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August 9, 2023

By U.S. Mail and email (ctadmin@contracosta.courts.ca.gov)

Ms. Cynthia Roberts, Foreperson
Contra Costa County Civil Grand Jury
P.O. Box 431
Martinez, CA 94553

Re: City of Concord and Local Reuse Authority Response to June 15, 2023 Grand Jury Report No. 2305, "Concord Naval Weapons Station Grand Jury Report, A Promise Unfulfilled"

Dear Ms. Roberts:

This letter serves as the City of Concord's (and Local Reuse Authority's) response to the Contra Costa County Civil Grand Jury's findings and recommendations set forth in Report No. 2305, hereafter referenced as the "Report" in this letter. This letter was reviewed by the Concord City Council, sitting as the Local Reuse Authority, at its August 8, 2023, meeting, and I was directed to submit the response for the City of Concord and Local Reuse Authority. This response satisfies both the Local Reuse Authority (LRA) response requested by August 13, 2023 and the City of Concord response requested by September 13, 2023.¹

Before responding to the Grand Jury's findings and recommendations, the City/LRA wishes to object and refute a statement found in the Report's Summary:

"Now, seventeen years after Concord was designated as the Local Reuse Authority, little has been achieved..."

The LRA disagrees with the Grand Jury's conclusion that over the past seventeen years "little has been achieved..." The City/LRA recognizes that the scope of materials available on the LRA website may be challenging to review and process. However, it appears that the Report title and this statement demonstrates a lack of understanding as to how much progress the LRA has made working with the

¹ A city has 90 days to respond under Penal Code Section 933(c). While that section references a 60 day response timeframe with respect to county officers and boards, the LRA is not a county board. Rather, the LRA and the City Council are two separate legal entities they are made up of the same five elected officials. Out of respect to the Grand Jury, and in the interest of transparency, the City/LRA's response was nevertheless drafted with the 60 day timeframe in mind.

community, stakeholders, local agencies, regulators, and the U.S. Navy on this complicated project, including:

- The Reuse Plan and Environmental Impact Report was adopted after 3 years of community engagement in 2010.
 - a. <http://concordreuseproject.org/DocumentCenter/View/1523/2006-09-CNWS-Phase-1-Report>
 - b. <http://concordreuseproject.org/DocumentCenter/View/167/Final-Reuse-Plan-EIR-2010>
- The Reuse Area Plan and environmental amendments were adopted into the City's General Plan in 2012.
 - a. <http://concordreuseproject.org/DocumentCenter/View/1105/2012-01-24-CRP-Area-Plan---Book-1-Vision-and-Stand>
 - b. <http://concordreuseproject.org/DocumentCenter/View/1106/2012-01-24-CRP-Area-Plan---Book-2-Technical-Chapters>
 - c. <http://concordreuseproject.org/DocumentCenter/View/1092/2012-01-24-CRP-Area-Plan---Book-3-Climate-Act-Plan>
 - d. <http://concordreuseproject.org/DocumentCenter/View/152/Final-Area-Plan-EIR-Addendum-Initial-Study-of-Environmental-Significance-2012>
- Consulted with U.S. Fish & Wildlife Service to obtain a Biological Opinion permitting the transfer and development of the entire project area; all 5,000+ acres in 2017.
 - a. [2017-05-30-US-Fish-Wildlife-Biological-Opinion \(concordreuseproject.org\)](http://concordreuseproject.org/DocumentCenter/View/802/BRAC-Final-Environmental-Impact-Statement-Vol-1-and-2-Aug-2017)
- Assisted the U.S. Navy with their Environmental Impact Statement in support of future property transfer in 2017.
 - a. <http://concordreuseproject.org/DocumentCenter/View/802/BRAC-Final-Environmental-Impact-Statement-Vol-1-and-2-Aug-2017>
- Prepared a Conceptual Plan for the Tournament Sports Complex in 2018/19, which Council received in 2019.
 - a. <http://www.concordreuseproject.org/DocumentCenter/View/1755/Tournament-Sports-Complex-Conceptual-Plan-and-Feasibility-Report---website>
- Facilitated the Blue Ribbon Committee's Campus District Vision Framework in 2018/19 which Council received in 2019
 - a. <http://www.concordreuseproject.org/DocumentCenter/View/1746/2019-06-04-BRC-Campus-District-Vision-Framework-Final-Report>
- Surveyed and established property boundaries allowing for the future transfer of property; this work was necessary to facilitate the Public Benefit Conveyance to the East Bay Regional Park District of approximately 2,600 acres of land to create the Thurgood Marshall Regional Park in 2019.
 - a. [Regional Park at Concord Naval Weapons Station Reaches Major Milestone | East Bay Parks \(ebparks.org\)](http://ebparks.org/Regional-Park-at-Concord-Naval-Weapons-Station-Reaches-Major-Milestone)
 - b. [Thurgood Marshall Regional Park Land Use Plan | East Bay Parks \(ebparks.org\)](http://ebparks.org/Thurgood-Marshall-Regional-Park-Land-Use-Plan)

All of these efforts were accomplished while also monitoring the U.S. Navy's clean-up of the property, facilitating GoMentum Station's interim use for autonomous vehicle testing, coordinating law enforcement and fire district use of the base for training purposes, seeking a suitable master developer to author and implement a Specific Plan; and negotiating an Economic Development Agreement with the U.S. Navy agreeing to financial and other terms for property transfer.

In short, the City/LRA has facilitated a great deal of progress towards the eventual development of the CNWS.

1. 2021 Master Developer Selection

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.

Response: The LRA² agrees with this finding.

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.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding.

1.d The RFQ process used in 2021 master developer selection process did not use practices such as stated weighted criteria and objective scoring.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding.

² The Concord City Council is the Local Reuse Authority board for the Concord Naval Weapons Station Reuse Project. All references to the LRA in responses also serve as responses from the Concord City Council.

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.

Response: The recommendation will not be implemented because the RFQ for the next master developer selection process was discussed at a public meeting on March 14, 2023, and considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023. However, the City Council has full discretion to reject respondents based on incomplete or nonresponsive submissions as outlined in Appendix F of the RFQ.

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.

Response: The recommendation has been implemented. The response date and time is July 14, 2023, 3 p.m.

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.

Response: The recommendation has been implemented. The LRA is not providing extensions or second requests for information that was clearly requested in the RFQ.

1.d RFQs and RFPs for the CNWS project should be created by designated city staff and outside consultants of the LRA team.

Response: The recommendation has been implemented. All of the RFQs and RFPs for the CNWS project have been created by designated 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.

Response: The recommendation has been implemented. At a public meeting on March 14, 2023, the City Council provided input into the current master developer selection process and at a public meeting on May 9, 2023, reviewed the draft RFQ, provided direction to staff, and authorized its release.

1.f The LRA staff and designated consultants should be the sole evaluators of the RFQ or RFP responses for the CNWS project.

Response: The recommendation will not be implemented because the RFQ for the next master developer selection process was discussed at a public meeting on March 14, 2023, and

considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023. The defined process in the issued RFQ states that staff and consultants will provide a basic evaluation in a Summary Table for Council and the public to review. Further, the issued RFQ states that the Council will evaluate the RFQ responses, and the selection will be made by the City Council. The City Council are the directly elected governing representatives of the community and it falls within their scope of authority and responsibilities to make the decision on which firm the LRA will work with as a Master Developer for the CNWS project, and it is also within the Council's authority to define the level of staff analysis for their evaluation.

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.

Response: The recommendation will not be implemented because the RFQ for the next master developer selection process was discussed at a public meeting on March 14, 2023, and considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023. The issued RFQ's Selection Criteria can be found in Section 5.3 on page 34.

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.

Response: The recommendation will not be implemented because the RFQ for the next master developer selection process was discussed at a public meeting on March 14, 2023, and considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023.

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.

Response: The recommendation will not be implemented because the RFQ for the next master developer selection process was discussed at a public meeting on March 14, 2023, and considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023.

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.

Response: The recommendation will not be implemented because: 1) staff will not be making a recommendation to Council regarding master developer candidates and, 2) state law requires agendas be released to the public prior to the Council meeting where the item in question is heard. Staff will release the report that accompanies the agenda item, as is its practice, concurrent with publication of the agenda. Moreover, specific to matters related to master

developer selection, it is the City/LRA practice to release documents early, such as a week to several weeks before City Council consideration.

2. LRA Contractor Management

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.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding.

Recommendations

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.

Response: The recommendation has not yet been implemented, but will be implemented as contracts are offered, renewed, or extended in the future.

3. Transparency

Findings

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.

Response: The LRA agrees with this finding.

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.

Response: The recommendation has been implemented. The RFQ for the next master developer selection process was approved after a full analysis and report was issued by LRA staff; was

discussed at a public meeting on March 14, 2023, and was considered and approved by the City Council at a public meeting on May 9, 2023, and issued on May 15, 2023.

4. Concord City Loans to the Local Reuse Authority

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.

Response: The LRA agrees with this finding.

4.b The annual Program Reports issued by the LRA do not show the actual funding source. Annual forecasts by vendor show projected funding sources but fiscal year actuals are shown as totals with no indication of the funding source.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding. The City is not self-insured for workers' compensation claims. The City did loan the above amount from a General Fund account designated to pay deductibles for workers' compensation claims.

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.

Response: The LRA agrees with this finding.

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.

Response: The recommendation has not yet been implemented but will be implemented in the future. The February 2020 report and associated table of expenditures will be updated to reflect expenditures to date against the loan to the LRA by September 30, 2023. The details of deposits and/or refunds to Concord First Partners or future master developers is a separate fund and different document. The record of deposits and refunds to Concord First Partners will be released by the LRA by September 30, 2023.

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.

Response: The recommendation has not yet been implemented but will be implemented in the future. The February 2020 report and associated table of expenditures will be updated to reflect expenditures to date against the loan to the LRA by September 30, 2023. This document will be updated annually in the future.

4.c The City of Concord should find funding sources other than its self-insured workers compensation fund when making loans to the LRA.

Response: The recommendation has been implemented. The latest loan from the City to the LRA of \$530,000, approved by the City Council on June 13, 2023, comes from unallocated General funds.

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.

Response: This recommendation will not be implemented. The City is not self-insured for workers' compensation claims. The City participates in a joint powers authority, Public Risk Innovation, Solutions, and Management (PRISM), along with other cities and governmental agencies. The City contracts for several different coverages, including workers' compensation. The City's deductible is \$500,000 per claim.

Additional information on the City's risk and insurance management is available in Note 16 of the City's annual comprehensive financial report available here:

<https://www.cityofconcord.org/DocumentCenter/View/8855/2022-Annual-Comprehensive-Financial-Report>

The City is self-insured for its deductibles for workers compensation claims and does have a fund called the City's workers compensation fund to be used for this purpose. The amount of this fund is evaluated every 2 years and when needed during budgeting, the City adds funding to this fund. The current loan from this fund is not creating undue risk to the fund in that it is funded to 90% certainty.

Further, it is worth noting that the reference the Grand Jury makes to state guidelines are guidelines intended to guide counties not cities.

5. GoMentum Station Expenses

Findings

5.a CCTA, AAA, and their partner clients have been using the GoMentum test facility on the CNWS site since 2014.

Response: *The LRA agrees with this finding.*

5.b There is language in a 2017 LRA document that CCTA would pay 80 percent of Guardian Security costs.

Response: *The LRA agrees with this finding.*

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.

Response: *The LRA agrees with this finding.*

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 GoMentum facility at CNWS.

Response: *The LRA agrees with this finding.*

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.

Response: *The LRA disagrees with this finding. The calculation incorrectly assumes that all Guardian Security costs are attributable to GoMentum/CCTA/AAA. The U.S. Navy, LRA, East Bay Regional Park District, and Contra Costa County required gate access during this timeframe and those costs were borne by the LRA.*

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.

Response: *This recommendation will not be implemented because the May 2019 MOU states that AAA and CCTA will reimburse the LRA for "fees/costs associated with providing access and security for the TESTBED site and facilitating the PROGRAM on the site." The costs associated with providing access and security are not exclusively related to GoMentum Station. The City/LRA, U.S. Navy, East Bay Regional Park District and Contra Costa County also access the site and require security to do so and the LRA funded that share of security costs. The determination that 80 percent of access and security costs should be paid for by GoMentum is a reasonable estimate at this time and will be reviewed in the future.³*

³ The City Council, acting as the LRA, approved a new security guard contract on August 8, 2023 increasing GoMentum Station's estimated share of future costs to 90%.

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 LRA.

Response: The recommendation requires further analysis to assess the share of access and security costs attributable to GoMentum Station versus other Base users. The LRA will conduct this analysis in conjunction with AAA and CCTA and either confirm or change the reimbursement amount as appropriate by December 15, 2023.

5.c The change in the CNWS security service rate agreement reimbursement should be effective within 90 days of AAA and CCTA being notified.

Response: The recommendation requires further analysis. See answer to 5.b above.

5.d The LRA should seek reimbursement from AAA and CCTA on CNWS gate security payments in excess of 20% in 2020 and 2021.

Response: The recommendation requires further analysis. By December 15, 2023, LRA staff will reevaluate past invoicing and determine if the terms of the agreement with AAA and CCTA were met regarding GoMentum gate guard costs being carried by GoMentum.

6. Jenkins Report Charged Against LRA City Loan

Findings

6.a The Jenkins Report presented the findings of an investigation authorized by the Concord City Attorney in 2015.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding.

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.

Response: The LRA agrees with this finding.

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.

Response: The recommendation will not be implemented. The Jenkins investigation was related to the LRA Base Reuse Project. One of the adopted goals of the Reuse Area Plan is the concept of fiscal neutrality – that all aspects of the project should pay for itself and not rely on any subsidy from current taxpayers. The Jenkins investigation is appropriately a Reuse Project/LRA expense and was treated as such in 2016.

6.b The payment for the Jenkins investigation should be reversed as an expense against the city loan to the LRA.

Response: The recommendation will not be implemented. See answer to 6.a above.

6.c The payment for the Jenkins investigation should be paid as an expense from Concord general funds.

Response: The recommendation will not be implemented. See answer to 6.a above.

While the City and LRA are separate legal entities, the same five elected officials serve as the governing body of each such entity. Consequently, pursuant to Penal Code Section 933(b), this letter serves as the joint response of the governing bodies of the City and LRA to the Report.

Guy Bjerke, Executive Director of the Local Reuse Authority and Director of Economic Development and Base Reuse, is available to answer any questions or provide any additional information concerning the above responses. You can reach him at (925) 671-3076 or by email at guy.bjerke@cityofconcord.org.

Sincerely,



Valerie J. Barone
City Manager

