



To: Theresa Adams-Lopez, Port of Los Angeles

From: Meghan Reese, Executive Director, Harbor Community Benefit Foundation  
David Sloane, Board Chair, Harbor Community Benefit Foundation

Cc: Joy Crose, Assistant General Counsel, Port of Los Angeles

Date: **October 2, 2017**

Re: San Pedro Noise Study, Task 2 & PCMTF Transfer

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### **INTRODUCTION**

In accordance with the Operating Agreement of the TraPac Memorandum of Understanding (TraPac MOU), the Harbor Community Benefit Foundation (HCBF) hereby submits a proposed project to continue a noise monitoring program to study the noise impacts in the community of San Pedro, from port-related operations. HCBF staff hereby requests the Board of Harbor Commissioners (BOHC) to review and approve the execution and funding of the contract to perform Task 2 of a Noise Assessment Study, and to direct JP Morgan to release \$105,270 from the Port Community Mitigation Trust Fund (PCMTF) to HCBF, in a single disbursement, for the completion of the project.

### **BACKGROUND**

On behalf of HCBF, Landrum & Brown and the Jones Payne Group conducted a noise assessment study in the community of Wilmington in 2014, documenting the noise impacts of Port of Los Angeles operations.

On August 19, 2016 the HCBF Board of Directors voted to approve Task 1 of a San Pedro noise assessment study to determine the zones of greatest impact in San Pedro. Task 1 of the San Pedro Noise Study identified several areas that are impacted by the Port's operations. Task 2 will involve noise measurements, development of noise impact criteria, mapping, and identification of noise impacts. This Task will be used to prioritize the implementation of any necessary mitigation efforts.

HCBF recommends funding an extension of the Wilmington Noise Study, in an effort to provide equitable assessment of impacts within both communities. The proposed project allows HCBF to appropriately identify and measure the zones of greatest impact in San Pedro, and quantify the cost to mitigate, as stated in the TraPac MOU, to "reasonably and appropriately mitigate, address, reduce, or eliminate the identified impact."

### **HCBF BOARD ACTIONS**

On June 9, 2017, the HCBF Board of Directors, by majority vote, approved the following recommendation:

#### **Recommendation to Board:**

1. Approve the Task 2 of the San Pedro Noise Study;
2. Authorize the Interim Executive Director to:
  - a) report to the Board of Harbor Commissioners (BOHC), requesting approval of funding for the San Pedro Noise Study, and,
  - b) execute a letter to the BOHC to approve the distribution of funds in one lump sum transfer from the Port Community Mitigation Trust Fund to HCBF, and,

- c) fully execute and administer the Grant Agreement between HCBF and the approved vendor for the San Pedro Noise Study.

**PCMTF STATUS REPORT: APPROVED PROJECTS & FUND BALANCE UPDATE**

Pursuant to the Operating Agreement section 5.C.i. - The following chart summarizes the transfer of funds from the PCMTF for studies and HCBF Programs to date, and the balance of PCMTF funds (as of July 31, 2017):

<b>Funding Summary (as of 7/31/2017)</b>		
<b>Funding, approved to date:</b>		
<b>Various</b>	\$300,000	Land Use Study (as required by the Operating Agreement)
	\$185,000	Noise Study (as required by the Operating Agreement)
	<b>\$485,000</b>	<b>Total for Studies</b>
<b>2012</b>	\$350,000	Healthy Harbor, Round 1
	<b>\$350,000</b>	<b>Total for 2012</b>
<b>2013</b>	\$450,000	Healthy Harbor, Round 2
	\$506,000	Community Benefit, Round 1
	<b>\$956,000</b>	<b>Total for 2013</b>
<b>2014</b>	\$620,000	Community Benefit, Round 2
	\$550,000	Healthy Harbor, Round 3
	<b>\$1,170,000</b>	<b>Total for 2014</b>
<b>2015</b>	\$518,000	Healthy Harbor, Round 4
	\$306,000	STEAM Pilot
	\$335,000	Community Benefit, Round 3
	<b>\$1,159,000</b>	<b>Total for 2015</b>
<b>2016</b>	\$300,000	Healthy Harbor, Round 5
	\$800,000	Community Benefit, Round 4
	<b>\$1,100,000</b>	<b>Total for 2016</b>
	<b>\$5,220,000</b>	<b>Total (Committed funding to date)</b>
<b>Funding, pending approval:</b>		
<b>2017</b>	\$330,019	Community Benefit, Round 5 (pending approval)
	<b>\$330,019</b>	
	<b>\$5,550,019</b>	<b>Grand Total</b>

**Balance of PCMTF funds (as of July 31, 2017):**

<b>JP Morgan Account Balance Summary</b>		
through July, 31, 2017		
	<b>Savings/Investment Accounts</b>	
	<b>Subtotal</b>	<b>Total</b>
Beginning Balance (as of 12/31/16)		\$3,169,747
Contributions		\$0
Withdrawals		\$0
Management Fees		(\$3,065)
Income	\$28,646	
Change in investment value	\$8,871	
Net increase		\$43,909
<b>Ending Market Value (as of 7/31/17)</b>		<b>\$3,213,656</b>

**REQUEST**

**HCBF requests the Board of Harbor Commissioners (BOHC) to review, and approve, the execution and funding of the contract to perform Task 2 of a San Pedro Noise Assessment Study and to direct JP Morgan to release \$105,720 from the Port Community Mitigation Trust Fund (PCMTF), in a single disbursement, for the completion of the project.**

**HCBF Contact**

Meghan Reese, Executive Director  
 Harbor Community Benefit Foundation  
 302 W. 5<sup>th</sup> Street, Suite 300  
 San Pedro, CA 90731  
 Email: [meghan@hcbf.org](mailto:meghan@hcbf.org)  
 Office: (310) 997-7116  
 Website: [www.hcbf.org](http://www.hcbf.org)

**ATTACHMENTS:**

- Attachment 1 - Draft Contract: The Jones Payne Group
- Attachment 2 - San Pedro Noise Study, Task 2 - Scope of Work
- Attachment 3 - San Pedro Noise Study, Task 2 - Schedule
- Attachment 4 - San Pedro Noise Study, Task 2 - Budget

**HARBOR COMMUNITY BENEFIT FOUNDATION  
AGREEMENT FOR PROFESSIONAL SERVICES  
FOR PREPARATION OF SAN PEDRO NOISE STUDY**

This Agreement for Professional Services for San Pedro Noise Study (“Agreement”) is made on this 2<sup>nd</sup> day of October, 2017, by and between the Harbor Community Benefit Foundation, a California nonprofit public benefit corporation (“HCBF”) and The Jones Payne Group, Inc. (“CONSULTANT”), each a “party” and referred to collectively herein as the “parties.”

**RECITALS**

- A. CONSULTANT completed noise study in Wilmington and noise assessment in San Pedro, and now proposes to conduct comprehensive noise measurements in San Pedro.
- B. CONSULTANT is in the business of providing services of this kind to its clients and desires to perform such services for HCBF.
- C. CONSULTANT has the necessary qualifications by reason of experience, qualified personnel, preparation and organization to provide such services.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises and representations set forth below, HCBF and the CONSULTANT mutually agree as follows:

1. **SERVICES/SCOPE OF WORK.** CONSULTANT shall perform those services set forth in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference. CONSULTANT shall perform the services in accordance with the professional standards of care applicable to its profession. Except as herein otherwise expressly specified to be furnished by HCBF, CONSULTANT will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space, and facilities necessary or proper to perform and complete the work and provide the professional services required of CONSULTANT by this Agreement. By executing this Agreement, CONSULTANT represents that CONSULTANT and HCBF have (a) thoroughly discussed, considered and agreed upon the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) agreed upon the facilities, difficulties, and restrictions attendant to performance of the services under this Agreement. The scope and budget reflect this mutual agreement.
2. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon execution by both parties and shall expire on March 31, 2018 unless extended in writing by both parties.

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3. **TIME OF PERFORMANCE.** The services of CONSULTANT are to commence upon execution of this Agreement by both parties and shall continue until all authorized work is completed to HCBF's reasonable satisfaction commensurate with the level of effort identified in Exhibit C, Budget, in accordance with the schedule set forth in Exhibit B, Schedule, incorporated herein by reference, unless extended in writing by HCBF.
  
4. **PAYMENT FOR SERVICES.** CONSULTANT shall be compensated in an amount not to exceed \$105,270 for services provided pursuant to this Agreement as described in Exhibit C attached hereto and incorporated herein by reference. The level of effort for each task is identified by the hours in Exhibit C. Compensation shall under no circumstances be increased except by written amendment of this Agreement. CONSULTANT shall be paid within thirty (30) days of presentation of an invoice to HCBF for services performed to HCBF's satisfaction commensurate with the level of effort identified in Exhibit C. CONSULTANT shall submit invoices monthly describing the services performed by line item and category, a description of reimbursable costs, and any other reasonable information requested by HCBF. CONSULTANT will provide HCBF with a Taxpayer Identification Number.
  
5. **CONTRACT ADMINISTRATION.**
  - 5.1. **HCBF's Representative.** Unless otherwise designated in writing, the Executive Director shall serve as HCBF's representative for the administration of this Agreement. In his/her absence, the Board Chair, or his designee, shall serve as the alternate contact. All activities performed by CONSULTANT shall be coordinated with this person.
  
  - 5.2. **Principal-in-Charge.** For the CONSULTANT, John Hansen shall be in charge of the project on all matters relating to this Agreement and any commitment made by him shall be binding on CONSULTANT. The Principal-in-Charge shall not be replaced without the written consent of HCBF.
  
  - 5.3. **Responsibilities of HCBF.** HCBF shall provide all relevant documentation in its possession to CONSULTANT upon request in order to minimize duplication of efforts. HCBF's staff shall work with CONSULTANT as necessary to facilitate performance of the services. All data and information must be provided in a timely manner, usable

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and will be assumed to be correct. Any work that results from incorrect information shall be considered out of scope.

- 5.4. **Personnel.** CONSULTANT represents that it has or will secure at its own expense all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by CONSULTANT or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

CONSULTANT reserves the right to determine the assignment of its own employees to the performance of the CONSULTANT's services under this Agreement, but HCBF reserves the right, for good cause, to require CONSULTANT to exclude any employee from performing services on the HCBF's premises.

**6. TERMINATION.**

- 6.1. **Termination for Convenience.** Either party may terminate this Agreement without cause and in its sole discretion at any time by giving the other party thirty (30) days' written notice of such termination. In the event of such termination, CONSULTANT shall cease services as of the date of such notice, unless HCBF specifically requests specific services to be continued through the date of termination, in which case CONSULTANT shall complete those services to HCBF's reasonable satisfaction commensurate with the level of effort identified in the budget. CONSULTANT shall be compensated for time expended and expenses reasonably incurred to the date of such notice or termination, as the case may be.

- 6.2. **Termination for Cause.** All terms, provisions, and specifications of this Agreement are material and binding, and failure to perform any material portion of the work described herein shall be considered a breach of this Agreement. Should the Agreement be breached in any manner, HCBF may, at its option, terminate the Agreement not less than five (5) days after written notification is received by CONSULTANT to remedy the violation within the stated time or within any other time period agreed to by the parties.

7. **INDEMNIFICATION.** Except for the sole negligence or willful misconduct of the City of Los Angeles, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, and of HCBF, CONSULTANT undertakes

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and agrees to indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest and HCBF from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City and HCBF, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONSULTANT's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by CONSULTANT or its subcontractors. Rights and remedies available to the City and HCBF under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. Provided there is no conflict of interest, the parties will endeavor to minimize defense costs by employing common legal counsel in the defense of third-party lawsuits.

**8. INSURANCE REQUIREMENTS.**

8.1. CONSULTANT, at CONSULTANT's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:

8.1.1. **Workers' Compensation Coverage.** CONSULTANT shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, CONSULTANT shall require any and every subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by HCBF at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against HCBF, its officers, agents, employees, and volunteers for losses arising from work performed by CONSULTANT for HCBF.

8.1.2. **General Liability Coverage.** CONSULTANT shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily

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injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

8.1.3. **Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage for all activities of CONSULTANT arising out of or in connection with the work to be performed under this Agreement, including coverage for owned (if any), hired, and non-owned vehicles, in an amount of not less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence.

8.1.4. **Professional Liability Coverage.** CONSULTANT shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from CONSULTANT'S operations under this Agreement, whether such operations are by the CONSULTANT or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single-limit-per-occurrence basis. When coverage is provided on a "claims made basis," CONSULTANT will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONSULTANT for all claims made by HCBF arising out of any errors or omissions of CONSULTANT, or its officers, employees or agents during the time this Agreement was in effect.

8.2. **Endorsements.** Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's rating of no less than A-:VII. Each general liability insurance policy shall be endorsed with the specific language of Section 8.2.1 below. CONSULTANT also agrees to require all contractors, and subcontractors to do likewise.

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- 8.2.1. “City of Los Angeles and HCBF, their elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of CONSULTANT, including materials, parts, or equipment furnished in connection with such work or operations.”
- 8.2.2. This policy shall be considered primary insurance as respects the City of Los Angeles and HCBF, their elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the City of Los Angeles and HCBF, including any self-insured retention the HCBF may have, shall be considered excess insurance only and shall not contribute with this policy.
- 8.2.3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- 8.2.4. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amounts of coverage required. Any insurance proceeds available to HCBF in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to HCBF.
- 8.2.5. The insurer waives all rights of subrogation against the City of Los Angeles and HCBF, their elected or appointed officers, officials, employees, or agents regardless of the applicability of any insurance proceeds, and agrees to require all subcontractors to do likewise.
- 8.2.6. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Los Angeles and HCBF, their elected or appointed officers, officials, employees, agents, or volunteers.
- 8.2.7. The insurance provided by this policy shall not be suspended, voided or reduced in coverage or in limits except after thirty (30) days’ written notice has been submitted to HCBF by either CONSULTANT or the insurer and approved of in writing, except in the case of cancellation, for which ten (10) days’ written notice shall be provided.

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- 8.2.8. CONSULTANT agrees to provide immediate notice to HCBF of any claim or loss against CONSULTANT arising out of the work performed under this agreement. HCBF assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve HCBF.
- 8.3. **Self Insured Retention/Deductibles.** All policies required by this Agreement shall allow HCBF, as additional insured, to satisfy the self-insured retention (“SIR”) and/or deductible of the policy in lieu of the CONSULTANT (as the named insured) should CONSULTANT fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of HCBF’s General Counsel. CONSULTANT understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by CONSULTANT as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should HCBF pay the SIR or deductible on CONSULTANT’s behalf upon CONSULTANT’s failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, HCBF may include such amounts as damages in any action against CONSULTANT for breach of this Agreement in addition to any other damages incurred by HCBF due to the breach.
- 8.4. **Certificates of Insurance.** CONSULTANT shall provide certificates of insurance with original endorsements to HCBF as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with HCBF on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with HCBF at all times during the term of this Agreement. CONSULTANT shall provide written evidence of current automobile coverage to comply with the automobile insurance requirement.
- 8.5. **Failure to Procure Insurance.** Failure on the part of CONSULTANT to procure or maintain required insurance shall constitute a material breach of contract under which HCBF may terminate this Agreement pursuant to Section 6.2 above.
9. **ASSIGNMENT AND SUBCONTRACTING.** The parties recognize that a substantial inducement to HCBF for entering into this Agreement is the professional reputation, experience, and competence of CONSULTANT. Assignments of any or all rights, duties, or obligations of CONSULTANT under

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this Agreement will be permitted only with the express consent of the HCBF. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of HCBF. If HCBF consents to such subcontract, CONSULTANT shall be fully responsible to HCBF for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between HCBF and any subcontractor nor shall it create any obligation on the part of HCBF to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

10. **COMPLIANCE WITH LAWS, CODES, ORDINANCES, AND REGULATIONS.** CONSULTANT shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.

10.1. **Taxes.** CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold HCBF harmless from any and all taxes, assessments, penalties, and interest asserted against HCBF by reason of the independent contractor relationship created by this Agreement. In the event that HCBF is audited by any Federal or State agency regarding the independent contractor status of CONSULTANT and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between HCBF and CONSULTANT, then CONSULTANT agrees to reimburse HCBF for all costs, including accounting and attorneys' fees, arising out of such audit and any appeals relating thereto.

10.2. **Workers' Compensation Law.** CONSULTANT shall fully comply with the workers' compensation law regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold HCBF harmless from any failure of CONSULTANT to comply with applicable workers' compensation laws. HCBF shall have the right to offset against the amount of any compensation due to CONSULTANT under this Agreement any amount due to HCBF from CONSULTANT as a result of CONSULTANT's failure to promptly pay to HCBF any reimbursement or indemnification arising under this Section.

10.3. **Licenses.** CONSULTANT represents and warrants to HCBF that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONSULTANT to practice its profession. CONSULTANT represents and warrants to HCBF that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any

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licenses, permits, insurance, and approvals which are legally required of CONSULTANT to practice its profession.

11. **CONFLICT OF INTEREST.** CONSULTANT confirms that it has no financial, contractual, or other interest or obligation that conflicts with or is harmful or inimical to performance of its obligations under this Agreement. CONSULTANT shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation, nor shall it employ or subcontract with any person for performance of this Agreement who has such incompatible interest or obligation.
12. **WARRANTY.** CONSULTANT represents and warrants to HCBF that the work product it produces hereunder shall not violate or infringe upon the trademark, trade name, copyright, literacy, personal, private, civil, “droit moral” or property right or rights of privacy or any other right of any person or entity.
13. **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** CONSULTANT represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, political affiliation or opinion, medical condition, or pregnancy or pregnancy-related condition. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, political affiliation or opinion, medical condition, or pregnancy or pregnancy-related condition. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to include in all solicitations or advertisements for employment and to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
14. **RECORDS AND AUDITS.** CONSULTANT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by HCBF or any authorized representative. All records shall be made available at the request of HCBF, with reasonable notice, during regular business hours, and shall be retained by CONSULTANT for a period of three years after the expiration of this Agreement.
15. **OWNERSHIP OF DOCUMENTS.** It is understood and agreed that HCBF shall own all documents and other work product of CONSULTANT which

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pertain to the work performed under this Agreement, except CONSULTANT's notes and draft workpapers. HCBF shall have the sole right to use such materials in its discretion and without further compensation to CONSULTANT. It is further understood that the work of CONSULTANT is based on years of professional expertise and CONSULTANT shall retain rights and ownership of all intellectual property of all documents and other work products. CONSULTANT shall provide all such documents to HCBF upon request during or at the end of the project. Future requests for information and materials shall be billed on a time and materials basis.

16. **CONFIDENTIALITY.** CONSULTANT shall maintain in strict confidence any data or information collected in the course of its services that HCBF identifies as confidential.
17. **INDEPENDENT CONTRACTOR.** CONSULTANT is and shall at all times remain as to HCBF a wholly independent contractor. CONSULTANT is in business for itself and HCBF is but one of many clients for whom CONSULTANT provides professional services of the kind described herein. Neither HCBF nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees or agents, except as herein set forth. CONSULTANT shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of HCBF. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of HCBF or otherwise act on behalf of HCBF as an agent.
18. **NOTICE.** All Notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable party's representative by personal delivery, electronic mail or first class U.S. mail, return receipt requested, whichever is delivered first. Mailed copies of such notices shall be given to the respective parties at the following addresses or at such other addresses as the parties may provide in writing for this purpose.

HCBF:

Harbor Community Benefit Foundation  
302 W. 5<sup>th</sup> St., Suite 300  
San Pedro, CA 90731  
Attention: Interim Executive Director

cc: Meghan Reese, Interim Executive Director  
email: [ben@hcbf.org](mailto:ben@hcbf.org)

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COUNSEL:**

Jenkins & Hogin LLP  
Attention: Mike Jenkins  
email: MJenkins@localgovlaw.com

**CONSULTANT:**

The Jones Payne Group, Inc.

Attention: John Hansen

19. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California.
20. **DISPUTE RESOLUTION.** Except as may otherwise be set forth expressly herein, all disputes arising under this Agreement shall be resolved as set forth in this Section 20.

**20.1 Negotiation and Mediation:** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the parties' authorized representatives. The disputing party shall give the other party written notice of any dispute.

Within twenty (20) days after delivery of such notice, the authorized representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, any party may initiate a mediation of the dispute. The mediation shall be facilitated by a mediator that is acceptable to both parties and shall conclude within sixty (60) days of its commencement, unless the parties agree to extend the mediation process beyond such deadline. Upon agreeing on a mediator, the parties shall enter into a written agreement for the mediation services with each party paying a pro rata share of the mediator's fee, if any. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association; provided, however, that no consequential damages shall be awarded in any such proceeding and each party shall bear its own legal fees and expenses.

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20.2 **Confidentiality:** All negotiations and any mediation conducted pursuant to Section 19.1 shall be confidential and shall be treated as compromise and settlement negotiations, to which Section 1152 of the California Evidence Code shall apply, which Section is incorporated in this Agreement by reference.

20.3 **Continuing Obligation:** Each Party shall continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

20.4 **Failure of Mediation:** If after good faith efforts to mediate a dispute under the terms of this Agreement the parties cannot agree to a resolution of the dispute, any party may pursue whatever legal remedies may be available to it at law or in equity before a court of competent jurisdiction and with venue in Los Angeles County.

21. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement supersedes any and all other agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party that are not embodied herein. Any agreement, statement, or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both parties.
22. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this agreement. Payment of any invoice by HCBF shall not constitute a waiver of HCBF's right to obtain correction or replacement of any defective or noncompliant work product.
23. **EXECUTION.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
24. **AUTHORITY TO ENTER AGREEMENT.** CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

**HARBOR COMMUNITY BENEFIT FOUNDATION  
AGREEMENT FOR PROFESSIONAL SERVICES  
FOR PREPARATION OF SAN PEDRO NOISE STUDY**

25. **COVENANT.** This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. CONSULTANT agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations. HCBF shall review all materials and products produced under this Agreement to ensure conformance with the limitations, conditions, restrictions and reservations or the Act and HCBF shall take responsibility for conformance of the work with the Act.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the 2<sup>nd</sup> day of October, 2017.

CONSULTANT: The Jones Payne Group, Inc.

\_\_\_\_\_

TaxPayer ID# \_\_\_\_\_

HARBOR COMMUNITY BENEFIT  
FOUNDATION:

\_\_\_\_\_  
Meghan Reese, Executive Director

## **TASK 2 – NOISE MONITORING PROGRAM**

The San Pedro community is immediately adjacent to Wilmington where major sources of noise associated with the Port of Los Angeles are more apparent. These include operations within the port boundaries, port trucks traveling on local roads, and railway noise. The following tasks lay out the process for determining existing noise exposure and noise impact.

### **Task 2A – Undertake Noise Measurements**

Prior to undertaking a noise measurement program and setting up noise monitors, a site visit will be performed to select final noise measurement locations. To accomplish this L&B and JPG may be required to meet with, or contact, representatives of the noise sources such as the Port, refinery and local highways to obtain information on schedules and traffic levels. L&B and JPG may also meet with representatives of the school, apartment building, and some local residents to pick final noise measurement locations. Final 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 along any rail lines from the Port.

We propose to conduct noise measurements at up to eight (8) locations. Seven (7) locations were identified in our Task 1 report, while one (1) additional location will be provided by the Foundation. Measurements will be taken at each site during the daytime hours as well as during the evening/nighttime hours, when appropriate. Up to two (2) long term monitors will be set up that will run multiple days consecutively. Up to eight (8) short term monitors are selected at each site where a monitor is set up for four (4) to eight (8) hours.

Noise levels that will be measured will help determine noise exposure, such as Community Noise Equivalent Level (CNEL), and identify the most significant noise sources. L&B will document single event noise exposure from truck and train pass-by events that are of concern. These single event 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 be measured to capture the potential for short-term intrusive noise for these types of noise sources.

### **Task 2B – Develop Noise Impact Zone Maps**

Based on the noise measurements performed in Task 2A and the criteria developed as part of the Wilmington study, noise zone maps will be developed. Noise modeling is used to determine the noise

exposure throughout the community and develop noise contours. Applicable noise criteria are used to identify noise impact zones.

Task 2C – Develop Inventory of Noise Impact Area

Using the impact zones identified in Task 2B, L&B and JPG staff will participate in a site survey to identify residential housing types, and school construction within the identified noise impact areas. During the inventory two sets of data will be collected - acoustical and architectural. Specific building characteristics will be documented, including location in the program area, building typologies, and general condition.

Task 2D – Develop Documentation of Noise Monitoring Program

A draft report documenting the results of the noise monitoring program will be produced. This will include the noise measurements, noise criteria, noise contours, impact zones, and impact inventory. Following a review of the draft document by Foundation staff, a meeting will be undertaken to review the work product. Following concurrence by the Foundation, a final document will be produced incorporating all changes and comments.

**PROPOSED FEE (FOLLOWING PAGE)**

We wish to thank you for providing our team the opportunity to help you meet your mission to improve the quality of life of the harbor communities of San Pedro and Wilmington.

Please feel free to contact us should you have any questions.

Sincerely,

***The Jones Payne Group, Inc.***



Joe Chairez, Assoc, AIA  
Associate

cc: John Hansen, JPG  
Alan Hass, L&B

**PROJECT SCHEDULE - HCBF SAN PEDRO NOISE MONITORING PROGRAM:**

<i>Month:</i>	<i>Task:</i>	<i>Milestone:</i>
<b>November 2017</b>	Undertake Noise Measurement	<ul style="list-style-type: none"><li>• Perform Measurements</li></ul>
<b>December 2017</b>	Develop Noise Impact Zone Maps	<ul style="list-style-type: none"><li>• Graphically Depict Affected Areas</li></ul>
<b>January 2017</b>	Develop Inventory of Noise Impact Area	<ul style="list-style-type: none"><li>• Analyze Findings</li></ul>
<b>January 2017</b>	Findings Review/ Development of Report	<ul style="list-style-type: none"><li>• Draft Report</li></ul>
<b>February 2017</b>	Development Documentation of Noise Monitoring Program	<ul style="list-style-type: none"><li>• Final Report</li></ul>

**HCBF Noise Survey - San Pedro****L&B - BOSTON OFFICE**

Category	AVP	MC	SC	CT	AT	PA		
Hourly	\$250	\$220	\$200	\$180	\$130	\$95		Total
Number of Hours								
<b>TASK 2 - NOISE MONITORING PROGRAM</b>								
Task 2A - Undertake Noise Measurements	44	0	80	60	0	2	\$	37,990
Task 2B - Develop Noise Impact Zone Maps	4	0	80	16	0	0	\$	19,880
Task 2C - Develop Inventory of Noise Impact Area	4	0	32	0	0	0	\$	7,400
Task 2D - Develop Documentation of Noise Monitoring Program	48	0	40	16	0	0	\$	22,880
<b>Total (Hours)</b>	<b>100</b>	<b>0</b>	<b>232</b>	<b>92</b>	<b>0</b>	<b>2</b>	<b>\$</b>	<b>88,150</b>

AVP - Associate Vice President Alan Hass

MC - Managing Consultant

SC - Senior Consultant

CT - Consultant

PA - Project Administrator

**JONES PAYNE GROUP**

Category	JH	JC	MA	AW	0	0		
Hourly	\$230	\$140	\$110	\$140	\$0	\$0		Total
Number of Hours								
<b>TASK 2 - NOISE MONITORING PROGRAM</b>								
Task 2A - Undertake Noise Measurements		8	24				\$	3,760
Task 2B - Develop Noise Impact Zone Maps							\$	-
Task 2C - Develop Inventory of Noise Impact Area		4	14				\$	2,100
Task 2D - Develop Documentation of Noise Monitoring Program		8	24				\$	3,760
<b>Total (Hours)</b>	<b>0</b>	<b>20</b>	<b>62</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$</b>	<b>9,620</b>

JH - John Hansen, Principal Consultant

JC - Joe Chairez, Architectural Consultant

MA - Maribel Aldana, Planning Consultant

AW - Andrew Walter, GIS/Data Consultant

	Cost
Task 2A - Undertake Noise Measurements	\$ 41,750
Task 2B - Develop Noise Impact Zone Maps	\$ 19,880
Task 2C - Develop Inventory of Noise Impact Area	\$ 9,500
Task 2D - Develop Documentation of Noise Monitoring Program	\$ 26,640
Expenses Breakdown	\$ 7,500

**\$ 105,270****Expenses Breakdown**

Airfare (Boston staff)	\$800 (BOS - LAX)
Hotel (Boston staff)	\$600 (3 nights total/1 staff)
Rental Car (Boston staff)	\$300 (4 days total/1 vehicle)
Subsistence (Boston staff)	\$200 (4 days total/1 staff)
Local Mileage (Irvine staff)	\$200 (400 miles/2 vehicles)
(JPG staff)	\$400 (800 miles/2 vehicles)
Hotel (Irvine staff)	\$1,200 (6 nights total/2 staff)
Subsistence (Irvine staff)	\$400 (8 days total/2 staff)
(JPG staff)	\$400 (8 days total/2 staff)
Equipment	
SLM - 2 kits	\$1,800 (4 days/2 monitors, plus shipping time)
SLM - 2 portables	\$800 (4 days/2 monitors)
Shipping	\$400 (rental SLM kits from SID)
<b>Total</b>	<b>\$7,500</b>