arbitrator;

I. Severability and Survival. If any provision of this Section X is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. The dispute resolution provisions of this Section X shall survive the termination of the independent contractor relationship between HCBF and L&B; and

XI. MISCELLANEOUS

A. Earnings Assignment Orders; Notices of Assignments. L&B and any Subconsultant shall fully comply with all applicable state and federal employment reporting requirements for L&B or Subconsultant's employees. L&B and any Subconsultant shall certify that its respective principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. L&B and any Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. L&B and any Subconsultant will maintain such compliance throughout the Term of this Agreement.

B. Notices. In all cases where written notice is to be given under this Agreement, service of notice shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective Parties, notice to HCBF shall be addressed to:

Harbor Community Benefit Foundation
Attn: Mary Silverstein, Executive Director
150 West 6th Street, Suite 100B
Los Angeles, CA 90731

Email: mary@hcbf.org

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And notice to L&B shall be addressed to:

Landrum & Brown, Inc.
Attn: Fred Greve, Managing Director
27812 El Lazo
Laguna Niguel, CA 92677

Email: fgreve@landrum-brown.com

C. Taxpayer Identification Number (“TIN”). The Internal Revenue Service (“IRS”) requires that all consultants and suppliers of materials and supplies provide a TIN to the Party that pays them. L&B declares that its authorized TIN is reflected in the signature block of this Agreement. No payments will be made under this Agreement without a valid TIN.

D. Governing Law; Venue. This Agreement and any resolution of disputes arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The Parties agree that that any arbitration brought under this Agreement shall be conducted under the procedures described in Section X. and shall be held within thirty (30) miles of the offices of HCBF, or as otherwise mutually agreed to by the Parties. Any other actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

E. Amendments. This Agreement may be amended only by a written agreement of the Parties.

F. Assignment. Neither Party may assign this Agreement or any of its rights hereunder, in whole or in part, without the prior written consent of the other Party. Any purported assignment in violation of the foregoing will be void *ab initio*. This Agreement shall be binding upon, and shall inure to the benefit of, L&B and HCBF and their permitted successors and assigns.

G. Integration. This Agreement contains the entire understanding and agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, or incorporated into this Agreement by reference shall be deemed in any way to exist or bind either of the Parties. Each Party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced or incorporated into the Agreement. The Parties acknowledge that this Agreement is intended to be, and is, an integrated agreement.

H. Severability. Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not

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be affected thereby, and such invalid, illegal or unenforceable part, term, condition, or provision shall be treated as follows: (a) if such part, term, condition or provision is deemed by such court to be immaterial to this Agreement, then such part, term, condition, or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition, or provision is deemed by such court to be material to this Agreement, then the Parties shall revise the part, term, condition, or provision so as to comply with the applicable law or public policy and to effect the original intent of the Parties as closely as possible.

I. Waiver. A failure of either Party to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

J. Force Majeure. Neither Party shall be liable for failure to perform or delay in performing its obligations under this Agreement, and shall not be deemed to be in breach of its obligations hereunder, if and to the extent and for so long as such failure or delay in performance or breach is due to natural disaster, wars, strikes, labor disputes, or other cause beyond the reasonable control of such Party.

K. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one fully executed agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

Landrum & Brown, Inc.
(L&B)

By: 

Name: DENNIS E. PETER

Title: CFO

Harbor Community Benefit Foundation
(HCBF)

By: _____

Mary Silverstein
Title: Executive Director

By: 

Name: Bruce Anderson

Title: VP

Landrum & Brown
Taxpayer ID# 31-1095645

EXHIBIT A NOISE ASSESSMENT SCOPE OF WORK

Revised February 21, 2012

The following scope of work will document the noise levels at schools and residences for portions of Wilmington that are potentially affected by TraPac. The noise impacts will be ranked in order to determine priorities. Detailed recommendations will be provided on how to sound mitigate impacted schools and residences. Cost estimates will be developed, and an estimated implementation schedule provided. The work in this phase is the necessary precursor to implement the school and residential sound insulation program.

Task 1A – Kickoff Meeting

An initial kick-off meeting will be held to discuss specific concerns regarding port related noise in the Wilmington community. The meeting will be used to identify the major offending noise sources and their operational characteristics. Further, the location of noise sensitive areas and the degree of severity of noise problems in the community will be discussed.

Work Product: Memo with minutes of the meeting.

Task 1B – Community Meetings

Three community meetings are included in our scope of work. Community meetings are an important part of the process. We feel that the community meetings are critical to gain community support and to develop realistic expectations in the community. The cost for the community meetings include preparing presentation materials and teaming with Harbor Community Benefit Foundation (HCBF) for the presentation. We have assumed that HCBF would be responsible for notifying the community of the meetings. The timing of the meetings will be developed in conjunction with the HCBF. However, a potential schedule of the meetings may include one meeting near the start of the program to outline the noise assessment program and to solicit the community's input on the most severe noise sources and their characteristics. A second meeting may be held once noise impact zones have been identified to present the results of the noise measurement/modeling efforts, and to gain the community concurrence. Also this meeting might be used to identify the remaining steps of the program and to seek volunteers for sound testing of their residences. The final meeting might occur near the end of the program to present the final results of the program, and to explain what may happen in the next phase.

Task 2 – Noise Monitoring Program

The study area is impacted by three major sources of noise associated with the Port of Los Angeles; operations within the port boundaries, port trucks traveling on local roads, and railway noise. We propose to conduct noise measurements at twenty locations. Three measurements will be made at each site during the daytime hours as well as during the evening/nighttime hours. A site visit will be performed and this information will be used to select noise measurement locations. These locations will be provided to HCBF for review and concurrence. The sites will focus on residential and school uses near the port and along roads accommodating port traffic, as well as the homes and schools in the vicinity of rail operations. All three of the major noise sources will be monitored. Currently we envision about ¼ of the

sites oriented to railway noise, ¼ associated with port operations, and approximately ½ of the sites impacted by truck noise.

An important component of our measurement program along roadways will be traffic counts during the measurements. Specifically, counts of Port related traffic (e.g.; container trucks) will be made. We understand that while port related trucks are supposed to utilize Interstate 110, a considerable number of trucks use the surface streets in the community to avoid congestion on I-110. Our truck counts will be used to document the Port's usage of surface streets through the Wilmington area.

Averaging noise scales such the equivalent noise level (Leq) and the Community Noise Equivalent Level (CNEL) are most commonly used to characterize community noise environments as they are well correlated with annoyance levels. However, for truck and train pass-by events, the short-term peak noise levels are of most concern. These short-term noise events can result in sleep disturbance and speech interference, two of the primary components of noise impacts. Therefore, The maximum sound level (Lmax) and sound exposure level (SEL) will also be measured to capture the potential for short-term intrusive noise for these types of noise sources.

As part of our monitoring program we will reach out to the community to get two community residents to assist with the monitoring. We plan to work with Los Angeles Harbor College to identify candidates. The paid interns will go through an orientation course. Afterwards, they will make measurements initially in tandem with our staff and then later solo. When they are making measurements solo, we will always have permanent staff nearby in the area to provide assistance as needed.

Local Hire:

L&B acknowledges that local job creation is a high priority for HCBF. As such, L&B agrees to employ no less than 50% of the project's temporary employees from the communities of Wilmington and/or San Pedro, "Local Hires". As an addendum to each monthly invoice, L&B shall provide a monthly report of the total number of staff and consultants employed during the reporting period, including the number of Local Hires, as well as their zip codes of residence (**Appendix [A] - Sample Local Hire Monthly Report**).

Work Products: Report documenting noise measurements and results. The noise levels monitored will be presented on graphics that can be used in community meetings.

Task 3 – Determine Noise Criteria

Vince Mestre, in our Laguna Niguel office, is the primary author of the "Effects of Aircraft Noise: Research Update on Selected Topics," (Airport Cooperative Research Program, 2008) and is one of the leading experts on the health effects of noise. Mr. Mestre will be the lead in developing recommendations for appropriate noise criteria and to provide the most current information on the health effects of long-term exposures to community noise levels. In addition to the research on this topic, many agencies have developed standards or guidelines including the California Department of Health Services, Caltrans, City of Los Angeles, Federal Aviation Administration, and the U.S. Environmental Protection Agency. Potential noise criteria will be summarized along with their strengths and weaknesses in measuring annoyance and potential

health impacts. A specific recommendation for noise criteria will be made to identify noise impact zones.

Our initial thought is that two criteria may be appropriate for this area. The first criteria would apply to noise that occurs on a continuous or regular basis such as rail and port operation. A second criterion would address peak noise levels from truck and train pass-bys that can interfere with communication and cause sleep disturbance. This criterion may also be applicable to some port operations.

Work Product: A report will be prepared that summarizes relevant noise criteria and makes specific recommendations for noise criteria for the study area. In addition, the document will discuss the potential health effects of long-term exposures to community noise. The document will be written with a minimum of technical language with the target audience being the community.

Task 4 – Develop Noise Impact Zone Maps

Based on the noise measurements performed in Task 2 and the criteria developed in Task 3, noise zone maps will be developed. Noise modeling will be used to supplement the measurements to predict noise levels throughout the community. The criteria will be used to identify three impact zones; low, medium and high. Landrum & Brown routinely develops noise impact maps included in Noise Elements. Recently, maps have been prepared for the entire cities of Santa Clarita, Laguna Beach, Twenty-nine Palms, and Glendale. These maps were developed using ArcGIS (also referred to as ArcView). There are several advantages to this approach. The maps are scalable so that they can be drawn at a small size for a report or scaled up for wall size presentations. Additionally, the use of ArcGIS allows us to overlay noise contours on land use or parcel maps, and determine automatically which lots are exposed to unacceptable levels of noise.

Work Product: ArcGIS shapefiles of noise contours and noise zones that can be used by HCBF and others. Presentation sized exhibits showing the impact areas. A report will be prepared that identifies the number of residential structures and schools in each impact zone.

Task 5 – Develop Detailed Inventory of Noise Impact Area

Using the impact zones identified in Task 4, staff from L&B and JPG will participate in a site survey to identify residential housing types, and school construction within the noise impact area. During this inventory two sets of data will be collected - acoustical and architectural. For the architectural component, JPG has created a Soundesign™ system that incorporates detailed procedures manual for site assessments and the use of standard data collection methods to streamline the design process and ensure quality. The acoustical component will develop an acoustical evaluation plan, identify items that will impact treatment approaches and costs, and identify pilot homes/schools for further noise study.

Specific building characteristics will be documented, including location in the program area, building typologies, general condition, presence of ventilation systems, potential for hazardous materials remediation, window and door types, number of stories, construction type, and other salient features will be noted. Upon completion of the site survey, the team will compare results of the noise assessment with the building typologies.

Work Product: A report will be prepared that summarizes the results of the site survey. Various building construction types will be identified, and the associated advantages/disadvantages for soundproofing them will be discussed. A preliminary estimate of the outside to inside noise reduction for each building type will be made. This estimate of noise reduction will be used to preliminarily identify which home and school types will benefit most from a sound insulation program.

Task 6 – Develop Recommendations for Implementation

The evaluation of noise impact and the development of acoustical recommendations for implementation require several steps including the review of existing building codes, inspection of existing structures, pre-construction acoustical testing, development of design goals, undertaking the acoustical design and the recommendation of sound mitigation treatments. Given the potential for a large number of properties that might be included in the mitigation program, one can assume that property inspections, testing and design cannot be performed on all properties at this time. Therefore, it is recommended to perform the inspection of the existing structures, pre-construction acoustical testing, perform acoustical design and develop the final recommendation for the noise mitigation treatments based on a limited sample of properties.

Task 6.1: Building Code Reviews/Agency Interviews. To insure that implementation strategies comply with the necessary regulations and procedures of local, state, and federal authorities, the team will review local, state, and federal codes including but not limited to the California Noise Standard (Title 21), California Green Building Standards Code (Title 24), International Building Code, International Residential Code, and the International Existing Building Code. A summary of the relevant building codes will be prepared for review with the local building department to be factored into the implementation plan. The team will then meet with the building department to validate code determinations, and document submittal procedures, and permitting fee requirements.

The team will also review local, state and federal requirements regarding hazardous materials (lead paint and asbestos), and prepare a summary report on the various testing, plan submission & approval, and remediation requirements for the sound insulation program in connection with the installation of acoustical treatments (window & door replacements, and HVAC and ventilation upgrades).

Task 6.2: Inspection of Existing Structures. Using the final list of structures identified in Task 5 above, the Team will conduct an inspection of a representative sample of the structures that were found in the noise impact area. The inspections are to include a sampling of the various residential construction types identified in Task 5 and all school properties. The purpose of the inspection would be to assist the Team in development of potential treatment options for each structure, perform a preliminary historical evaluation of the building, evaluate constructability issues, evaluate the mechanical and electrical systems of the building, evaluate the air conditioning system of the buildings, and evaluate where to perform pre-construction acoustical tests for each building. The Team will also review any floor plans, architectural drawings, constructions details, and previous noise studies of existing conditions provided by the owners of the structures as necessary.

Task 6.3: Pre-Construction Acoustical Tests. To determine the existing conditions of the building, to understand how well the building is insulating against aircraft noise, and to help determine what treatments are required to provide noise mitigation for the structure, pre-construction acoustical testing on the sample of residential housing and the institutional property that was inspected in Task 6.2 will be performed. The purpose of the testing is to determine the existing noise level reduction (NLR) of various rooms in each structure and evaluating the performance of the roof, façades, and other elements. The acoustical measurements will be performed using an artificial noise source to optimize the cost-efficiency, minimize the measurement duration, and to assist in the development of sound insulation treatments. All measurements will be performed in accordance with American Society for Testing and Materials (ASTM) E966 - "Field Measurement of Airborne Sound Insulation of Building Facades and Facade Elements."

Task 6.4: Develop Property Database. Data gathered during the windshield survey and the noise impact zone maps will be used to develop a program database. The Team will use an integrated project tracking and outreach information management system, designed to help organize and manage sound insulation programs. JPG's Residential Sound Insulation Management System (RSIMS) is composed of modules organized around the activities of administering sound insulation projects.

Task 6.5: Acoustical Design. L&B's proprietary acoustical model will be used to evaluate the performance of building upgrades, estimate construction costs, and provide detailed recommendations for implementation of the noise mitigation program. The modeling, and the results of the limited pre-construction noise testing, will determine the level of noise reduction treatments required in each structure type. Treatments will likely include replacement of windows and doors and additional attic insulation. In addition, alternatives for the upgrade and/or replacement of the existing mechanical/ventilation systems and electrical service (as required) will be presented.

Utilizing the results of the preliminary acoustical design and evaluations, the Team will prepare a preliminary understanding of the treatments for each building type that will need sound insulation. If a building is evaluated under a typology, like similar residences or schools, the treatments will be standard for each building of that type.

Work Products: A report will be prepared identifying the treatment recommendations for all residential and school properties in the impact zones.

Task 6.6: Community Benefit Analysis. A "Community Benefit Analysis" task is included in the costs. This task would identify other potential sources of funds and draft specification language for the use of local and/or union labor sources in the following phases if directed by the HCBF. Our team has been involved in programs where additional funds were sought for energy insulation, air filtration, street improvements, and homeowner improvements. The intent of the task is to gain the most benefit for the community per dollar spent by HCBF, and to develop the program so that the local labor workforce reaps an appropriate benefit from the program.

Task 7 – Develop Cost Estimates

JPG has completed over \$473 million of in-place construction for sound insulation programs nationally. Tracking the data from that work has enabled JPG to construct an efficient database of cost information. Specific to this project we will compare building types identified during the site survey and utilize data assembled from similar projects in the local area. These include projects in the City of Inglewood and the City of El Segundo for Los Angeles International Airport, Ontario International Airport, and San Diego International Airport. Cost estimate will also factor procurement methodology which will be identified through interviews with City and HCBF staff.

Work Products: Development of cost for program implementation including program management and construction costs.

Task 8 – Prepare Estimated Implementation Schedule

The Team will develop an implementation schedule for the structures in the zone of highest impact. Depending upon the number of structures recommended for sound mitigation, it is likely that structures will have to be prioritized to account for the limits on the annual amounts of funds available to treat the structures. Structures in the highest impact zone may be phased based on a number of factors that could include treating structures in the higher noise areas first, longevity at a specific site, owner-occupied dwelling, or other factors.

JPG has over twenty years of experience creating baseline schedules for sound insulation programs. The Team will prepare a Master Program Schedule that contains all tasks and subtasks and their respective duration and interdependencies. The schedule will also project the entire sound insulation program over the anticipated duration. The Schedule will be prepared using *Microsoft Project*.

For structures that are located in the low and medium impact zone a schedule for implementation will also be developed.

Landrum & Brown and the Jones Payne Group have partnered on many sound insulation programs nationwide. Our collective experience in developing treatment approaches, program policies and procedures, and sound insulating homes, schools, and other noise sensitive structures insures our team has the experience to successfully deliver this project. We are committed, and have the proven track record, to taking assigned projects, should there be a need, through design to a point of bid advertisement.

Work Products: A schedule for the implementation of treatment of all properties in the low, medium and high impact zones.

Appendix A – SAMPLE LOCAL HIRE MONTHLY REPORT

Project: Off Port Noise Assessment Study (Wilmington)

Consultant: L&B

Reporting period - month ending _____
[Month, day, year]

Report of all workers, Staff and Consultants, dedicated to above project

	Total	Local Hire	Percentage
Number of permanent staff (L&B)			
Number of temporary hires (L&B):			
Number of permanent sub-consultants:			
Number of temporary hires (sub consultants):			
Total Number during reporting period:			

List all Zip Codes for Local Hire:

Definitions:

Local Hire: staff and consultants who currently reside in Wilmington and/or San Pedro zip codes

Temporary Hire: workers, either full time or part time, who commenced employment during the project and are not anticipated to be retained beyond the completion of this project.

Permanent: workers, either full time or part time, who commenced employment prior to the project

EXHIBIT B - Fees, Rates and Delivery Schedule	
Task 1 - Meetings:	\$ 20,250
Task 1a Kick off, week 1 <i>Deliverable: Memo with Minutes of Meeting</i>	\$8,080
Task 1b Community Meetings, Month 1 - Outline Program and Solicit community input <i>Deliverable: Memo with Minutes of Meeting</i>	\$4,500
Task 1b Community Meetings, Month 4 - Identify zones, present results <i>Deliverable: interim report, memo with minutes of meeting</i>	\$4,500
Task 1b Community Meetings, Month 9 - sound testing of residences <i>Deliverable: Present final results of program</i>	\$3,170
Task 2 - Noise Monitoring Program, Months 1 and 2 <i>Deliverable: Report Documenting noise measurement and results, with graphics</i>	\$ 17,280
Task 3 - Determine Noise Criteria, Months 2, 3 and 4 <i>Deliverable: Report summarizing relevant noise criteria, discussion of potential health effects with recommendations</i>	\$ 5,760
Task 4 - Develop Noise Impact Zone Maps, Months 2, 3 and 4 <i>Deliverable: ArcGIS shape files of noise contours & zones. Report to identify residential and educational structures</i>	\$ 12,720
Task 5 - Develop Detailed Inventory of Noise Impact Area, Months 4, 5 and 6 <i>Deliverable: Report to summary results of site survey</i>	\$ 23,186
Task 6 - Develop Recommendations for Implementation, Months 4, 5 and 6 6.1 Building Code and Agency Reviews 6.2 Inspection of Existing Structures 6.3 Pre-Construction Acoustical Tests 6.4 Develop Property Database 6.5 Acoustical Design <i>Deliverable: Summary report</i> 6.6 Community Benefit Analysis, (see Task 8a)	\$ 62,005
Task 7 - Develop Cost Estimates, Months 6, 7 and 8 <i>Deliverable: Cost Estimates for program implementation including management and construction costs</i>	\$ 16,240
Task 8 - Estimated Implementation Schedule, Months 7, 8 and 9 <i>Deliverable: Schedule for implementation of treatment in low, medium and high impact zones</i>	\$ 10,560
Task 8 - Community Benefit Analysis, Month 8 and 9 <i>Deliverable: Report on Potential Sources of Funds and draft spec language for use by labor sources</i>	\$ 9,800
TOTAL COST NOT TO EXCEED	\$ 177,801