

Concord Naval Weapons Station Grand Jury Report

A Promise Unfulfilled



2022 – 2023
Contra Costa County
Civil Grand Jury
Report # 2305

June 5, 2023

A REPORT BY
THE 2022-2023 CONTRA COSTA COUNTY CIVIL GRAND JURY
725 Court Street
Martinez, California 94553

Report 2305

Concord Naval Weapons Station Grand Jury Report

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APPROVED BY THE GRAND JURY

Date 6-13-2023



CYNTHIA ROBERTS
GRAND JURY FOREPERSON

ACCEPTED FOR FILING

Date 6/12/2023



Hon. JILL C. FANNIN
JUDGE OF THE SUPERIOR COURT

Contact: Cynthia Roberts
Foreperson
(925) 608-2621

Contra Costa County Grand Jury Report 2305

Concord Naval Weapons Station Grand Jury Report A Promise Unfulfilled

To: Concord City Council
To: Local Reuse Authority

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GLOSSARY AND ABBREVIATIONS

AAA	AAA of Northern California, Nevada, and Utah
ADS	Automated Driving System
BRAC	Base Realignment and Closure
CAV	Connected and Autonomous Vehicle
CCG	California Capital Group (predecessor to CCIG)
CCIG	California Capital & Investment Group
CCTA	Contra Costa Transportation Authority
CFP	Concord First Partners
CNWS	Concord Naval Weapons Station
CPRA	California Public Records Act
CRP	Concord Reuse Project
DA	Development Agreement
DDA	Disposition and Development Agreement
EBRPD	East Bay Regional Park District
EIR	Environmental Impact Report
ENA	Exclusive Negotiating Agreement
LRA	Local Reuse Authority
MOTCO	Military Ocean Terminal Concord
MOU	Memorandum of Understanding
OSIP	Office of Self-Insurance Plans
PSA	Professional Services Agreement
RFB	Request for Bid
RFP	Request for Proposal
RFQ	Request for Qualifications
SOQ	Statement of Qualifications

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SUMMARY

Almost twenty years ago, the City of Concord began to study future use of the land available after the decommissioning of the Concord Naval Weapons Station (CNWS). In the intervening years there have been several false starts and the city's portion of the former base remains undeveloped. Concord is at another crossroads and the civil grand jury makes recommendations to address a series of prior missteps and to adopt measures to advance and accelerate the productive utilization of the area.

In 2006, Concord was designated as the Local Reuse Authority (LRA) for a large portion of the decommissioned military facility. Ten years passed before Concord selected Lennar Urban as the master developer for the project. However, distrust grew between the city and Lennar and the project stalled in 2019 when Lennar was unable to negotiate a project labor agreement with the Contra Costa Building and Construction Trades Council. Lennar's Exclusive Negotiating Agreement (ENA) expired in March 2020 and the city council did not extend it.

Due to delays associated with the coronavirus epidemic, the next master developer selection phase did not begin until November 2020. In August 2021, Concord First Partners (CFP) was chosen as master developer. We make several findings regarding the 2020-21 bidding process and recommend major changes to improve the process in the future. Sixteen months of delays and extensions followed as CFP sought to create an economically viable term sheet outlining the material terms and conditions. CFP asked the city council to amend the ENA to provide CFP with an enforceable right to the property at the same time the term sheet was signed. The city council rejected CFP's request to modify the ENA and extended the deadline to finalize the Term Sheet until January 2023. A proposed term sheet was released in December 2022, but the city council voted it down and CFP's Exclusive Negotiating Agreement expired in January 2023.

Now, seventeen years after Concord was designated as the Local Reuse Authority, little has been achieved and the project is once again at a crossroads. In the minutes of a 2022 meeting the Navy real estate contracting officer is quoted stating the Navy does "not want this to drag on for 6 more months or we (Navy) will have to cut." In interviews with the grand jury, city staff and council members indicate that the Navy remains supportive of the city's efforts to move forward with a third master developer selection cycle. The grand jury recommends that the city considers remedying various prior practices and select a master developer with strong financial resources, and with experience in multi-decade military base conversion projects and working with varied stakeholders and constituents.

During this investigation, the grand jury also reviewed loans the City of Concord made to the LRA from Concord's general fund and two other funds. We developed several findings about the use of these loans and provide recommendations on improved reporting and the appropriateness of certain payments made from these loans.

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METHODOLOGY

This investigation was initiated by a Concord citizen's complaint to the grand jury. This individual was interviewed, and the complaint and testimony indicated that there were issues involving the Concord Naval Weapons Station project, which required further investigation. The grand jury used the following investigative tools:

- Reviewed local, regional, and business publications, including blogs and websites
- Reviewed documents posted on the Concord Local Reuse Authority (LRA) website
- Reviewed Concord city meeting agendas and attached documents when city council met as the LRA from 2020 through 2023
- Attended a Concord community meeting presentation of the draft term-sheet by Concord city staff and CFP in December 2022
- Reviewed nine-hour video of August 21, 2021, Concord council meeting in which CFP was chosen as the master developer
- Did a site visit to Concord Naval Weapons Station
- Reviewed Concord budget and finance documents
- Reviewed Memorandums of Understanding
- Obtained and reviewed additional documents and materials from the City of Concord
- Interviewed the complainant
- Interviewed eleven other individuals with expertise and information pertinent to this report.

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BACKGROUND

Following the 1944 Port Chicago disaster in which 320 people were killed, the US Navy purchased 5,200 acres of land located within the City of Concord's limits adjacent to the 7,600-acre Navy base located north of Concord. The Navy used the new site for the storage of ammunition, barracks, and other administrative and logistical purposes. With the end of the Cold War, the Navy determined that the Concord Naval Weapons Station site was no longer needed for its original purposes and could be decommissioned. Beginning in 1999, the City of Concord began a study to reimagine the potential utilization for this land. The area north of Route 4 continues to operate as a major ammunition transshipment port on the West Coast for the Department of Defense as the Military Ocean Terminal Concord (MOTCO).

In 2005, the Base Realignment and Closure Commission (BRAC) approved the closure of the 5,200-acre inland area of the CNWS. BRAC is a congressionally authorized process in which independent commissions review and approve military base changes which are then submitted to the Secretary of Defense. In 2006 the Department of Defense designated the Concord City Council as the Local Reuse Authority (LRA). An LRA is the entity recognized by the Secretary of Defense to create a development plan for a closed military base. The Concord LRA began a process, completed in 2012 with significant citizen input, to develop a detailed, transit-oriented, reuse plan for the site. The plan called for the development of 12,200 homes, with 25 percent sold at affordable housing rates, various public amenities such as parks and utilities to complement the housing development, and more than 6 million square feet of commercial space, schools, and other facilities. The East Bay Regional Park District (EBRPD) portion of the CNWS site, which totals 2,687 acres, is located on the eastern portion of the CNWS, bordering the City of Pittsburg foothills. It was conveyed from the Navy to the EBRPD in July 2019.

In 2014, the City of Concord initiated a Request for Qualifications (RFQ) for Phase 1, or the first five hundred acres development of its portion of the site. The RFQ called for 4,392 residential units (25 percent affordable), nearly 1.7 million square feet of commercial space, and 105 acres of parks, community centers and utilities. After an initial screening in 2014, Concord narrowed the prospective developer pool and received proposals from three developers in February 2015. In April 2015 after further reviews, Concord began negotiations with Catellus Development Corp and with Lennar for the rights to develop the first phase. There was controversy in this phase with allegations of improper campaign contributions to a council member and favoritism by both developers. In March 2016, Catellus exited the process after raising issues about financial risk and lack of trust. In May 2016, the Concord City Council announced its agreement on a term sheet with Lennar, designating it as the master developer for the first phase of the project. A term sheet summarizes the main points of the deal before executing legal agreements. It is a nonbinding written agreement that sets forth the key business terms to be included in a Disposition and Development Agreement (DDA) and Development Agreement (DA) between Concord and the master developer for the CNWS project.

The Concord-Lennar term sheet included language that Lennar agreed to negotiate "in good faith" at least one labor agreement with the building unions. During the next three years, Lennar was unable to reach an agreement with the Contra Costa Building Trades Council on how much union labor the developer would use on the CNWS project. In October 2019 Lennar stopped

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funding of city staff to work on the project's draft specific plan and Environmental Impact Report (EIR) until the project labor agreement issue was settled, In March 2020, the ENA with Lennar expired after the city council declined to extend it for an additional six months.

In April of 2021, Concord issued a new RFQ for the development of the CNWS site. The RFQ resulted in proposals from three companies: Brookfield Properties, City Ventures, and Concord First Partners (CFP), a joint venture of three companies. CFP was selected as the master developer in August 2021 and entered into an ENA in October 2021. Following two extensions of the ENA, CFP presented its term sheet in December 2022, which included 3,300 more homes than on the original plan. On January 28, 2023, the Concord City Council rejected the CFP term sheet to develop the project and directed staff to let the ENA with CFP expire on January 31, 2023.

DISCUSSION

2021 Master Developer Selection

The grand jury's investigation of the Concord Naval Weapons Station project revealed several issues involving the August 2021 master developer selection process.

- how the specified RFQ selection process was followed
- the LRA staff's investigation of the master developer applicants
- the city manager and city council's decision to preempt city staff from providing a recommendation on the master developer

Genesis of 2021 Master Developer Selection Process

In December 2020, the Concord city council and the LRA agreed to restart the CNWS project following expiration of the ENA with Lennar. They established an ad hoc team of two city council members (Birsan and Aliano) to address certain issues and to return to the council with a recommended approach for selecting a new master developer. The Master Developer Selection ad hoc committee met five times and addressed the following issues:

1. Selection approach/City expectations
2. Qualifications requested from respondents
3. Questions for respondents
4. Selection/ranking criteria, selection process and timeline
5. Review of the draft RFQ¹

The ad hoc committee considered the prior master developer selection process and decided to modify the structure and process in several ways. First, they followed the city staff recommendation to use a hybrid RFQ solicitation process. This approach would include a standard RFQ along with additional questions that would provide detail on a master developer's approach to the project. The benefit would be an accelerated selection process while providing the necessary qualitative information for the council to consider, not using the two-step RFQ/RFP process used to select Lennar. Second, the proposed RFQ made it clear it preferred a project labor agreement. Third, the scope of development project expanded to include the entire 2,350-acre Concord LRA footprint as opposed to an initial 500-acre phase 1 development established for the 2016 selection process.²

The RFQ issued in April 2021 included subsections addressing Qualifications Requested, Questions for Respondents, Financial Capabilities, and Required Appendices. The RFQ also provided specific selection criteria in Section 5.3. They are shown below as they are listed in the RFQ which states they are listed in order of importance:

1. Demonstrated understanding and commitments of the developer to satisfy the City's priorities for the CNWS, including development vision as expressed in the CRP Area Plan and community facilities in located in Section 3.4, including the Concord First commitment found in Section 3.11.

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2. Financial capability and history of successfully financing projects of a similar scale, particularly those with a large infrastructure component.
3. Experience of Lead Developer with successful completion of similar projects, including projects that are large-scale, mixed-use, military base reuse, and transit oriented.
4. Organization of the Master Developer Team
5. Experience of Master Developer Team members who are not the Lead Developer – such as architects/engineers/permitting/remediation specialists
6. Responses from references.³

In a December 2020 staff report to the city council, Guy Bjerke, Concord's Economic Development & Base Reuse Director, proposed that the city LRA team's role in evaluating the RFQ submissions would be to score information on evaluation criteria including performance on past projects, financial capacity to deliver the project, references, and responses addressing the applicant's approach to the project. Following interviews, the city council would select the preferred master developer candidate.⁴ The 2021 master developer selection team (listed as City or LRA team) consisted of Bjerke, one Concord city planner partially allocated to this project and five outside consultants.⁵

Implementation of the Selection Process

The RFQ that was issued varied on several points from the staff proposal. The LRA Team's (staff and consultants) participation in the selection process was limited to reviewing the Statements of Qualifications (SOQs) for responsiveness to the selection criteria and the preparation of a summary table conveying that information. The LRA Team would not make any recommendations as to which respondents to interview. The full city council would decide which respondents to interview based on their review of the summary table and each applicant's Privacy Redacted Statements of Qualifications (with confidential information removed).⁶ There was no mention of applicant scoring in the RFQ issued on April 16, 2021, which was due on June 18, 2021.

The RFQ timeline is shown in Appendix 1. The Selection Process and Timeline found in section 5.1 of the RFQ was based on the number of applicants and the city council's schedule. The August 3 meeting was cancelled and the LRA Team brought the three applicants forward for presentations and council interviews on August 21. The applicants were Brookfield, City Ventures, and CFP, a three-company joint venture comprised of Discovery/Seeno Companies (Discovery), Lewis Group of Companies (Lewis), and California Capital & Investment Group (CCIG). Concord First Partners is the name this joint venture adopted after its selection.

Applicant presentations were made available for public review as part of the agenda packet for the August 21 city council meeting when the council selected the master developer. The three applicants each forwarded PowerPoint presentations of approximately forty pages, which provided overviews of their project teams, detail on their master developer experience, their visions for the CNWS project, and answers to eight questions from the RFQ. The presentations contained minimal company financial data, but the applicants were advised that hard copies of Appendix F, which included additional financial information, should be sent to Gerald Ramiza, an attorney who was a member of the LRA team.⁷ The RFQ contained language regarding

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confidentiality of the information included in Appendix F. It indicated that submitted materials were subject to California Public Records Act (CPRA) disclosure, unless the content falls within a specific CPRA exemption category. Any confidential or proprietary information believed to be exempt from disclosure under the CPRA had to be enclosed separately and be clearly marked as “Confidential// Proprietary Information.”⁸

Failure of Selection Process

A significant issue in the RFQ selection process was the submission of documents to determine and verify financial capability. The required documents from CFP were (1) not returned on time and (2) were incomplete. Financial capability was listed as the second most important criteria in the selection process. The total CNWS project cost was estimated at six billion dollars. In addition, initial infrastructure costs before any property sales, were estimated at five hundred million dollars.⁹ As these would be extremely large investments for the applicant companies, there would need to be thorough and complete reviews to vet their financial capabilities. Based on the grand jury review of the records provided, this due diligence for the financial capabilities of CFP was not done.

The financial materials submitted by CFP as part of their SOQ were not complete. This omission was noted in a July 7 letter Guy Bjerke sent to the three CFP principals: Albert Seeno III, Richard Lewis, and Phil Tagami. This letter asked for specific information requested in the RFQ but not provided. This information was required on the SOQ submission due on June 18.¹⁰ The missing information included three years of audited financial statements, information regarding material changes in financial condition over the past three years, and questions about the availability of credit ratings for each of the three CFP companies.

The RFQ stated that the financial statement requirement applied to both privately held companies and public companies. Mr. Bjerke acknowledged receipt of Seeno and Lewis reference letters and advised that CCIG needed to submit these documents. The letter also repeated requests for litigation information previously requested in the RFQ. Mr. Bjerke’s letter set a July 15 deadline for the CFP partners to submit these materials and documents.¹¹

The CFP response, dated July 15, was signed by the three CFP principals. It acknowledged that the city needed to ensure that the selected master developer would have the financial capacity to complete the CNWS project. The response also advised that since “...the Discovery team is comprised of (3) separate local and non-publicly traded companies, we feel that a broad, generic request for financial information (at this point) is premature and unnecessary.” The response also addressed the questions about material changes and credit ratings in two sentences without providing further documentation except for financial reference contacts. CFP advised that their team had the capabilities and financial standing to manage a project of this magnitude based on prior projects built in California.¹² On July 30, counsel for Discovery/Seeno provided a litigation summary of cases over the prior ten years.

The LRA team compiled a summary of the three applicants’ SOQ in a file dated August 2. This file was the means for the LRA team to present a summary of each applicant’s SOQ to the council. As part of the agenda package for the August 21 city council meeting, this summary was made public to facilitate the deliberations and vote for the new developer.¹³ Regarding

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CFP's financials, the summary table indicated that CFP maintained its position on not supplying the financial data required in the RFQ and the follow-up request letter. The SOQ showed that Brookfield provided audited financials for three years, a Moody's credit rating report and showed consistent annual revenues of \$2B. The LRA summary table indicated Brookfield's finances show "... it has the capacity to execute very large land development projects." The third master developer, City Ventures, a privately held limited liability company, provided confidential audited financials for its three most recent operating years. They had annual revenues of \$400 million and were judged as having "...the capacity to execute very large land development projects."¹⁴ The LRA did not provide an assessment that CFP had the capacity to execute a large land development project in this summary.

On July 22, Louis Parsons, President of Discovery/Seeno Companies, sent e-mails to request meetings with individual council members before the August 21 meeting to vote on the master developer. Council member Birsan met with the Discovery and Lewis teams twice. He addressed several issues with the CFP in writing on August 16 prior to a second meeting and made the following points about their financial data submission:

Finance: there is a bunch of information on references (page 5 and 6), but it is not exactly clear to me what is actually available. You may have a line of credit of 'millions' but how much is available for this project? The transparency issue is a problem, while a compromise of having some Third Party review the info that can be shown confidentially and simply answer the question of can this project be done financially or not, this seems reasonable, but does such a group exist and can they get it done by Saturday?¹⁵

This questioning indicates the financial data requested in the RFQ and the July follow letter had not been submitted by CFP and that missing data was an issue for one council member days before the August 21 vote on the master developer selection.

The Discovery portion of the CFP presentation to the council on August 21 reiterated its position on financial disclosure. It stated that as "...a private company that has been in business for decades, financial statements are not and will not be made public." They also advised the scale and scope of the CFP partner's past and current projects "...leave no doubt about the financial capabilities of this Development Team to easily finance this project." The Seeno presentation includes language such as "track record speaks for itself", "leave no doubt about the financial capabilities", and "private company with a track record of success".¹⁶ A CFP principal stated that their size and prior success afforded them the right to have the financial disclosure requirements waived; their financial position can only be validated through the financial disclosure requirements in the RFQ.

Financials Included in Other RFQ Submissions from CFP Partners

The grand jury reviewed other RFQs that CFP partners had completed. We were not able to find records of prior project RFQs completed by Discovery but did find RFQ submissions from CCIG and Lewis. We reviewed CCIG's response to a 2008 Oakland Army Base RFQ in which CCIG, then operating as California Capital Group (CCG) was the junior partner in a joint venture submission with AMB Property Corporation. In 2009, the joint venture between CCG and

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Prologis (which acquired AMB) was selected as the master developer for the Oakland Army Base.

In his 2008 RFQ submission, Phil Tagami, CEO of CCG, detailed that CCG had raised \$57 million from a dozen sources and owned, managed, leased, and/or renovated over 4.5 million square feet with a value of \$328 million. In section D2 of this RFQ, Tagami provided three years of personal tax returns for himself and another CCG partner as well as real estate loan data from two projects that they retained an ownership interest in. This RFQ information was sourced from CCIG's joint venture website, and a summary of the financial information submitted for that RFQ is shown in Appendix 2.¹⁷

Lewis responded in January 2020 to an RFQ for the Solano360 Mixed Use Site Project. This project was for the redevelopment and reenergizing of the 149-acre site that housed the Solano County Fairgrounds. Approximately 25 percent of the property would be retained for the fairgrounds with the rest being developed in this project. The specific plan from Solano County proposed "a mix of region-serving entertainment and amusement attractions, along with complementary restaurant, retail, commercial, and other uses." The financial portion of the RFQ required applicants to provide "...a statement of the entity's financial resources and fiscal capacity sufficient to undertake and successfully complete a project of the scale envisioned." Financial disclosures were requested to verify abilities to provide necessary capital to fund predevelopment costs, secure construction and permanent loan financing, provide equity capital and provide funding for ongoing operations. The county's RFQ stated that "...submittals that are complete, responsive, and meet the minimum qualifications will be evaluated and considered."¹⁸

Lewis's response to the Solano360 RFQ stated in the Confidential Financial Submittal - section 5, that they would provide three years of Profit/Loss Statements. A copy of this page in the Lewis RFQ response is shown in Appendix 3.¹⁹ Although the grand jury could not view these financial documents, we have verified independently that they were submitted and responsive to the RFQ's requirements. A cover letter signed by Richard Lewis, President of Lewis Planned Communities, accompanied the RFQ submission and confirmed their understanding of the submittal requirements. Note this RFQ request provided a weighting for each evaluation category. The financial capability category was weighted 25%.

Nineteen months later, Guy Bjerke sent a follow-up letter to the three CFP principals reiterating the requirements for financial documents in the SOQ. In an email response, Richard Lewis advised "...we are happy to provide the additional info you need and will comply by the 15th. We do not have audited statements as our strength financially does not require us to waste money on audited statements. We will provide you with adequate info showing we are capable of handling transactions internally with our own cash."²⁰

RFQ Structure Impacted Council Deliberations on August 21, 2021

Just before council deliberations and the vote to select the master developer for the CNWS project, a council member raised questions about responsiveness by certain applicants to requirements of the RFQ. Council member Hoffmeister indicated that one of the candidates did not submit certain financial information while the other two submitted the required financial

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documents. She asked if this failure to submit this financial information would be a material defect to their application and if it was mandatory to supply it. Mr. Bjerke replied that the council had asked staff to provide summaries but not evaluations, so the SOQs represented what was submitted and that there were some follow-up clarifications with the applicant teams. He said that some of the applicant teams provided additional information too late to include in the summary table. He advised that the “...best way to approach the financing aspect of things is to base your decisions based on the representations made in the presentations and the answers to the questions today.”²¹

Mr. Bjerke noted that the city council had limited LRA staff’s role to summarizing and not evaluating the three respondent RFQs. His statement did not answer the council member’s question. A transcript of this portion of the council meeting is shown in Appendix 4. The RFQ for the CNWS master developer selection did contain language that could have been invoked regarding CFP’s failure to provide required financial data. Appendix F, section F2, Reservations and Options states that the LRA reserves the right to reject “... any submittal that is determined to contain false, misleading, or materially incomplete information.”²²

The CFP partners did not comply with the RFQ requirements to provide a complete set of financial documents showing evidence of sufficient financial strength to undertake and successfully complete a project of this scale. In contrast, both Brookfield (public company) and City Ventures (private company) provided the necessary financial documents and were each evaluated by the LRA team as having a financial position that indicates “...it has the capacity to execute very large land development.” The LRA team did not provide that assessment for CFP. Although Lewis and CCIG have a history of complying with other project’s RFQ financial disclosure requirements, the language in Discovery’s August 21 presentation showed an unwillingness by that partner to provide financial information for their SOQ submission.

The grand jury researched best practices in RFQ development and implementation. RFQs are used across many industries and there are many nuances depending on the project being considered. We did not find a definitive source but did review an article from a 2019 presentation to the League of California Cities. The authors are partners at one of the law firms that Concord has engaged for the CNWS project. The article recommends that the criteria used to evaluate an RFQ be listed in rank order and each one be assigned a raw score or weighted percentage. The city should document its scoring process using scoresheets that show scoring instructions provided in the RFQ and track selection criteria and scoring. The city’s plan for review of the submittals and award of the agreement should also be included in the RFQ document.²³

The grand jury conducted a review of RFQ requirements pertaining to financial capability and overall responsiveness for recent public agency building projects in California. We examined eight RFQs used in vendor selection of development and construction projects over the past five years. Table 1 shows seven of eight RFQs provided a defined scoring matrix and three-quarters specified a percent weight for rating financial capability. A seventh RFQ evaluated finance capability on a pass/fail basis, with a failure in this category resulting in elimination from overall consideration. Another attribute found in the majority of the RFQs was language on nonresponsive submissions. The CSU Pomona RFQ stated “If a major item is not mentioned at

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Table 1 – RFQs for California Public Building/Development Projects

Project	Entity	RFQ Year	Size	Scoring (Y/N)	Financials	Finance Capability %	Disqualify Non Responsive	Finance P/F
Cal Poly Pomona Lantermann Development Center	CSU (Cal State Pomona)	2021	300 acres housing & academic buildings	Y	2 yr audited	listed as Pass/Fail	Y	Y
Solano 360 Mixed Use	Solano County	2020	mixed-use development, public	Y	not specified	25%	Y	N
Cabrillo Marina Development	Port of Los Angeles	2019	89 acre marina	Y	3 yr audited	30%	N	N
Los Angeles Street Civic Building Project	City of Los Angeles	2019	750K sq ft bulding, 1100 underground parking spots	Y	3 yr audited	20%	Y	N
South County County Operations Maintenance Facility	Monterey Salinas Transit	2019	\$12MM, 4.8 acres	Y	3 yr	20%	Y	N
Cuttner Station Transit Oriented Development	Santa Clara Valley Transportation	2019	mixed use project with up to 305 units	N	Funding experience/ references	None	Y	N
Riverbank Industrial Complex	City of Riverbank	2018	develop/manage 105 acres industrial complex	Y	3 yr audited	0%	N	N
Morro Bay Water Reclamation Facility Project	City of Morro Bay	2017	\$89MM for new water treatment plant	Y	3 yr audited	20%	N	N

all in the proposal, and the omission is recognized prior to selection, the proposal will be considered non-responsive and rejected.”²⁴ It also advised “CSU may reject any proposal that CSU deems incomplete, unresponsive or is not in the best interests of CSU.” The Los Angeles project RFQ describes that SOQ “...not responsive to the requirements of this RFQ or Respondents who the City determines are not responsible may be excluded from further consideration...”²⁵

Findings

- 1.a The LRA team allowed master developer applicant CFP to continue to be considered in 2021 master developer selection process even though its SOQ submission dated June 18, 2021, did not include many required financial documents.
- 1.b The LRA allowed applicant CFP to continue to be considered in the 2021 master developer selection process after CFP did not comply with the LRA team follow up request for financial documents made in July 7, 2021, correspondence.
- 1.c The RFQ process adopted by the Concord City Council ad hoc committee did not utilize the LRA staff and consultants to issue a written report with a recommendation for CNWS master developer.
- 1.d The RFQ process used in 2021 master developer selection process did not use practices such as stated weighted criteria and objective scoring.
- 1.e The RFQ process used in 2021 master developer selection process did not include a written, scored evaluation of the SOQ submitted for the CNWS project from LRA staff and consultants.

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Recommendations

- 1.a The Concord City Council should consider adding language to the Selection Process and Submittal Requirements section of an RFQ or RFP that incomplete or nonresponsive submissions may lead to disqualification of the applicant.
- 1.b The LRA team should specify that the stated RFQ or RFP response date and time is the final cutoff for submission of materials by any applicant.
- 1.c The LRA should specify that there will be no extensions or second requests for information that was clearly requested in the RFQ or RFP.
- 1.d RFQs and RFPs for the CNWS project should be created by designated city staff and outside consultants of the LRA team.
- 1.e The Concord City Council should provide input on parameters and scope of a RFQ or RFP, prior to the document being written.
- 1.f The LRA staff and designated consultants should be the sole evaluators of the RFQ or RFP responses for CNWS project.
- 1.g Scoring criteria for RFQ or RFP evaluations used in the CNWS master development process should be provided on an RFQ or RFP template sent to each potential applicant.
- 1.h A raw score or percentage weight should be assigned for each evaluation criteria used on CNWS master developer RFQs or RFPs. This methodology should be created and documented before the SOQ due date and council review of the responses.
- 1.i The LRA director should issue a report with staff recommendations for the master developers considered for the CNWS project. The report should provide objective detail based on selection criteria on why the master developer candidates were chosen or eliminated.
- 1.j The report on staff recommendations for the master developer should be publicly released immediately following the council meeting in which the Concord City Council selects the master developer.

LRA Contractor Management

The Concord LRA team missed several misstatements about the information listed on the master developer applicants' SOQ submissions and listed a BRAC project not listed on Lewis' presentation. The SOQ summary prepared by the LRA team listed reuse projects at Mather Air Force Base (Mather South) and March Air Force Base (Meridian). It also listed a 1,271-home development at Independence at Mather Air Force Base.²⁶ Our investigation shows that Lewis was not involved in the infrastructure and construction of the BRAC project. Over the five years needed to complete the Mather Independence housing sale from the U'S. government, the property deteriorated and lost value. The Air Force transferred the property title to Sacramento County in September 1998.²⁷ Razing of the military housing units began in the fall of 1998.²⁸ In October 1998, Lewis entered into a purchase agreement with Kaufman and Broad to sell its residential housing business including Independence at Mather. The sale of this business closed in January 1999.²⁹

A second issue with the Lewis SOQ response is reporting it had developed the 3,500-unit Mather South project. Sacramento County ceded control of 639 acres of land at the former Mather Air Force Base to Lewis in 2011. Although the project was approved by Sacramento County in

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January 2020, in February 2020, Tsakopoulos Investments filed a lawsuit against Sacramento County and Mather South LLC (Lewis). In January 2022, Tsakopoulos filed an appeal on this case with the California Third District Court of Appeal.³⁰ At the time of the RFQ, Lewis had completed the regulatory requirements for the project, but there was no building activity because of this lawsuit.

A third issue was that the Lewis SOQ claimed that there were no lawsuits against Lewis Land Developers LLC. Although correct, note that the entity Lewis Land Developers was used only by parent company Lewis Planned Communities to submit the CNWS RFQ response. The same Lewis Land Developers LLC entity was used when Lewis Planned Communities submitted their SOQ for the Solano360 project in January 2020.³¹ In the case of Lewis participation on the CNWS project, Lewis Concord Member, LLC was incorporated on September 21, 2021, and was the company listed on a Memorandum of Understanding (MOU) created on October 13, 2021 by the three CFP companies.³² Mather South LLC is an example of an LLC created for a specific project. As noted previously, Mather South was involved in litigation at the time when Lewis replied on the SOQ to questions about litigation.

LRA Team Contracts (PSAs)

The grand jury reviewed invoices for the five outside companies that made up the LRA team. We reviewed the billings from these firms associated with the development, implementation, and analysis of the RFQ that was issued in April 2021 and received three submissions. Table 2 below summarizes billings for services associated with the RFQ through August 2021.

Table 2 -- LRA Team Billings for 2021 CNWS Master Developer RFQ and SOQ

Firm	Billings	2000-2021 RFP Services per PSA
ALH Urban & Regional Economics	\$ 8,000	Review of SOQ submitted by Master Developer candidates
HRA Advisors, Inc	14,090	Review of SOQ submitted by Master Developer candidates
ARUP	5,834	Review of SOQ submitted by Master Developer candidates, etc.
Burke, Williams & Sorensen, LLP	NA	Review of SOQ submitted by Master Developer candidates
Jarvis, Fay & Gibson, LLP	NA	Participation in lessons learned & policy confirmation process ahead of RFQ issuance for master developer
Total	\$27,924	

* NA – Not Available

Invoices from ALH and HRA were straightforward as the duties performed were well detailed and only related to the RFQ in this period. ARUP's bills were more complicated as this firm provided an array of technical services involving upwards of a dozen team members each month.

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Dahlia Chazan was the ARUP lead on their CNWS team and was listed as a LRA team member. For the majority of the bills, ARUP invoices provided details on her hours and duties related to the RFQ. For other months we used a calculated percentage of her time allocated to RFQ work (8.3%) and assessed it against Chazan's total project management time. The two legal firms' bills were more difficult to breakdown because the bills only showed a monthly charge and noted that a separate, detailed billing statement that "conveys attorney/client privileged information is also enclosed." As such, we cannot determine the hours and expense the two legal firms spent on matters specific to the 2021 CNWS RFQ.

The costs from ALH, ARUP and HRA associated with the RFQ and SOQ total \$27,924 for 84 hours of work at an average cost of \$333 per hour. Once the RFQ responses were received, the LRA tasks were limited to compiling the SOQ and including some review and analysis within it. Certain items were misstated or missed, particularly Lewis' BRAC experience and the CFP litigation history.

Concord entered into annual Professional Services Agreements (PSAs) with each of the firms that comprised the LRA team. A review of invoices from the five outside companies engaged as the LRA team revealed billing rate increases within the PSA period. For HRA Advisors, nine invoices were reviewed from March 2021 to June 2022. The hourly rate on the first invoice was \$395/hour (February /April 2021). The next three 2021 invoices were billed at \$415/hour and the final five starting in December 2021 were billed at \$450/hour. We noted two rate increases across a calendar year. There were also rate increases at ARUP, which impacted all positions in April of each year.

The PSA agreements reviewed by the grand jury in this investigation are for one year and align with the city's fiscal year (July to June). They authorize a not-to-exceed payment amount for services specified in the scope of duties across the one-year agreement. Various other standards and duties are described in these agreements. Except for agreements signed by two legal firms, there are no specifications of hourly rates by position or person in the PSAs.

Burke, Williams & Sorensen's 2020/2021 PSA agreement shows rates of:

Sr. Partner	\$350 per hour
Jr. Partner	\$325 per hour
Sr. Associate	\$300 per hour
Jr. Associate	\$270 per hour
Paralegal	\$210 per hour

Jarvis, Fay & Gibson rates for 2020/2021 were also broken down by position:

Senior Partner	\$325 per hour
Partner/Of Counsel	\$300 per hour
Associate	\$230 per hour
Paralegal	\$125 per hour

Findings

2.a LRA staff and consultant reference checks in the 2021 master developer selection process missed certain points involving prior BRAC experience and litigation history.

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- 2.b The PSAs between the City of Concord and ARUP, HRA Advisors, Inc., and ALH Urban & Regional Economics during the period 2020 to 2022 did not have language to restrict hourly rate increases by consultants during one-year PSA terms.

Recommendation

- 2.a To control costs and foster more accurate expense forecasting, City of Concord PSAs for LRA consultants should have specified hourly rates by either position or by individual and the hourly rates should remain fixed across the one-year PSA.

Transparency

The grand jury discovered that the LRA staff and their outside consultants were not allowed to offer recommendations on the selection of CNWS master developer applicants during the SOQ. This situation was present during the selection between Lennar and Catellus in September 2015. According to data officially released in the 2016 Jenkins Report, on September 1, 2015, there was discussion about whether the city council wanted staff to make a recommendation in the report presented at the meeting at which the city council would select the master developer. The initial decision by the city council was that "...consistent with general city policy, staff should make a recommendation."³³ This decision was made in response to questions posed in a report on Master Developer Term Sheets and Selection Process by LRA staff.³⁴ Additionally, both companies vying for the master developer selection were advised there would be a staff recommendation at the end of negotiation process.

On September 16, in a closed city council session, a near final staff report was presented, which included staff's recommendation of Catellus as Master Developer.³⁵ In late September 2015, the City Manager instructed the LRA staff to remove the staff recommendation from the staff report, after meeting separately with three members of the city council. In the days following the closed session, several council members changed their positions regarding inclusion of a recommendation in the staff report. The impetus for this change was a series of questionable allegations against Catellus and concerns by council that there would be a perception of favoritism in the staff report. In late September, the city manager instructed LRA Manager Michael Wright, to remove the staff recommendation from the final staff report.³⁶ Catellus then withdrew from the master developer selection process, and Lennar was awarded the CNWS master developer contract in May 2016.

As stated in the *Implementation of the Selection Process* section earlier in this report, the Master Developer Selection ad hoc committee did not follow the LRA manager's December 2020 recommendations on RFQ content. The RFQ limited the LRA team's role to reviewing and vetting materials submitted for each applicant's SOQ and then compiling these materials. There was no written report from the LRA team, just a spreadsheet showing the responses of the three applicants.

Finding

- 3.a The RFQ and SOQ process used in the 2021 CNWS master developer selection prevented LRA staff from providing analysis and recommendations on the three respondents.

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Recommendation

- 3.a For future RFQs and RFPs used to select a master developer for the CNWS project, there should be a full analysis and report issued by LRA staff.

Concord City Loans to Local Reuse Authority

Through fiscal year 2019-2020, the City of Concord loaned the LRA \$14.06 million to pay for CNWS expenses not paid from funds from governmental entities or the initial master developer, Lennar. These loans began in fiscal year 2012-2013 and were made through fiscal year 2019-2020. In fiscal year 2019-2020, they totaled \$3.35 million.³⁷ These loans came from three Concord revenue sources: General Fund reserves of \$9.91 million and Workers' Compensation Fund of \$3.15 million and Pavilion Fund of \$1.0 million that total \$14.06 million.³⁸

**Table 3 –CNWS Expenses Paid with City Loans (\$ million) -
February 2020**

Prior Fiscal Year	10.46
Fiscal Year 19-20	2.73
Unencumbered Funds	0.87
Total	14.06

These loan agreements state that the Lender (General Fund or Workers' Compensation Fund or Pavilion Fund) agree to lend to Borrower (Local Reuse Authority) and that Borrower agrees to repay to Lender an amount not to exceed the Loan amount plus applicable interest. Regarding payment of the loan, the agreement states "...principal payments shall be paid by the Borrower to the Lender at the time that sale proceeds of raw land at the Community Reuse Project are available...".³⁹ The sale of land regarding these loans is not the transfer to the LRA but a subsequent sale to a master developer. This will not occur until after a master developer is selected, the Navy and Concord have completed all regulatory requirements for transfer of the CNWS land to the LRA and the LRA has sold the land to the master developer. The grand jury was advised it would be two to three years following the master developer selection before the Navy would transfer land to the LRA and there would be two years of infrastructure development at CNWS before residential construction would begin.

The December 2022 term sheet proposal negotiated with CFP called for paying Concord approximately \$5 million before issuance of building permits for 90 percent of the market rate dwelling units (2,180) in phase one, and paying the City approximately \$10 million before issuance of building permits for 90 percent of the market rate dwelling units (3,777) in phase two.⁴⁰ Using the timelines from these statements and contracts, the loans to the LRA would repaid in two payments four to five years after a master developer is selected plus the time required to buildout the units specified in phases one and two.

There are many issues to be addressed before construction at CNWS can begin, including hydrology, air quality, traffic flow, hazardous materials, soil geology, BRAC disposition activities, and affordable housing that require analysis and study involving public and private

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entities at federal, state, and local levels. To complete these prerequisites, Concord has engaged various consultants, attorneys, and other experts to study, analyze and complete reports. When a master developer is selected, the ENA and term sheet agreements include language that will require the master developer to provide reimbursement of certain ongoing and previously incurred expenses associated with the CNWS project. Such expense reimbursement policies were detailed in the term sheet signed by Lennar in 2016 and in the one negotiated with CFP in 2022. In our investigation, we found that it is common for municipalities to charge developers upfront fees and seek reimbursement for third party costs. LRA financial reporting shows that more than \$37 million has been spent on the CNWS project since 2006, with the City of Concord providing loans to the LRA totaling over \$14 million. In reviewing payments made from city loans, there are two vendor expenses that will be discussed in the next two sections of the report.

A memo on the interfund loans was compiled at the city council's request in February 2020, shortly before the expiration of Lennar's ENA in March 2020 (see Appendix 5). It shows vendors by active or inactive status, vendor payments totaled for prior fiscal years and vendor payments for the 2019/2020 fiscal year. Aside from this report, there have been no written reports by Concord city staff detailing how the loan funds have been spent on the CNWS project. Reporting on CNWS vendor expenditures is done quarterly or biannually under the section heading of Program Report on the LRA website but these reports provide no detail on spending against the city loans to the LRA.

The Program Reports also show budgeted and actual expenses by CNWS project vendor for the city fiscal year. The initial citizen complainant advised the grand jury of their concerns about the amount spent by Concord on the CNWS project and the lack of financial reporting on it. On the LRA website, we reviewed a June 2022 CNWS report that showed expenditures to date of \$37.4 million, which includes federal grants, state redevelopment money, developer funds, and city loans.⁴¹ The annual Program Reports issued by the LRA do show multiple funding sources such as city loans and developer funds. Annual forecasts by vendor show projected funding sources but fiscal year actuals are shown as totals with no indication of the funding source used to pay the vendor expenses. Table 4 is a pro forma of how the funds available in the city loan to the LRA have changed since early 2020. Unencumbered balances are funds that have been appropriated but not spent or targeted for use. This concept is employed in governmental accounting.⁴² Starting with listed unencumbered balances of \$866,000, the loan initially was about a half million dollars over the forecast based on final 2019/2020 expenses shown in that year's Project Report. This discrepancy was due to a \$1.050 million payment to Lennar, which was a refund of previously deposited funds that had not been spent when Lennar's ENA expired in March 2020. The city's reporting of this payment as an expense is not accurate, as it was a reimbursement of previously deposited funds by Lennar. At the end of fiscal year 2020/2021, the loan reserve balance was \$1.496 million. For fiscal year 2020/2021, there was no master developer on the CNWS project, and \$1.088 million in expenses were incurred. Following a GoMentum reimbursement of \$99,423, the loan reserve balance stood at \$507,349.

When CFP signed the ENA in October 2021, they deposited \$250,000 to pay for expenses on the CNWS project. In the same period, CNWS project expenses of \$1.138 million were shown as paid from the General Fund in the 2021/2022 program report.⁴³ By June 2022, the LRA loan

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reserve stood at -\$243,000, a net decrease of \$1.108 million. With LRA expenses averaging \$1.113 million over the last two fiscal years (38% are salary/benefits) and no funds coming from a master developer, the reserve balance in the pro forma is trending to exceed -\$1.5 million by December 2023. The financial data for the three budget cycles used to compile this pro forma can be found in Appendix 6.

Table 4 – Cumulative Change to Concord-LRA Loan Obligations (Feb20 - Jun22)

	Feb20 Loan Report	June 20/21/22 Project Reports	Reserve Balance	Cumulative Change to Reserve
Unencumbered Funds	865,645		865,645	
FY 19/20 Exp (Feb20)	(2,731,990)			
FY 19/20 Exp (Jun20) *		(3,239,831)	357,804	(507,841)
Repayment to Lennar of previous deposit		1,049,951	1,407,755	542,110
FY 19/20 GoMentum reimbursement		88,400	1,496,155	630,510
FY 20/21 Exp		(1,088,229)	407,926	(457,719)
FY 20/21 GoMentum reimbursement		99,423	507,349	(358,296)
FY 21/22 CFP ENA deposit		250,000	757,349	(108,296)
FY 21/22 General Fund		(1,138,289)	(380,940)	(1,246,585)
FY 21/22 GoMentum reimbursement		138,325	(242,615)	(1,108,260)

* FY19/20 Exp (Jun20) worse than forecast primarily due to \$1.05 million payment to Lennar (refund of previously deposited funds not spent at expiration of ENA in March 2020)

The City of Concord has provided a loan of \$14.06 million to the LRA to help fund costs associated with the development of the CNWS site. Sources of funds include a loan of \$3.15 million from the city’s self-insured workers compensation claims fund. According to the terms of Interfund Loan Agreement 5, executed on June 27, 2017, Concord borrowed \$1.35 million in FY 2017 and \$1.8 million in FY 2018 to avoid dropping below its 30 percent general fund reserve target. The city intends to pay back the loans, with interest, from future proceeds as properties are sold in the CNWS development.

California self-insured workers compensation employers are regulated by the California Office of Self-Insurance Plans (OSIP). These funds are needed to pay current and future workers compensation claims. There is a guideline in the Handbook of Cost Plan Procedures for California Counties (Cost Plan) that if funds are borrowed from a self-insured workers compensation fund, they should be paid back with interest within 36 months and if not repaid by then, the loan is considered a bad debt and requires an immediate rebate from the general fund.⁴⁴

Findings

- 4.a Concord city staff provided the Concord City Council in February 2020 a report that provided detail on CNWS-related expenses paid from loans the City of Concord has made to the LRA.

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- 4.b The annual Program Reports issued by the LRA do not show the actual fundings source. Annual forecasts by vendor show projected funding sources but fiscal year actuals are shown as totals with no indication of the funding source.
- 4.c The City of Concord borrowed \$3.15 million from the city's self-insured workers compensation fund in FY 2017 and FY 2018 to provide funds to the City of Concord's loan to the LRA.
- 4.d The City of Concord's financial reporting does not show that loans made from Concord's workers compensation fund to the LRA have been paid off.

Recommendations

- 4.a Concord city staff should provide updates to the February 2020 report to show payments made against Concord's loan to the LRA for CNWS-related expenditures for 2021, 2022 and 2023 and to show details on what funds were deposited and/or refunded from Concord First Partners and future master developers.
- 4.b The City of Concord should produce annual reporting on the city loans to the LRA, showing annual and project to date expenses by vendor in detail as was done in the February 2020 report.
- 4.c The City of Concord should find funding sources other than its self-insured workers compensation fund when making loans to the LRA.
- 4.d The City of Concord should repay its self-insured workers compensation fund for any loans made to the LRA that are outstanding more than 36 months per state guidelines.

GoMentum Station Expenses

In a 2017 memo, Concord's Director of Community Reuse Planning, stated that Concord has "...temporarily provided security guard services to monitor the former Concord Naval Weapons Station (CNWS) entry gates at the request of, and at the expense of, GoMentum Station since September 2016." Believing that there would be increased level of activities at CNWS over the next several years,⁴⁵ LRA staff issued a Request for Bid (RFB) in April 2017 to provide security services at the entry gate to CNWS. The funding source was listed to be a combination of the LRA, the master developer, and GoMentum Station. The bid was awarded to Guardian Security in June 2017. Note in the narrative below, GoMentum is the name of the operator of the facility both when it was a non-profit corporation and after its acquisition in 2018 by AAA of Northern California, Nevada, and Utah (AAA).

Use of CNWS Grounds as a Facility for Autonomous Vehicle Testing

GoMentum was founded in 2014 by the Contra Costa Transportation Authority (CCTA) and incorporated as a nonprofit corporation in California in September 2015.⁴⁶ The existing road network of 20 miles at the CNWS is the largest Connected and Autonomous Vehicle (CAV) proving ground in the nation, and GoMentum acts as "a facilitator between suppliers, OEMs, and public and private partners..." to conduct in-depth testing of Automated Driving System (ADS) technologies.⁴⁷

GoMentum Station, Inc. was set up by the CCTA specifically to run autonomous vehicle testing at CNWS. Inquiries by the grand jury to CCTA about onsite testing partners, daily test site

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charges and annual revenue were declined due to nondisclosure agreements or claimed lack of knowledge. GoMentum filed IRS Form 990 for the years 2016 to 2019. Two officers were listed, one a full-time manager at CCTA, the other an outside consultant that CCTA engaged as the GoMentum project manager.

GoMentum declared program service revenue of \$772,000 in 2016, \$908,000 in 2017, \$1.824 million in 2018, and \$14,000 in 2019.⁴⁸ GoMentum filed annually with the California Department of Justice's Registry of Charitable Trusts from 2016 to 2019 but did not file in subsequent years. AAA acquired the operating rights to the GoMentum Station on August 1, 2018. CCTA records show they were notified on September 12, 2018, by AAA of their acquisition of GoMentum. CCTA staff advised the transfer did not require CCTA's approval and terms of the acquisition were never disclosed to the CCTA. On September 24, 2018, the CCTA received requests from GoMentum and AAA to assign master cooperative agreements from GoMentum to AAA.⁴⁹

Acquisition of GoMentum Station Operating Rights by AAA

Although AAA is a nonprofit corporation, it is a large multi-state organization operating in seven states with 4,600 employees. It has increased sales by \$1.2 billion, while welcoming 1.6 million new members over the past four years.⁵⁰ AAA launched A3Ventures in 2016 to invent and test autonomous and connected vehicle prototype solutions and bring them to market. This division of fifty-one employees is located in Berkeley, California. Their venture capital arm invests directly in innovative startups. Among their listed investments are GIG Car Share, a hybrid-electric, one-way car share; RapidSOS, a technology focused on the 911 mobile location problem; a partnership with Keolis for a self-driving shuttle in Las Vegas,⁵¹ Zippity, a workplace amenity offering comprehensive repair, diagnostic, and detailing services to employees at their workplace,⁵² and GoMentum Station.

AAA's letter of intent that accompanied a Preliminary Agreement on Transfer of Assets between GoMentum and AAA is informative. Signed by a senior AAA executive, it stated a goal of reaching a long-term land agreement with Concord to "...re-invest GoMentum revenue into site development and local job creation, with a goal of \$50 Million over a five-year period."⁵³ Security guard services were set up to monitor entry gates at CNWS as activity related to the testing of autonomous and connected vehicles increased at GoMentum Station, Inc. As shown above, AAA and its operating subsidiary, A3Ventures, have the resources to assume full monetary responsibility for security guard services at the CNWS entry gates. Moreover, the development and usage of the test facilities begun by CCTA and now overseen by AAA, have resulted in higher security costs due to increased day time hours, occasional weekend hours and the opening of a security station at the Bailey Road entrance April 2022. The Bailey Road entrance was opened to handle autonomous tractor trailer test vehicles because the Willow Pass Road entrance to the CNWS site has a bridge with a 10,000-pound limit.

In 2016, when gate security arrangements were initially made, the CCTA had just begun vehicle testing, facility usage was much lower and there was a belief that the master developer would begin infrastructure construction in the next year or two.⁵⁴ In the subsequent years, GoMentum's operational test sites have increased to ten and annual utilization of the GoMentum site has

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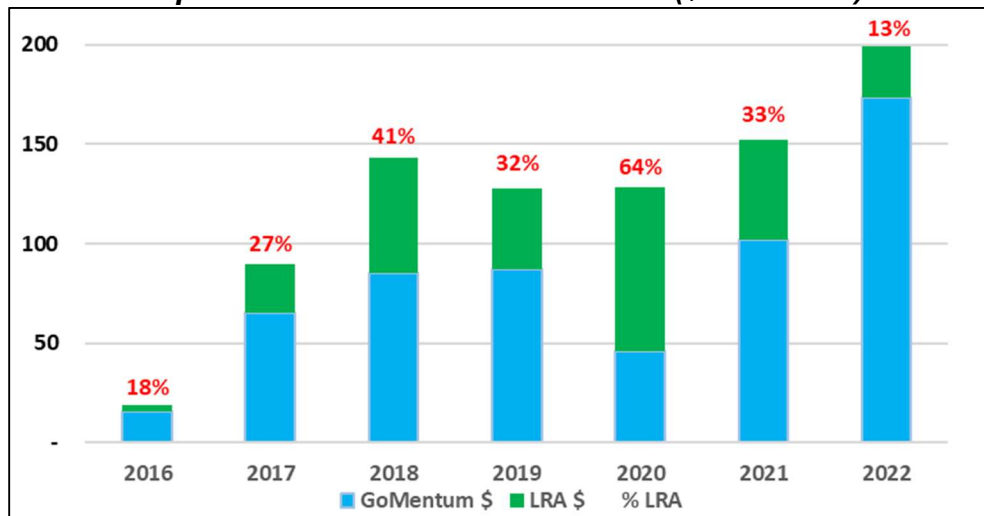
increased to about 80 percent. With the absence of a master developer and the projected timeline provided by the LRA ENA, conveyance of the CNWS land to the City of Concord will occur no earlier than 2026.

In the cover memo regarding the security gate services request for bid, it is indicated that “...GoMentum Station currently reimburses the LRA for their share of the cost of these services – currently set at approximately 80 percent of these costs.”⁵⁵ The MOU between Concord (CITY) and CCTA (AUTHORITY) specific to the CNWS Transportation Innovation Program signed in July 2019 states on page four, section H, that the Authority is responsible to “Reimburse CITY FOR all CITY incurred fees/costs associated with providing access and security for the TESTBED site and facilitating the PROGRAM on the site.”⁵⁶ The applicable section of the MOU is shown in Appendix 7. Note that even with AAA acquiring the operating rights to GoMentum, a November 2018 MOU between CCTA, AAA and GoMentum specifies that the CCTA will serve as the manager and facilitator for all activities related to the CCTA’s Innovation Program. It also states that CCTA will coordinate access to the facility in a manner that protects the safety, security, and confidentiality of all partners.⁵⁷ This agreement binds AAA to the terms of the existing Concord-CCTA MOU.

Allocated Security Service Payments and Reimbursement from GoMentum

There are single-page documents from 2019 and 2020 signed by AAA staff that specify fixed monthly amounts of \$7,900 for 12-hour gate security services, with higher rates for weekend access. During this two-year period, Guardian Security monthly charges averaged \$10,652 with an allocation of \$5,540 to GoMentum (52%) and \$5,112 to the Concord LRA (48%). Billing records from 2020 show no security cost reimbursements from GoMentum for five months and that the LRA was allocated 64 percent of Guardian Security’s costs. There is no indication of a correction of the misallocation in subsequent months. The allocated security costs and LRA percent share by year since September 2016 are shown below in Figure 1.

**Figure 1 – CNWS Security Expense Allocation
September 2016 to December 2022 (\$ thousand)**



GoMentum=\$574,279; LRA=\$284,891

(Data from Concord LRA staff)

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In mid-2021, AAA signed an updated rate memo. This document referenced a 7 percent rate increase for Guardian Security (which is a catch up because prior year rate increases were not reflected in prior year billing). There was also an additional monthly charge of \$6,453 for a guard at the Bailey Road entrance. GoMentum's billing allocation share rose to 81 percent over the last five months of 2021 and was 87 percent for the full year of 2022. Concord provided data showing Guardian Security billings for services at CNWS were \$859,170 from September 2016 through December 2022. These records show that GoMentum reimbursed Concord \$574,279 (66.8%) while Concord paid the balance of \$284,891 (33.2%).

Findings

- 5.a CCTA, AAA, and their partner clients have been using the GoMentum test facility on the CNWS site since 2014.
- 5.b There is language in a 2017 LRA document that CCTA would pay 80 percent of Guardian Security costs.
- 5.c In 2020, 2021 and 2022, AAA forwarded to Concord memos listed as Security Guard Coverage for GoMentum Station that stated maximum monthly payments AAA will pay for GoMentum security services. These memos were signed only by AAA and are not signed by Concord city staff.
- 5.d The signed MOU between Concord and CCTA states that CCTA should reimburse Concord for incurred fees/costs associated with providing access and security for the GoMentum facility at CNWS.
- 5.e Since 2016, Concord has paid 33 percent of Guardian Security fees associated with GoMentum and CCTA and AAA have jointly reimbursed Concord for 67 percent of Guardian Security's costs associated with providing security services at CNWS.

Recommendations

- 5.a The agreement for gate security between Concord, AAA, and CCTA should be modified to require that AAA and CCTA reimburse the Concord LRA for 100 percent of CNWS gate security costs as stated in the May 2019 MOU.
- 5.b Notice on updated security reimbursements should be sent to AAA and CCTA within 90 days of this report being received by Concord City Council and the LRA.
- 5.c The change in the CNWS security service rate agreement reimbursement should be effective within 90 days of AAA and CCTA being notified.
- 5.d The LRA should seek reimbursement from AAA and CCTA on CNWS gate security payments in excess of 20% in 2020 and 2021.

Jenkins Report Charged Against LRA City Loan

The city loan to the LRA includes \$63,154 for the costs of a 2016 investigation, (Jenkins Report) authorized by the City of Concord to investigate improprieties associated with the master developer selection in 2015.⁵⁸ According to the 2020 memo provided to the city council on the status of loans to the LRA, this expense was described as providing "...independent investigation into allegations surrounding the Master Development selection process."⁵⁹ Concord commissioned attorney Michael Jenkins to conduct an independent investigative in response to a

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letter received from Catellus asserting that Lennar had violated the terms of an Agreement to Negotiate, signed by both firms, by lobbying the city council. Catellus also raised questions about the removal of the Concord staff's analysis and recommendation for a master developer from a published staff report.

Jenkins found that Lennar violated the no-lobbying provision of the Agreement to Negotiate and left it to the city to see if this warranted disqualification. The report determined that one-on-one meetings conducted between the City Manager and Councilmembers Grayson, Birsan and Hoffmeister resulted in a reversal of the Council's September 2015 decision to include a staff recommendation in the final staff report. It also found those meetings constituted a hub-and-spoke serial meeting that was in violation of the Brown Act. Concord staff recommended the city council accept the report's findings and that both city council members and senior city staff participate in advanced Brown Act training.⁶⁰

Findings

- 6.a The Jenkins Report presented the findings of an investigation authorized by the Concord City Attorney in 2015.
- 6.b The expense to the LRA for the investigation and report done by Michael Jenkins was \$63,154 and it was paid as a 2016 expense against the city loan to the LRA.
- 6.c The issues investigated in the Jenkins Report were improper lobbying by a council member, removing staff recommendation from final report on the master developer and Brown Act violations. These findings involved real or perceived improper activity by the Concord city staff and the Concord City Council.

Recommendations

- 6.a The expenses for this investigation should not be charged to the LRA loan and ultimately to the master developer on the CNWS project.
- 6.b The payment for the Jenkins investigation should be reversed as an expense against the city loan to the LRA.
- 6.c The payment for the Jenkins investigation should be paid as an expense from Concord general funds.

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REQUIRED RESPONSES

As required by California Penal Code § 933(b) and California Penal Code § 933.05, the 2022-2023 Contra Costa County Civil Grand Jury requires responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Concord City Council	F1.a through F1.c F2.a through F2.b F3.a F4.a through F4.d F5.a through F5.e F6.a through F6.c	R1.a through R1.j R2.a R3.a R4.a through R4.d R5.a through R5.d R6.a through R6.c
Local Reuse Authority	F1.a through F1.c F2.a through F2.b F3.a F4.a through F4.d F5.a through F5.e F6.a through F6.c	R1.a through R1.j R2.a R3.a R4.a through R4.d R5.a through R5.d R6.a through R6.c

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to ctadmin@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

APPENDICES

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**Concord Naval Weapons Station Grand Jury Report
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Appendix 1. Master Developer RFQ Process Timeline

Selection Process and Timeline	Dates (all 2021)
Issuance of the RFQ April 16	April 16
Pre-response conference (see sign-up information in Section 4)	May 4 at 10am PDT Deadline for questions submitted in writing
Deadline for questions submitted in writing	May 14 at 5pm PDT
Responses to questions posted	May 28
SOQ submitted	June 18 by 3pm PDT
LRA Team Reviews SOQs for responsiveness to Selection Criteria and prepares Summary Table	July 16
City Council reviews Summary Table, Redacted SOQs (with Confidential Information removed), and selects SOQs to interview	August 3
Interviews with City Council – Possible Selection	August 24
City Council Selection for Initial Negotiations	August 31
Finalize Exclusive Negotiating Agreement (ENA)	September 23

* Dates following SOQ submittal are subject to change

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Appendix 2. CCIG Financials for 2008 Oakland Army Base RFQ

Note: Mr. Epstein is co-owner of CCIG

Gateway Development Area of the Former Oakland Army Base

Please note sensitive information has been redacted, other financial documents are available upon request.

- Capmark Inductoin Letter Dated October 23, 2007
- 1040 U.S. Tax Returns 2004, 2005, 2006
 - Mr. and Mrs. Tagami
 - Mr. and Mrs. Epstein
- R.E. Loans LLC Mortgage Funds CCG Investor Portfolio
 - Dated December 31, 2007.
- R.E. Loans LLC Mortgage Funds Rotunda Partners III. LLC Investor Portfolio
 - Dated December 31, 2007
- Greater Bay Bank Account Statement Leonard Epstein

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Appendix 3. Lewis 2020 RFQ response – Solano360 Mixed-Use Site

**5. Confidential Financial Submittal -
Financial Qualification, Capability, and Litigation History**

**PROFIT/LOSS STATEMENTS
(3 YEARS)**

To be provided confidentially under a separate cover / submission.

**EVIDENCE OF FINANCING/
SECURED FUNDING SOURCES**

Lewis Land Developers, LLC, self-finances all acquisitions, entitlements, development and construction on development projects and does not seek or utilize outside sources of capital, capital partners, bank loans, or private development loans. Under a separate cover we shall show that our average cash balances for the past five years, which will unequivocally reflect our ability to fund this development internally and with no dependence on outside financing.

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Appendix 4. Transcription of 8/21/2021 Concord Council Meeting

Interaction between Council Member Laura Hoffmeister and LRA Manager Guy Bjerke

(8:04 mark in Council meeting video)

Hoffmeister: Related to financial information submitted by the three master developers and one of the three deferred basically deferred not to submit financial information due to confidentiality issues that they're privately traded and I believe one privately traded company did submit and the other one submitted, so do you have a comment on that on how that works in terms of a technical aspect on our information that we received, is that a material defect to the application, is that something, was it mandatory that they submit it, I know they we asked for it, they commented back they felt it was premature at this time and so if you could maybe speak to that particular issue?

Bjerke: So, so remember that council asked staff to provide summaries but not evaluate and so in the summary table we summarized what each of the SOQs said in those particular areas, we did ask each of the teams in different ways for certain clarifications and we tried to represent those to you and so some of the teams got us additional information just too late for us to get it properly into the summary table and so, so I think the best way to approach the financing aspect of things is to base your decisions based on the representations made in the presentations and the answers to the questions today. I don't know if there have been financing questions asked today and representations made in the presentations today and I would make your decision on those.

Hoffmeister: Thank you very much.

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Appendix 5. Use of City Loan to LRA - February 2020

Current Consultants Consultant/Vendor	LRA Loan		Grand Total from Inception with FY19/20 Amendments
	Previous FY's	FY19-20	
ALH Economics	206,177	67,810	273,987
Arup	1,886,647	436,671	2,323,318
Burke Williams Sorensen	619,702	32,000	651,702
ERS Corp	783,217	200,788	984,005
ESA	1,228,546	499,660	1,728,206
Friedman & Rolapp	24,741	-	24,741
Garrity & Knisely	574,140	186,900	761,040
Guardian Security	99,346	68,872	168,218
HR&A	407,121	60,815	467,936
HT Harvey	1,136,871	598,939	1,735,810
Johnson Marigot	307,517	293,010	600,527
Lubin Olsen	456,113	236,525	692,638
Towill	309,646	50,000	359,646
Victoria Walker	26,775	-	26,775
Total Active Vendor	\$8,066,559	\$2,731,990	\$10,798,549

Previous Consultants Consultant/Vendor	LRA Loan		Grand Total from Inception With FY19/20 Amendments
	Previous FY's	FY19-20	
Accela	3,667		3,667
Civic Plus	13,200		13,200
Craig Labadie	73,880		73,880
Dell Computers	201		201
Ebbin Moser	461,000		461,000
EKI	53,560		53,560
Folger Graphics	5,930		5,930
Hallmark	261,741		261,741
Jenkins & Hogin	63,154		63,154
KRPA	6,000		6,000
LPA	167,300		167,300
MIG	115,786		115,786
Mike Wright	109,137		109,137
Peak Democracy	12,160		12,160
Peckham & McKenney	12,861		12,861
Salas O'Brien	36,000		36,000
Salaries	859,775		859,775
Office Supplies	140,827		140,827
Unencumbered Funds		866,645	866,645
Subtotal	2,396,179		2,396,179
Total	\$10,462,738	\$3,598,635	\$14,061,373
Interfund Loans \$14,080,983			

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Summary of Costs-All Consultants

	Previous FY's	FY19/20	Total
Current Active Vendors	\$ 8,066,559	\$ 2,731,990	\$ 10,798,549
Inactive Vendors	\$ 1,395,577		\$ 1,395,577
Salaries/Office Supplies	\$ 1,000,602		\$ 1,000,602
Unencumbered Funds		\$ 866,645	\$ 866,645
Total	\$ 10,462,738	\$ 3,598,635	\$ 14,061,373

Interfund Loans \$14,080,983

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Appendix 6. LRA Project Reports - June 2020/2021/2022

July 2019-June 2020 (Source June 2020 CRP Program Report, p. 5)

Description	DDA		Loan		SP		FY19/20 Total Budget	YTD Expense
	FY 18/19 Rollover	FY 19/20 Rollover	FY 18/19 Rollover	FY 19/20 Rollover	FY 18/19 Rollover	FY 19/20 Rollover		
Vendors / Consultants								
ALH	3,675	-	28,708	67,810	5,619	-	105,812	21,384
ARUP	18,232	-	(46,443)	436,671	(49,706)	261,000	619,754	181,828
Burke, Williams Sorenson	223,868	-	680	32,000	(13,570)	-	242,978	153,524
State of California		-	-	-	-	-	-	32,670
Civic Plus		-	-	-	-	-	-	1,866
ERS Corp		-	106,984	200,788	-	-	307,772	35,291
ESA		-	273,049	499,660	76,726	7,680	857,115	180,960
Fieldman, Rolapp and Associates	4,725	-	-	-	10,250	-	14,975	-
Garrity & Knisely	6,300	-	(19,266)	186,900	-	-	173,934	49,821
Gilpin & Lipman LLP		-	-	-	-	1,865	1,865	1,865
Guardian Security *		-	4,320	160,872	-	-	165,192	43,404
HR&A Advisors	59,760	-	83,475	60,815	-	-	204,050	25,842
HT Harvey & Associates		-	20,384	598,939	25,166	74,031	718,520	179,023
Jarvis Fay Associates		-	-	-	159,482	109,587	269,069	107,518
Johnson Marigot Consulting		-	104,938	293,010	-	-	397,948	2,750
Kittelson		-	-	-	177,319	55,115	232,434	87,115
Lennar Concord		-	-	-	-	-	-	1,049,951
Lubin Olsen & Niewiadomski	5,096	-	80,768	236,525	41,752	7,900	372,041	89,744
MIG	13,127	-	-	-	-	-	13,127	13,127
SWCA	-	-	-	-	1,481,301	397,510	1,878,811	436,036
Towill, Inc	-	-	21,037	50,000	-	-	71,037	(253)
Victoria Walker	-	-	-	180	-	-	180	180
Vlaming & Associates	-	-	-	6,132	-	-	6,132	6,132
Vendor Subtotal	334,783	-	658,634	2,830,302	1,914,339	914,688	6,652,746	2,699,778
City Costs								
Staffing	-	-	-	-	412,203	1,315,372	1,727,575	533,738
Office Expense:	-	-	-	-	23,056	52,500	75,556	6,315
Total	334,783	-	658,634	2,830,302	2,349,598	2,282,560	8,455,877	3,239,831

DDA: Disposition and Development Agreement

SP: Specific Plan

* Total contract for \$160,872. City paid \$72,472 and GoMentum Station paid \$88,400

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July 2020-June 2021 (Source June 2021 CRP Program Report, p. 5)

Vendors and Consultants	FY 20/21 Total Budget	YTD Expense	% Spent
ALH	36,000	12,493	35%
ARUP	382,000	314,149	82%
Burke, Williams & Sorenson LLP	61,000	48,390	79%
State of California	5,477	5,477	100%
Civic Plus	1,940	1,940	100%
ERS Corp	60,000	28,300	47%
ESA	5,000		0%
Garrity & Knisely	60,000	21,105	35%
Guardian Security	239,000	146,750	61%
HR&A Advisors	60,000	28,191	47%
HT Harvey & Associates	60,000	19,059	32%
Jarvis Fay & Associates	61,000	42,795	70%
Johnson Marigot Consulting	24,000	2,250	9%
Lubin Olsen & Niewiadomski	60,000	24,319	41%
OpenGov	12,160	12,160	100%
Vendor Subtotal	1,127,577	707,378	63%
<i>City Costs</i>			
<i>Staffing</i>	490,743	369,614	75%
<i>Office Expense</i>	19,000	11,237	59%
Total	1,637,320	1,088,229	66%

** Total contract for \$239,000. City paid \$47,327 and GoMentum Station paid \$99,423*

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July 2021-June 2022 (Source June 2022 CRP Program Report, p. 5)

Vendors and Consultants	General Fund	ENA	Total Budget	YTD Expense	% Spent
ALH	16,000	20,000	36,000	24,054	67%
ARUP	302,500	47,500	350,000	123,031	35%
Burke, Williams & Sorenson LLP	10,000	90,000	100,000	83,639	84%
ERS Corp	60,000		60,000	51,329	86%
ESA	5,000		5,000	4,529	91%
Garrity & Knisely	52,500	7,500	60,000	3,885	6%
Guardian Security *	91,186		232,349	167,839	72%
HR&A Advisors	35,000	25,000	60,000	28,055	47%
HT Harvey & Associates	60,000		60,000	16,130	27%
Jarvis Fay & Associates	30,000	60,000	90,000	71,402	79%
Johnson Marigot Consulting	24,000		24,000	4,949	21%
Lubin Olsen & Niewiadomski	60,000		60,000	34,997	58%
Subtotal	746,186	250,000	1,137,349	613,839	54%
City Costs					
Staffing			522,308	491,926	94%
Office Expense			2,000	69	3%
Utilities				32,455	
Total			1,661,657	1,138,289	69%

**Total contract is for \$232,349. City paid \$29,514 and GoMentum Station paid \$138,325*

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Appendix 7. Memorandum of Understanding

MOU between Concord and Contra Costa Transportation Authority – page 4, signed June 17, 2019

G. Oversee financing and coordinate construction of all temporary facilities and infrastructure improvements on **TESTBED** per final designs, including obtaining **CITY** and other public agency' approvals determined to be necessary. **AUTHORITY** will pay all actual planning review fee requirements to accommodate **PARTNER** testing activities, subject to compliance with any required **CITY** land use review, including but not limited to environmental review.

H. Reimburse **CITY** for all **CITY** incurred fees/costs associated with providing access and security for the **TESTBED** site and facilitating the **PROGRAM** on the site.

I. Assume financial and administrative responsibility for removal and restoration of the site as reasonably requested by **CITY** to support **CNWS PLANNING AND DEVELOPMENT** and with reasonable notice to **AUTHORITY**, including compliance with all land use requirements for improvements related to **PROGRAM** and all **CITY** costs/fees associated therewith.

J. **AUTHORITY** will consider **CITY** as the highest priority partner in the **PROGRAM** and will conduct this **PROGRAM** in concert and full coordination with **CITY**. **AUTHORITY** understands the main objectives of the **CITY** are the **CNWS GOALS**. **AUTHORITY** will manage the **TESTBED** such that it does not interfere with the **CNWS GOALS** or violate any requirements/obligations/limitations established by either the **U.S. NAVY**, State of California, or the **CITY** as communicated to **AUTHORITY**.

K. **AUTHORITY** will ensure a fully transparent process with regards to alignment of private sector commercialization objectives with the **CITY**, **US NAVY**, and State of California concerning public safety policies, rules, and regulations.

L. When discussing the **PROGRAM** or **TESTBED**, **AUTHORITY** will use best efforts to promote the **CITY** worldwide and nationwide, and to enhance the value of the **TESTBED** through the **PROGRAM**.

M. **AUTHORITY** will assure that all partner agencies wanting access to the **TESTBED** under the **PROGRAM** apply for and receive a sublicense from the **CITY** before performing any testing on the **CNWS** and accept any restrictions to site access, photography, video and personnel back ground checks imposed by the **U.S. NAVY**.

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Endnotes

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- 14 “Summary Table of Master Developer Statements of Qualifications (SOQs)”, 5-7.
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- 20 July 7, 2021, email from Richard Lewis to Wendy McAuley, et al., obtained in public records request from City of Concord.
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