



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
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(925) 671-3076

Subject: **Considering approval of an Agreement for Professional Services with H. T. Harvey & Associates (HTH) associated with preparation of site wide permits for sensitive habitat and species on the Concord Naval Weapons Station in an amount not to exceed \$225,000 (Funding provided through a loan to the LRA from the General Fund)**

Report in Brief

Staff is recommending that the Local Reuse Authority (LRA) approve an Agreement for Professional Services with H. T. Harvey and Associates (HTH) to authorize the expenditure of up to \$225,000. The term of the agreement is July 1, 2016 to June 30, 2017.

The HTH scope of work continues the preparation of technical studies required to support site wide permits for sensitive habitat and species on the Concord Naval Weapons Station (CNWS).

Funding will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2009 to HTH for their work on the Base, including this Agreement, is approximately \$1.1 Million. Funding was provided by the City's Redevelopment Agency (\$134,860), the General Fund (\$758,000), state grants (\$148,733), and the Office of Economic Adjustment (\$35,000).

Recommended Action

Staff recommends the LRA approve the Agreement for Professional Services with H. T. Harvey & Associates in a total amount of \$225,000; and authorize the Executive Director of the LRA to execute the agreement, subject to approval of the City Attorney.

Background

The LRA and community stakeholders have a proposed strategy to secure a set of site wide permits to help guide implementation of the Area Plan and mitigation programs in the Final Environmental Impact Report (FEIR). The LRA is now also assisting the Navy with the completion of their Draft Environmental Impact Statement (EIS). The LRA requires the specialized services of restoration ecologists to support technical studies and agency negotiations. HTH has been involved in the project since 2009 and has developed the mitigation and mitigation monitoring requirements associated with sensitive habitat and species for the Area Plan. HTH will provide ecological consulting services to prepare the conceptual restoration elements of the wetland and riparian habitats.

H. T. Harvey & Associates' restoration ecologists and restoration landscape architects will work closely with the rest of the project team to ensure the maximum wetland and riparian habitat values can be created with the site's soil and hydrologic limitations while ensuring the design concepts are constructible and cost effective. Their scope is also integral to a scope of services being executed by Engineering Science Associates (ESA) for a Conceptual Flood Management Plan and wetland protection programs

Analysis

For historical purposes, the tasks associated with this scope of services are listed here. HTH scope of work for this fiscal year is found primarily in Task 11.

Task 1. Impact Assessment

HTH will prepare a detailed impact assessment for the Project for inclusion in the MMP. The impact assessment will include a summary of impacts to USACE, CDFW, and RWQCB jurisdictional areas. Although impacts to jurisdictional waters have already been quantified to some extent, this effort will include preparation of maps showing areas of proposed impacts and an examination of all areas to be graded within Mt. Diablo Creek and Willow Pass Creek to accurately determine the area of riparian canopy to be removed. It will also include an evaluation of the quality of the habitat that will be impacted so appropriate mitigation ratios can be assigned. This task will build off previous impact assessment work completed for the Project and will include all impacts associated with development of the Project as well as impacts to Mt. Diablo Creek, Willow Pass Creek, and the proposed new amphibian breeding ponds. Impacts will be described in both text and tables and will include a series of figures depicting the impact areas. This impact assessment will form the basis for the proposed habitat restoration mitigation measures.

Task 2. Mt. Diablo Creek Restoration Design

HTH will work with ESA to develop the habitat restoration design for Mt. Diablo Creek for incorporation into the MMP. Building off the 30% grading plans developed by others, HTH will determine the extent of each of the 3-4 jurisdictional habitat types that can be established within the proposed creek restoration areas, the species composition of these habitat types, and the maintenance activities that will be necessary to establish these habitats in the long-term. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target riparian habitat types. It will include a summary of the physical features to be incorporated into the design, including the channel restoration elements derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. The restoration design will include an analysis and description of all of the proposed measures that will result in ecological enhancement and mitigation credits, including the control of invasive exotic pest plants within existing riparian habitat and the removal/reduction of existing bridge crossings. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the grading plans provided by others. The information derived from this design effort, including the figures developed, will be incorporated into the MMP.

Task 3. Flood Detention Basin Design

HTH will develop the revegetation elements of the flood detention basin. This will be based on the 30% grading design and hydrologic modeling performed by ESA. The revegetation design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support vegetation. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the 30% grading plans provided by others. Assuming mitigation credit can be obtained for this feature, figures and information developed under this task will be incorporated into the MMP.

Task 4. Willow Pass Creek Restoration Design

HTH will work with ESA to develop the habitat restoration design for the re-creation of Willow Pass Creek for incorporation into the MMP. Building off approximately 30% grading plans developed and provided by others, HTH will determine the extent of each of the 2-3 jurisdictional habitat types that can be established within the proposed creek re-creation area, the species composition of these habitat types, and the maintenance activities that will be necessary to establish these habitats in the long-term. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target riparian habitat types. It will include a summary of the physical features to be incorporated into the design, including the channel restoration elements derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the 30% grading plans

provided by others. The figures and information developed under this task will be incorporated into the MMP. Because this task relies heavily on how the immediately adjacent land plan is developed, it is assumed that 2-3 conference calls with ESA, Arup, and others will be required to help determine the approximate alignment of the new creek.

Task 5. Airfield Wetlands Restoration Design

HTH will work with ESA to develop the habitat restoration design for the creation of wetlands near the old airfield on site. Building off approximately 30% grading plans developed and provided by others, HTH will determine the extent of each of the 2-3 jurisdictional habitat types that can be established within the proposed wetland restoration site. The species composition of the wetlands to be created will be based upon the predicted depth and duration of ponding determined by ESA. It is assumed that a combination of seeding and container plant installation will be used to establish the target wetland habitat types. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target wetland habitat types. It will include a summary of the physical features to be incorporated into the design, including the water control features used to regulated water entering and leaving the site. These descriptions will be derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. This task will include development of plans views and typical cross-sections depicting the restoration design based on the 30% grading plans provided by others. The figures and information developed under this task will be incorporated into the MMP.

Task 6. Conservation Area Amphibian Breeding Pond Creation Design Technical Memo

HTH will work with ESA to develop the habitat restoration design for the creation of amphibian breeding ponds in the Conservation Area. HTH will provide ESA with the necessary depth and duration of ponding to provide adequate water for successful breeding of California tiger salamander (*Ambystoma californiense*) and if enough runoff is available, California red-legged frog (*Rana draytonii*). The information derived from this design effort will be summarized in a technical memo that will include a water balance model developed by ESA and included as an appendix to the memo. This task will include development of plan views and typical cross-sections that depict the restoration design. This tech memo will provided stand-alone information that will not be incorporated into the MMP, but that rather will be incorporated into the Habitat Mitigation and Management Plan (HMMP; see Task 11) and made available to the USFWS and CDFW to indicate how the Conservation Area will be enhanced for listed species.

Task 7. Topsoil Management Technical Memo

Proper harvest, storage, and reapplication of topsoil is necessary to successfully restore habitat in projects that involve large-scale grading. To help ensure this valuable resource is fully utilized and the habitat restoration goals can be achieved, HTH will develop a comprehensive Soils Management Technical Memo. This tech memo will include an evaluation of topsoil resources within the footprint of each of the restoration

sites and adjacent areas that will be graded as part of site development. HTH will consult with Arup and the City of Concord (and the master developer, if appropriate) to determine the approximate footprint and timing of grading in the vicinity of the restoration areas to inform how topsoil can be practically managed on site. Based on the data collected and general observations of surficial soil conditions, HTH will develop a figure that shows the approximate limits of the topsoil harvest areas.

To better understand the characteristics of potential topsoil to be harvested, HTH will manually excavate approximately 20 shallow (12–18 inch) soil pits to determine the approximate depth of topsoil and how closely the soils present match the descriptions of the soil series mapped in the Contra Costa County Soil Survey. Approximately four composite soil samples (one at Willow Pass Creek and three on Mt. Diablo Creek) will also be collected and sent to a soils laboratory for horticultural suitability analysis. Collection and analysis of soil samples at the old airfield wetland site will not be required as enough information is known about this area from previous work conducted. Samples will be analyzed by Talus Soil Consulting to determine if any amendments are necessary and if so, what they will be.

A tech memo will be developed that includes information on approximate soil harvest depths, locations, storage requirements, potential amendments and general reapplication requirements. It will also include figures showing the approximate boundaries of topsoil harvest locations. The topsoil management technical memo will be an appendix to the MMP.

Task 8. Prepare Admin Draft MMP

HTH will prepare a habitat restoration MMP that summarizes the Project's conceptual habitat restoration and how it mitigates impacts to resource agency jurisdictional areas. It will include a general description of the overall Project and a detailed description of the habitat approach that will be employed. The MMP will be prepared following the guidelines developed by the San Francisco District of the USACE. The MMP will include a description of Project impacts, restoration design, and long-term habitat development success criteria and monitoring requirements. It will separately describe the habitat restoration methods to be used in each of the three primary restoration areas. It will incorporate the design information derived from Tasks 1–5 and will include the hydrology/geomorphology design reports developed by ESA and soils tech memo as appendices. The MMP will be provided to the City of Concord and the rest of the City's team for review.

Task 9. Prepare Draft MMP

HTH will revise the draft MMP based upon City comments. This task assumes the City will provide one round of consolidated comments on the MMP. The draft MMP will then be incorporated into the resource agency permit application packages.

Task 10. Prepare Final MMP

HTH will revise the draft MMP based upon resource agency comments. It is assumed that the resource agencies will generally accept the mitigation approach and as a result large-scale restoration design revisions will not be required.

Task 11. Continued Permitting Support

HTH staff will continue to support the City in obtaining its resource agency permits and in Federal and State Endangered Species Act consultation. Specific tasks to be performed include the following:

- Meetings, conference calls, and email coordination with the City and its Project team, the Navy, the East Bay Regional Park District, and resource agencies to discuss permitting, consultation, and land transfer issues.
- Preparation of materials to support permit applications to the USACE (Section 404), RWQCB (Section 401/Porter-Cologne Act), and CDFW (Section 1602 and California Endangered Species Act), including revision of existing permit application materials as necessary, as well as preparation of additional materials that may be requested by these agencies.
- Preparation of materials to support the Section 7 consultation with the USFWS, including preparation of an HMMP describing how the Conservation Area will be enhanced and managed for the conservation of federally listed species.
- Miscellaneous tasks that may be requested by the City, such as providing comments on CDFW or USFWS documents concerning Navy activities that could have implications for future City activities.
- Support City Team, Navy and regulators to finalize project description for biologic opinion (BO)
- Prepare “Effects” Analysis of BO for use by United States Fish and Wildlife Service (USFWS)
- Complete Long Term Management Plan (LTMP) for approval by USFWS for onsite conservation areas
- Prepare Habitat Mitigation and Monitoring Plan (HMMP) for approval by USFWS for onsite conservation area
- Coordinate with USACOE for renewal of Jurisdictional Determination for onsite wetland resources
- Support City Team in regulatory determination of “take” approval for ESA species
- Support City Team with site wide 404/401 permits from USACOE
- Support City Team with CDFW 1600, 1602 permits and associated mitigation
- Set strategies and tactics for satisfying off-site mitigation

Financial Impact

LRA staff is requesting the LRA approve an Agreement for Professional Services with HTH in an amount not to exceed \$225,000.

Funding will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2009, including this amendment, is approximately \$1.1 Million. Funding was provided by the City's Redevelopment Agency (\$134,860), the General Fund (\$758,000), state grants (\$148,733) and the Office of Economic Adjustment (\$35,000).

Public Contact

The City Council Agenda was posted.

Attachments

1. Agreement with H. T. Harvey & Associates

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on July 1, 2016 between the City of
2 Concord ("CITY") and H. T. Harvey & Associates, 983 University Avenue, Building D, Los Gatos,
3 California 95032 ("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 Two Hundred
17 Twenty-five Thousand Dollars (**\$225,000**) for basic services rendered, as more particularly described
18 in 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 Patrick Boursier, 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.

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

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

8 **16. CONFLICT OF INTEREST.**

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

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

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

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

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

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

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

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

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

25 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**
26 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,
27 assigns, and legal representatives to the terms and obligations of this Agreement. CONSULTANT
28

1 shall not assign or transfer any interest in the Agreement without the CITY's prior written consent,
2 which consent shall be in the CITY's sole discretion. Any attempted assignment or transfer in breach
3 of this provision shall be void. This Agreement is not intended and shall not be construed to create
4 any third party benefit. This Agreement is not intended and shall not be construed to create a joint
5 venture or partnership between the parties. CONSULTANT, its officers, employees and agents shall
6 not have any power to bind or commit the CITY to any decision.

7 **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll
8 costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on
9 a generally recognized accounting basis and made available to CITY if and when required.

10 **24. NOTICES.** All notices required hereunder shall be in writing and mailed postage
11 prepaid by certified or registered mail, return receipt requested, or by personal delivery to the CITY's
12 address as shown below, or such other places as CITY or CONSULTANT may, from time to time,
13 respectively, designate in a written notice given to the other. Notice shall be deemed received three
14 (3) days after the date of the mailing thereof or upon personal delivery.

15
16 To CITY: **Guy Bjerke, Director**
Community Reuse Planning
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3076

19 To CONSULTANT: **Stephen C. Rottenborn, Ph.D.**
H.T. Harvey & Associates
983 University Avenue, Building D
Los Gatos, CA 95032
Phone: (408) 458-3205

22 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent
23 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or
24 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in
25 interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

26 **26. EXECUTION.** Each individual or entity executing this Agreement on behalf of
27 Applicant represents and warrants that he or she or it is duly authorized to execute and deliver this
28

1 Agreement on behalf of Applicant and that such execution is binding upon Applicant.

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

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

8 **CONSULTANT**

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

10
11 By: _____
12 Name: Stephen C. Rottenborn, Ph.D.
13 Title: Principal
14 H.T. Harvey & Associates
15 Address: 983 University Avenue, Building D
16 Los Gatos, CA 95032
17 Telephone: (408) 458-3205

18 By: _____
19 Name: Valerie J. Barone
20 Title: City Manager
21 City of Concord
22 Address: 1950 Parkside Drive
23 Concord, CA 94519
24 Telephone: (925) 671-3150

25 APPROVED AS TO FORM:

26 ATTEST:

27 _____
28 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 \$225,000. Account Code _____.

36 _____
37 Finance Director's Signature

H. T. Harvey & Associates
Scope of Work
July 1, 2016 - June 30, 2017

For historical purposes, the tasks associated with this scope of services are listed here. HTH scope of work for this fiscal year is found primarily in Task 11.

Task 1. Impact Assessment

HTH will prepare a detailed impact assessment for the Project for inclusion in the MMP. The impact assessment will include a summary of impacts to USACE, CDFW, and RWQCB jurisdictional areas. Although impacts to jurisdictional waters have already been quantified to some extent, this effort will include preparation of maps showing areas of proposed impacts and an examination of all areas to be graded within Mt. Diablo Creek and Willow Pass Creek to accurately determine the area of riparian canopy to be removed. It will also include an evaluation of the quality of the habitat that will be impacted so appropriate mitigation ratios can be assigned. This task will build off previous impact assessment work completed for the Project and will include all impacts associated with development of the Project as well as impacts to Mt. Diablo Creek, Willow Pass Creek, and the proposed new amphibian breeding ponds. Impacts will be described in both text and tables and will include a series of figures depicting the impact areas. This impact assessment will form the basis for the proposed habitat restoration mitigation measures.

Task 2. Mt. Diablo Creek Restoration Design

HTH will work with ESA to develop the habitat restoration design for Mt. Diablo Creek for incorporation into the MMP. Building off the 30% grading plans developed by others, HTH will determine the extent of each of the 3-4 jurisdictional habitat types that can be established within the proposed creek restoration areas, the species composition of these habitat types, and the maintenance activities that will be necessary to establish these habitats in the long-term. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target riparian habitat types. It will include a summary of the physical features to be incorporated into the design, including the channel restoration elements derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. The restoration design will include an analysis and description of all of the proposed measures that will result in ecological enhancement and mitigation credits, including the control of invasive exotic pest plants within existing riparian habitat and the removal/reduction of existing bridge crossings. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the grading plans provided by others. The information derived from this design effort, including the figures developed, will be incorporated into the MMP.

Task 3. Flood Detention Basin Design

HTH will develop the revegetation elements of the flood detention basin. This will be based on the 30% grading design and hydrologic modeling performed by ESA. The revegetation design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support vegetation. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the 30% grading plans provided by others. Assuming mitigation credit can be obtained for this feature, figures and information developed under this task will be incorporated into the MMP.

Task 4. Willow Pass Creek Restoration Design

HTH will work with ESA to develop the habitat restoration design for the re-creation of Willow Pass Creek for incorporation into the MMP. Building off approximately 30% grading plans developed and provided by others, HTH will determine the extent of each of the 2-3 jurisdictional habitat types that can be established within the proposed creek re-creation area, the species composition of these habitat types, and the maintenance activities that will be necessary to establish these habitats in the long-term. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target riparian habitat types. It will include a summary of the physical features to be incorporated into the design, including the channel restoration elements derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. This task will include development of plan views and typical cross-sections that depict the restoration design based upon the 30% grading plans provided by others. The figures and information developed under this task will be incorporated into the MMP. Because this task relies heavily on how the immediately adjacent land plan is developed, it is assumed that 2-3 conference calls with ESA, Arup, and others will be required to help determine the approximate alignment of the new creek.

Task 5. Airfield Wetlands Restoration Design

HTH will work with ESA to develop the habitat restoration design for the creation of wetlands near the old airfield on site. Building off approximately 30% grading plans developed and provided by others, HTH will determine the extent of each of the 2-3 jurisdictional habitat types that can be established within the proposed wetland restoration site. The species composition of the wetlands to be created will be based upon the predicted depth and duration of ponding determined by ESA. It is assumed that a combination of seeding and container plant installation will be used to establish the target wetland habitat types. The restoration design will include details regarding site preparation, including topsoil placement (see Task 7), to establish conditions appropriate to support the target wetland habitat types. It will include a summary of the physical features to be incorporated into the design, including the water control features used to regulated water entering and leaving the site. These descriptions will be derived from the hydrogeomorphic design report to be developed by ESA and incorporated into an appendix of the MMP. This task will include development of plans views and typical cross-sections depicting the restoration design based on the 30% grading plans

provided by others. The figures and information developed under this task will be incorporated into the MMP.

Task 6. Conservation Area Amphibian Breeding Pond Creation Design Technical Memo

HTH will work with ESA to develop the habitat restoration design for the creation of amphibian breeding ponds in the Conservation Area. HTH will provide ESA with the necessary depth and duration of ponding to provide adequate water for successful breeding of California tiger salamander (*Ambystoma californiense*) and if enough runoff is available, California red-legged frog (*Rana draytonii*). The information derived from this design effort will be summarized in a technical memo that will include a water balance model developed by ESA and included as an appendix to the memo. This task will include development of plan views and typical cross-sections that depict the restoration design. This tech memo will provide stand-alone information that will not be incorporated into the MMP, but that rather will be incorporated into the Habitat Mitigation and Management Plan (HMMP; see Task 11) and made available to the USFWS and CDFW to indicate how the Conservation Area will be enhanced for listed species.

Task 7. Topsoil Management Technical Memo

Proper harvest, storage, and reapplication of topsoil is necessary to successfully restore habitat in projects that involve large-scale grading. To help ensure this valuable resource is fully utilized and the habitat restoration goals can be achieved, HTH will develop a comprehensive Soils Management Technical Memo. This tech memo will include an evaluation of topsoil resources within the footprint of each of the restoration sites and adjacent areas that will be graded as part of site development. HTH will consult with Arup and the City of Concord (and the master developer, if appropriate) to determine the approximate footprint and timing of grading in the vicinity of the restoration areas to inform how topsoil can be practically managed on site. Based on the data collected and general observations of surficial soil conditions, HTH will develop a figure that shows the approximate limits of the topsoil harvest areas.

To better understand the characteristics of potential topsoil to be harvested, HTH will manually excavate approximately 20 shallow (12–18 inch) soil pits to determine the approximate depth of topsoil and how closely the soils present match the descriptions of the soil series mapped in the Contra Costa County Soil Survey. Approximately four composite soil samples (one at Willow Pass Creek and three on Mt. Diablo Creek) will also be collected and sent to a soils laboratory for horticultural suitability analysis. Collection and analysis of soil samples at the old airfield wetland site will not be required as enough information is known about this area from previous work conducted. Samples will be analyzed by Talus Soil Consulting to determine if any amendments are necessary and if so, what they will be.

A tech memo will be developed that includes information on approximate soil harvest depths, locations, storage requirements, potential amendments and general reapplication requirements. It will also include figures showing the approximate

boundaries of topsoil harvest locations. The topsoil management technical memo will be an appendix to the MMP.

Task 8. Prepare Admin Draft MMP

HTH will prepare a habitat restoration MMP that summarizes the Project's conceptual habitat restoration and how it mitigates impacts to resource agency jurisdictional areas. It will include a general description of the overall Project and a detailed description of the habitat approach that will be employed. The MMP will be prepared following the guidelines developed by the San Francisco District of the USACE. The MMP will include a description of Project impacts, restoration design, and long-term habitat development success criteria and monitoring requirements. It will separately describe the habitat restoration methods to be used in each of the three primary restoration areas. It will incorporate the design information derived from Tasks 1–5 and will include the hydrology/geomorphology design reports developed by ESA and soils tech memo as appendices. The MMP will be provided to the City of Concord and the rest of the City's team for review.

Task 9. Prepare Draft MMP

HTH will revise the draft MMP based upon City comments. This task assumes the City will provide one round of consolidated comments on the MMP. The draft MMP will then be incorporated into the resource agency permit application packages.

Task 10. Prepare Final MMP

HTH will revise the draft MMP based upon resource agency comments. It is assumed that the resource agencies will generally accept the mitigation approach and as a result large-scale restoration design revisions will not be required.

Task 11. Continued Permitting Support

HTH staff will continue to support the City in obtaining its resource agency permits and in Federal and State Endangered Species Act consultation. Specific tasks to be performed include the following:

- Meetings, conference calls, and email coordination with the City and its Project team, the Navy, the East Bay Regional Park District, and resource agencies to discuss permitting, consultation, and land transfer issues.
- Preparation of materials to support permit applications to the USACE (Section 404), RWQCB (Section 401/Porter-Cologne Act), and CDFW (Section 1602 and California Endangered Species Act), including revision of existing permit application materials as necessary, as well as preparation of additional materials that may be requested by these agencies.
- Preparation of materials to support the Section 7 consultation with the USFWS, including preparation of an HMMP describing how the Conservation Area will be enhanced and managed for the conservation of federally listed species.
- Miscellaneous tasks that may be requested by the City, such as providing comments on CDFW or USFWS documents concerning Navy activities that could have implications for future City activities.

- Support City Team, Navy and regulators to finalize project description for biologic opinion (BO)
- Prepare “Effects” Analysis of BO for use by United States Fish and Wildlife Service (USFWS)
- Complete Long Term Management Plan (LTMP) for approval by USFWS for onsite conservation areas
- Prepare Habitat Mitigation and Monitoring Plan (HMMP) for approval by USFWS for onsite conservation area
- Coordinate with USACOE for renewal of Jurisdictional Determination for onsite wetland resources
- Support City Team in regulatory determination of “take” approval for ESA species
- Support City Team with site wide 404/401 permits from USACOE
- Support City Team with CDFW 1600, 1602 permits and associated mitigation
- Set strategies and tactics for satisfying off-site mitigation