



## Staff Report

**Date:** July 12, 2016

**To:** City Council Sitting as the Local Reuse Authority

**From:** Valerie J. Barone, City Manager

**Prepared by:** Guy S. Bjerke, Director - Community Reuse Planning  
 Guy.bjerke@cityofconcord.org  
 (925) 671-3076

**Subject:** **Considering approval of an Agreement for Professional Services with Arup North America Ltd. (Arup) associated with land transfer and development planning for the Community Reuse Project at the former Concord Naval Weapons Station (CNWS) in an amount not to exceed \$365,000 (Funding will be provided by the Master Developer or through a loan to the Local Reuse Authority (LRA) from the General Fund or/and through a grant from the Office of Economic Adjustment (OEA))**

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### Report in Brief

Staff is recommending that the Local Reuse Authority (LRA) approve an Agreement for Professional Services with Arup to authorize the expenditure of up to \$365,000. The term of the agreement is July 1, 2016 to June 30, 2017.

Arup's scope of work includes specialized studies for the CNWS in support of refinement of the Area Plan, revisions to site-wide infrastructure concepts, temporary site access, and development phasing, disposition planning, support of coordination with the Department of the Navy (DON) on National Environmental Protection Act/Endangered Species Act (NEPA/ESA) requirements, support of the LRA legal and real estate team with Disposition and Development Agreement Negotiations with the Master Developer and civil surveys to delineate key conveyance parcels and other on-call engineering and planning services needed to support the LRA.

Funding will be provided by the Master Developer, an OEA grant or through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY2016/2017 budget, depending on the task. The loan will be repaid, with interest, from land sales or leases within the former CNWS. The total funding for Arup since 2006, including this agreement, is \$10.8 M. Funding has been provided by

the Department of Defense, Office of Economic Adjustment (\$6.0 M), the City's former Redevelopment Agency (\$2.14 M), other regional, state and federal grants (\$1.86 M); and General Fund loans to the LRA (\$0.8 M).

### **Recommended Action**

Staff recommends approving an Agreement for Professional Services with Arup in an amount not to exceed \$365,000 and authorizing the Executive Director of the LRA to execute the agreement, subject to approval of the City Attorney.

### **Background**

Arup has been a key member of the LRA team since their selection in 2006. They were selected after a highly competitive selection process based on qualifications and cost. Their selection was made by a select interview panel including the Mayor/Vice Mayor, City Manager, City Attorney, Director of Community Development and Public Affairs Manager. In the ensuing ten years Arup has been involved in every major product/study/community meeting associated with the reuse project. Arup and its team lead all community meetings to determine seven alternative land uses for the Base, prepared the CEQA compliance documents to support selection of the two final reuse concepts, and prepared the Draft and Final Environmental Impact documents and findings for adoption of the Area Reuse Plan.

They supported staff in securing over \$1.5 Million in grant funding from regional government to support transit oriented planning around BART and development of complete streets concepts. Their engineering team has completed the conceptual infrastructure layout and provided cost data to financial models to determine project feasibility and potential value to the Navy. They transformed the Reuse Plan into an Area Plan with associated detail and policy so that it could be incorporated into the City's 2030 General Plan and prepared a Climate Action Plan specific to the base.

They have been providing oversight of the Navy's preparation of an Environmental Impact Statement under Federal law to ensure consistency with the Area Plan as well as the preparation of a biologic opinion for the U.S. Fish and Wild Life Service.

Present work tasks are focused on preparing the mapping documents needed to support transfer documents and working with the Master Developer and City planning on scope for a specific plan. This is not an exhaustive list but shows the key role that Arup has played over the last ten years and confirms the wisdom of their selection in 2006.

### **Analysis**

The work scope for this contract will focus on: 1) refinement of the Community Reuse Project Area Plan and Master Schedule to transfer activities; 2) development of the City's preferred real property disposition strategy and Master Developer Term Sheets; 3) analysis of appropriate transactional documentation included revised financial/fiscal modeling, phasing concepts; 4) refinement of infrastructure requirements with a

particular focus on utilities, primary/secondary street-system temporary access; 5) review and coordination with the Department of Navy (DON) remediation and environmental compliance documents; and 6) civil surveys to support EDC conveyance application to the DON.

Below is a detailed consultant scope for this agreement:

### **Task 1 - Continued Support of and Coordination with DON on NEPA/ESA Requirements**

- Integration of the transfer and development policies and strategies with the consultation process with the U.S. Fish and Wildlife Service under Section 7 of the ESA can significantly impact land use configurations, phasing, and parcel sizes in implementation planning. The LRA will need portions of the Arup team to support the DON consultation with technical input on habitat protection and restoration to insure the integrity of the City's Reuse Plan is maintained through the consultation process.
- In a similar vein, the DON will be conducting an outreach program to Native American tribes as required under Section 106 of the National Historic Preservation Act. The LRA will need assistance from Arup's cultural resource specialists to support the outreach.
- Support to the LRA from Arup on monitoring and coordinating with the DON on preparation of NEPA compliance documents to ensure consistency with the now adopted Area Plan and the certified California Environmental Quality Act (CEQA) compliance documents for both the Reuse Plan and the Area Plan. Specific areas of concern have to do with traffic modeling and associated noise and air quality projections.

### **Task 2 - Continued Disposition Application/Term Sheet and Development Agreement Support**

- The LRA will require support from Arup in preparation of components of a business plan and application for disposition under the Economic Development Conveyance authority and value determination negotiations with the DON. The business plan will need to reflect constraints noted in the infrastructure and development phasing model outputs, environmental review and consultation process, policies/standards of the implementation format that will reflect the desires of the community for reuse of the base and results of the Disposition and Development Agreement negotiated with the selected Master Developer. Arup will provide civil surveys of primary conveyance parcels and backbone infrastructure.

### **Task 3 – Continued Infrastructure and Area Plan Refinement Analysis**

- Discussions with a wide variety of public and regulatory agencies and utility providers have led to changes in the scale and scope of infrastructure requirements

to address the implementation of the Area Plan. However, the loss of redevelopment financing tools may change the scope and timing of infrastructure implementation. As part of this new work scope, Arup will provide an updated utilities plan, temporary access engineering and integrate advanced planning and internal infrastructure development findings from the Association of Bay Area Governments/Metropolitan Transportation Commission (ABAG/MTC) planning grant for the Base Priority Development Area. They will also coordinate studies for various funding structures including required transportation nexus studies and community financing/infrastructure financing district (CFD/IFD) formation studies.

**Task 4 – Continued General as needed on-call planning/engineering support**

- Support coordination and outreach with regional stakeholders, Planning Commission.

Specific tasks associated with Arup’s scope of work this fiscal year include:

**Project Management Support**

- Ongoing updates to project schedule and coordination with the Navy and other key partners.
- Planning and Engineering input for DDA and DA negotiations.
- Mapping in support of resource permitting, land transfer, and communication with key partners.
- Permitting support and coordination with project technical staff, including hydrology, biology, and others.
- Participation in resource permitting, remediation, and land transfer process as related to other tasks.

**Specific Plan and CEQA Technical Support**

- Review of draft Specific Plan documents for feasibility and consistency with the Area Plan, including policies, designs, and infrastructure.
- Support for Specific Plan outreach.
- Review of draft CEQA documents to ensure maximum use is made of past CEQA documents and to review mitigation for traffic, utilities, and other key community impacts.

**Financial Impact**

LRA staff is requesting the LRA approve an Agreement for Professional Services with Arup in an amount not to exceed \$365,000.

Funding will be provided by the Master Developer, an OEA grant or through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY2016/2017 budget, depending on the task. The loan will be repaid, with interest, from land sales or leases within the former CNWS. The total funding for Arup since 2006, including this agreement, is \$10.8 M. Funding has been provided by the Department of Defense, Office of Economic Adjustment (\$6.0 M), the City's former Redevelopment Agency (\$2.14 M), other regional, state and federal grants (\$1.86 M); and General Fund loans to the LRA (\$0.8 M).

**Public Contact**

The City Council Agenda was posted.

**Attachments**

1. Agreement with Arup North America Ltd.

**AGREEMENT FOR PROFESSIONAL SERVICES**

1 THIS AGREEMENT ("Agreement") is entered into on July 1, 2016 between the City of Concord  
2 ("CITY") and Arup North America Ltd., 560 Mission Street, Suite 700, San Francisco, California  
3 94105 ("CONSULTANT").

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings  
5 and intentions:

6 The CITY desires to contract with CONSULTANT to provide the professional services  
7 described in Section 2 of this Agreement, upon the terms and conditions hereinafter set forth.

8 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the  
9 parties herein contained, the parties hereto agree as follows:

10 1. **TERM.** This Agreement shall commence on July 1, 2016 and expire on  
11 June 30, 2017.

12 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by  
13 the CITY's Authorized Representative, CONSULTANT shall perform the services described in detail  
14 in Exhibit A, Scope of Services. CITY retains all rights of approval and discretion with respect to the  
15 projects and undertakings contemplated by this Agreement.

16 3. **PAYMENT.** CONSULTANT shall be compensated, not to exceed Three Hundred  
17 Sixty-five Thousand Dollars (**\$365,000**) for basic services rendered, as more particularly described in  
18 Exhibit A, in accordance with the terms and conditions included therein. Any Amendment to this  
19 Agreement that includes an increase to this compensation amount shall be made in accordance with  
20 Section 5 below.

21 CONSULTANT may submit monthly statements for services rendered; all statements shall  
22 include adequate documentation demonstrating work performed during the billing period. It is  
23 intended that CITY review such statement and pay CONSULTANT for services rendered within 30  
24 days of receipt of a statement that meets all requirements of this Agreement. Payment by CITY shall  
25 not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the  
26 time of payment.

1           **4.     AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent  
2 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered  
3 by CONSULTANT under this Agreement except where approval for the CITY is specifically required  
4 by the City Council. The CITY's authorized representative is Guy Bjerke, Director of Community  
5 Reuse Planning. The CONSULTANT's authorized representative is Aidan Hughes, Principal.

6           **5.     AMENDMENT TO AGREEMENT.** This Agreement may be amended in writing,  
7 subject to approval by both parties. If additional services are requested by CITY other than as  
8 described in the above Scope of Services, this Agreement may be amended, modified, or changed by  
9 the parties subject to mutual consent and in accordance with the CITY's Municipal Code by execution  
10 of an Amendment by authorized representatives of both parties setting forth the additional scope of  
11 services to be performed, the performance time schedule, and the compensation for such services.

12           **A.     Amendment for Additional Compensation.** CITY's Authorized  
13 Representative is authorized to execute amendments to the Agreement on behalf of CITY, including  
14 amendments providing for additional compensation to CONSULTANT not to exceed Fifty Thousand  
15 Dollars (\$50,000) during the fiscal year, including the base contract amount, throughout the term of  
16 this Agreement. Any additional compensation to CONSULTANT that is Fifty Thousand Dollars  
17 (\$50,000) or more for the fiscal year, including the base contract amount, must be approved by City  
18 Council.

19           Consultant's failure to secure CITY's written authorization for additional compensation or  
20 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price  
21 or time due, whether by way of compensation, restitution, quantum meruit, or similar relief.

22           **6.     INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that  
23 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the  
24 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall  
25 have any control over the manner by which the CONSULTANT performs this Agreement and shall  
26 only dictate the results of the performance. CONSULTANT shall not represent that CONSULTANT  
27 or its agents, employees or subcontractors are agents or employees of the CITY, and CONSULTANT  
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1 shall have no authority, express or implied, to act on behalf of the CITY in any capacity whatsoever as  
2 an agent, and shall have no authority, express or implied, to bind the CITY to any obligation  
3 whatsoever, unless otherwise provided in this Agreement.

4 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the  
5 City may provide to its employees and all persons, if any, hired by CONSULTANT shall be  
6 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of  
7 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work  
8 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work  
9 performed during non-standard business hours, such as in the evenings or on weekends.  
10 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized  
11 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it be in the  
12 form of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay  
13 all taxes, assessments and premiums under the federal Social Security Act, any applicable  
14 unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use  
15 taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by  
16 reason of or in connection with the services to be performed by CONSULTANT.

17 **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to  
18 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of  
19 Work and that such services shall be performed in an expeditious manner, and with the degree of skill  
20 and care that is required by current, good, and sound procedures and practices. CONSULTANT  
21 further agrees that the services shall be in conformance with generally accepted professional standards  
22 prevailing at the time work is performed.

23 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other  
24 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.  
25 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any  
26 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S  
27 representative as the person primarily responsible for the day-to-day performance of  
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1 CONSULTANT'S work under this Agreement. CONSULTANT shall not change the  
2 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise  
3 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the  
4 quality and timeliness of performance of the services, notwithstanding any permitted or approved  
5 delegation hereunder.

6 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents  
7 furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT'S  
8 services in respect to this project. They are not intended nor are represented to be suitable for reuse by  
9 others except CITY on extensions of this project or on any other project. Any reuse without specific  
10 written verification and adoption by CONSULTANT for the specific purposes intended will be at  
11 user's sole risk and without liability or legal exposure and expenses to CONSULTANT, including  
12 attorney's fees arising out of such unauthorized reuse.

13 CONSULTANT'S records, documents, calculations, and all other instruments of service  
14 pertaining to actual project shall be given to CITY at the completion of the project. The CITY  
15 reserves the right to specify the file format that electronic document deliverables are presented to the  
16 CITY.

17 Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions  
18 and other final work products compiled by the CONSULTANT under the Agreement shall be vested  
19 in the CITY, none of which shall be used in any manner whatsoever, by any person, firm, corporation,  
20 or agency without the expressed written consent of the CITY. Basic survey notes and sketches,  
21 charts, computations, and other data prepared or obtained under the Agreement shall be made  
22 available, upon request, to the CITY without restriction or limitations on their use. CONSULTANT  
23 may retain copies of the above-described information but agrees not to disclose or discuss any  
24 information gathered, discussed or generated in any way through this Agreement without the written  
25 permission of CITY during the term of this Agreement, unless required by law.]

26 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold  
27 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and  
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1 all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and  
2 other litigation expenses) arising out of the CONSULTANT's performance under the terms of this  
3 Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands,  
4 actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on  
5 the part of CITY.

6 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in  
7 full force at all times during the term of this Agreement the following insurance:

8 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
9 commercial general liability insurance with limits of no less than One Million Dollars (\$1,000,000)  
10 combined single limit per occurrence or Two Million Dollars (\$2,000,000) aggregate limit for bodily  
11 injury, personal injury, and property damage.

12 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile  
13 liability insurance covering all vehicles used in the performance of this Agreement providing a One  
14 Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury,  
15 and property damage.

16 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT  
17 shall maintain professional liability insurance with coverage for all negligent errors, acts or omissions  
18 committed by CONSULTANT, its agents and employees in the performance of this Agreement. The  
19 amount of this insurance shall be not less than One Million Dollars (\$1,000,000) on a claims made  
20 annual aggregate basis or a combined single limit per occurrence basis.

21 **D. Compliance with State Workers' Compensation Requirements.**  
22 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation  
23 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all  
24 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being  
25 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall  
26 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and  
27 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision  
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1 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

2 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to  
3 contain the following provisions:

4 **(1) Additional Insured.** CITY, its officers, agents, employees, and  
5 volunteers are to be covered as an additional insured as respects: Liability arising out of activities  
6 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,  
7 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope  
8 or protection afforded to CITY, its officers, officials, employees, or volunteers.

9 Except for worker's compensation and professional liability insurance, the policies mentioned  
10 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
11 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT  
12 receives any notice of cancellation or nonrenewal from its insurer.

13 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be  
14 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any  
15 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,  
16 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute  
17 with it.

18 **(3) Reporting Provisions.** Any failure to comply with the reporting  
19 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,  
20 employees, or volunteers.

21 **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
22 certificates of insurance and the original endorsements effecting coverage required by this Agreement.  
23 The certificates and endorsements for each insurance policy are to be signed by a person authorized by  
24 that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an  
25 insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and  
26 shall be delivered to CITY at the time of the execution of this Agreement or before work commences.  
27 Such policies and certificates shall be in a form approved by the City Attorney. CITY reserves the  
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1 right to require complete certified copies of all required insurance policies at any time.

2       **12. TIME OF PERFORMANCE.** The time of performance of the services under this  
3 Agreement is of the essence, and all time deadlines identified in this Agreement or Scope of Services  
4 shall be strictly construed.

5       **13. SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,  
6 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for  
7 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services  
8 performed and reimbursable expenses incurred prior to the suspension date. During the period of  
9 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for  
10 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

11       **14. TERMINATION.** CITY may terminate this Agreement for any reason upon ten (10)  
12 days written notice to the other party. CITY may terminate the Agreement upon five (5) days written  
13 notice if CONSULTANT breaches this Agreement. In the event of any termination, CONSULTANT  
14 shall promptly deliver to the CITY any and all finished and unfinished reports or other written,  
15 recorded, photographic, or visual materials, documents, data, and other deliverables ("Work  
16 Materials") prepared for the CITY prior to the effective date of such termination, all of which shall  
17 become CITY's sole property. After receipt of the Work Materials, CITY will pay CONSULTANT  
18 for the services performed as of the effective date of the termination.

19       **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,  
20 CONSULTANT agrees as follows:

21       **A. Equal Employment Opportunity.** In connection with the execution of this  
22 Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment  
23 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited  
24 to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or  
25 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and  
26 selection for training including apprenticeship.

1           **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply  
2 with all federal regulations relative to nondiscrimination in federally assisted programs.

3           **C. Solicitations for Subcontractors including Procurement of Materials and**  
4 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by  
5 CONSULTANT for work to be performed under a subcontract including procurement of materials or  
6 leases of equipment, each potential subcontractor, supplier or lessor shall be notified by  
7 CONSULTANT of CONSULTANT’S obligation under this Agreement and the regulations relative to  
8 nondiscrimination on the grounds of race, religion, color, sex, or national origin.

9           **16. CONFLICT OF INTEREST.**

10           **A.** CONSULTANT covenants and represents that neither it, nor any officer or  
11 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in  
12 any manner with the interests of CITY or which would in any way hinder CONSULTANT’S  
13 performance of services under this Agreement. CONSULTANT further covenants that in the  
14 performance of the Agreement, no person having any such interest shall be employed by it as an  
15 officer, employee, agent or subcontractor without the express written consent of the CITY.  
16 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of  
17 interest, with the interests of the CITY in the performance of this Agreement.

18           **B.** CONSULTANT is not a designated employee within the meaning of the  
19 Political Reform Act because CONSULTANT:

20                   **(1)** Will conduct research and arrive at conclusions with respect to its rendition  
21 of information, advice, recommendation or counsel independent of the control and direction of the  
22 CITY or of any CITY official, other than normal contract monitoring; and

23                   **(2)** Possesses no authority with respect to any CITY decision beyond the  
24 rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

25           **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable  
26 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable  
27 licenses, including a business license with the City of Concord, and permits for the conduct of its  
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1 business and the performance of the services.

2 **18. CHOICE OF LAW.** This Agreement shall be construed and interpreted in accordance  
3 with the laws of the State of California, excluding any choice of law rules which may direct the  
4 application of the laws of another jurisdiction. In the event that suit shall be brought by either party  
5 hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the  
6 County of Contra Costa, California.

7 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or  
8 condition contained in the Agreement, or any default in their performance of any obligations under the  
9 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other  
10 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default  
11 constitute a continuing waiver of same.

12 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions  
13 or portions of application of any of the provisions of the Agreement are held to be illegal or invalid by  
14 a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment  
15 in the provisions of the Agreement with a view toward affecting the purpose of the Agreement. The  
16 illegality or invalidity of any of the provisions or portions of application of any of the provisions of  
17 the Agreement shall not affect the legality or enforceability of the remaining provisions or portions of  
18 application of any of the provisions of the Agreement. This Agreement shall be interpreted as though  
19 it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the  
20 ground that said party was solely or primarily responsible for drafting the language to be interpreted.

21 **21. INTEGRATION.** All exhibits identified in this Agreement are attached hereto and  
22 incorporated herein by reference. The Agreement contains the entire agreement and understanding  
23 between the parties as to the subject matter of this Agreement. It merges and supersedes all prior or  
24 contemporaneous agreements, commitments, representation, writings, and discussions between  
25 CONSULTANT and CITY, whether oral or written.

26 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**  
27 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,  
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1           **26. EXECUTION.** Each individual or entity executing this Agreement on behalf of  
2 Applicant represents and warrants that he or she or it is duly authorized to execute and deliver this  
3 Agreement on behalf of Applicant and that such execution is binding upon Applicant.

4           This Agreement may be executed in several counterparts, each of which shall constitute one  
5 and the same instrument and shall become binding upon the parties when at least one copy hereof  
6 shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary  
7 to produce or account for more than one such counterpart.

8           **IN WITNESS WHEREOF,** the parties have executed this Agreement in one (1) or more  
9 copies as of the date and year first written above.

10                           **CONSULTANT**

11   **CITY OF CONCORD, a Municipal Corporation**

12  
13 By: \_\_\_\_\_  
14 Name: Aidan Hughes  
15 Title: Principal  
16 Company: Arup North America Ltd.  
17 Address: 560 Mission Street, Suite 700  
18 San Francisco, CA 94105  
19 Telephone: (415) 957-9445

20 By: \_\_\_\_\_  
21 Name: Valerie J. Barone  
22 Title: City Manager  
23 Company: City of Concord  
24 Address: 1950 Parkside Drive  
25 Concord, CA 94519  
26 Telephone: (925) 671-3150

27 APPROVED AS TO FORM:

28 ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

29 **FINANCE DIRECTOR'S CERTIFICATION:**

30 Concord, California

31 Date: \_\_\_\_\_, 2016

32 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
33 DURING THE CURRENT FISCAL YEAR 2016/2017 TO PAY THE ANTICIPATED  
34 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

35 THE SUM OF **\$365,000**. Account Code \_\_\_\_\_.

36 \_\_\_\_\_  
37 Finance Director's Signature

Arup North America Ltd.  
Scope of Work  
July 1, 2016 – June 30, 2017

**Task 1 - Continued Support of and Coordination with DON on NEPA/ESA Requirements**

- Integration of the transfer and development policies and strategies with the consultation process with the U.S. Fish and Wildlife Service under Section 7 of the ESA can significantly impact land use configurations, phasing, and parcel sizes in implementation planning. The LRA will need portions of the Arup team to support the DON consultation with technical input on habitat protection and restoration to insure the integrity of the City's Reuse Plan is maintained through the consultation process.
- In a similar vein, the DON will be conducting an outreach program to Native American tribes as required under Section 106 of the National Historic Preservation Act. The LRA will need assistance from Arup's cultural resource specialists to support the outreach.
- Support to the LRA from Arup on monitoring and coordinating with the DON on preparation of NEPA compliance documents to ensure consistency with the now adopted Area Plan and the certified California Environmental Quality Act (CEQA) compliance documents for both the Reuse Plan and the Area Plan. Specific areas of concern have to do with traffic modeling and associated noise and air quality projections.

**Task 2 - Continued Disposition Application/Term Sheet and Development Agreement Support**

- The LRA will require support from Arup in preparation of components of a business plan and application for disposition under the Economic Development Conveyance authority and value determination negotiations with the DON. The business plan will need to reflect constraints noted in the infrastructure and development phasing model outputs, environmental review and consultation process, policies/standards of the implementation format that will reflect the desires of the community for reuse of the base and results of the Disposition and Development Agreement negotiated with the selected Master Developer. Arup will provide civil surveys of primary conveyance parcels and backbone infrastructure.

**Task 3 – Continued Infrastructure and Area Plan Refinement Analysis**

- Discussions with a wide variety of public and regulatory agencies and utility providers have led to changes in the scale and scope of infrastructure requirements to address the implementation of the Area Plan. However, the loss of redevelopment financing tools may change the scope and timing of infrastructure implementation. As part of this new work scope, Arup will provide an updated utilities plan, temporary access engineering and integrate advanced planning and internal infrastructure development findings from the Association of Bay Area Governments/Metropolitan Transportation Commission (ABAG/MTC) planning grant for the Base Priority Development Area. They will also coordinate studies for

various funding structures including required transportation nexus studies and community financing/infrastructure financing district (CFD/IFD) formation studies.

**Task 4 – Continued General as needed on-call planning/engineering support**

- Support coordination and outreach with regional stakeholders, Planning Commission.

**Project Management Support**

- Ongoing updates to project schedule and coordination with the Navy and other key partners.
- Planning and Engineering input for DDA and DA negotiations.
- Mapping in support of resource permitting, land transfer, and communication with key partners.
- Permitting support and coordination with project technical staff, including hydrology, biology, and others.
- Participation in resource permitting, remediation, and land transfer process as related to other tasks.

**Specific Plan and CEQA Technical Support**

- Review of draft Specific Plan documents for feasibility and consistency with the Area Plan, including policies, designs, and infrastructure.
- Support for Specific Plan outreach.
- Review of draft CEQA documents to ensure maximum use is made of past CEQA documents and to review mitigation for traffic, utilities, and other key community impacts.