



## Staff Report

**Date:** September 27, 2016

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

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

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

**Subject:** **Considering approval of an Agreement for Professional Services in a not to exceed amount of \$80,000 to provide land surveying services related to the Area Plan for the former Concord Naval Weapons Station with Towill, Inc. (Funding will be provided by a loan to the Local Reuse Authority (LRA) from the General Fund)**

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### Report in Brief

Staff is recommending that the Local Reuse Authority (LRA) approve an Agreement for Professional Services with Towill, Inc. (Towill) to authorize the expenditure of up to \$80,000.

Towill will perform Land Surveying services related to the Area Plan for the former Concord Naval Weapons Station (CNWS) including review of current boundaries, canal location description and legal descriptions to support transfers from the Department of the Navy (DON) to the LRA, East Bay Regional Park District and Contra Costa County.

Funding will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the FY 2016/2017 budget. The loan will be repaid, with interest, from land sales or leases within the former CNWS.

### Recommended Action

Staff recommends approving an Agreement for Professional Services with Towill in an amount not to exceed \$80,000 and authorizing the LRA Executive Director to execute the agreement, subject to approval of the City Attorney.

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Considering approval of an Agreement for Professional Services in a not to exceed amount of \$80,000 to provide land surveying services related to the Area Plan for the former Concord Naval Weapons Station with Towill, Inc.

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### **Background**

The DON has asked the LRA to assist with the determination of parcel boundaries and the creation of legal descriptions of property to be transferred in the First Transfer Parcel and remainder parcels or “carve outs” to be transferred later under future Findings of Suitability to Transfer. The LRA’s GIS system has also raised the possibility of discrepancies between the boundary descriptions used by the Bureau of Reclamation for their canals on the property and the actual, physical location of the canals.

The goal of this effort is to finalize boundaries and the legal descriptions of parcels in order to facilitate the efficient transfer of the property.

### **Analysis**

Towill, Inc. is a surveying, mapping and GIS services firm with over 60 years of experience. Towill’s corporate headquarters is in Concord. Towill has previously had two “on-call” contracts and performed similar services for City projects. Their proximity to the project and timely ability to field survey and confirm information was a factor in their selection. Towill is also recommended for this work by ARUP – the LRA’s primary consultant for planning and engineering services and a key project manager for the Reuse Project.

The primary tasks for this agreement include:

- Task 1 – Record of Survey Review – comparing the boundaries identified in the Record of Survey with the provided title reports.
- Task 2 – Review Canal Information – clarifying the discrepancy with the location of the canals on the Reuse Project property.
- Task 3 – Legal Descriptions to Support Transfers – preparing multiple legal descriptions to support the first Economic Development Conveyance Transfer to the LRA and Public Benefit Development Conveyances to the East Bay Regional Park District and Contra Costa County, consistent with the adopted Area Plan.

Retaining Towill to conduct the scope of work under this agreement will expedite the DON’s ability to transfer property to the LRA by providing verified and useful information in a timely manner.

### **Financial Impact**

LRA staff is requesting the LRA approve an Agreement for Professional Services with Towill in an amount not to exceed \$80,000.

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Funding will be provided through a loan to the LRA from the General Fund that was approved and appropriated as part of the FY 2016/2017 budget. The loan will be repaid, with interest, from land sales or leases within the former CNWS.

### **Public Contact**

The City Council Agenda was posted.

### **Attachments**

1. Towill, Inc. Proposal for Land Surveying Services – August 29, 2016
2. Agreement with Towill, Inc.



August 29, 2016

Dahlia Chazan, AICP LEED AP

Arup  
 560 Mission Street, Suite 700  
 San Francisco, CA 94105  
 Direct: 415.963.3893  
 Mobile: 415.385.4543  
 E-mail: [dahlia.chazan@arup.com](mailto:dahlia.chazan@arup.com)

**RE: Professional Land Surveying Services at the Concord Naval Weapons Station  
 REV2**

Ms. Chazan,

Thank you for this opportunity to provide you with this scope of services and time and materials cost estimate for surveying at above described project. Below you will find details of the work to be provided, various assumptions and special considerations, and a proposed cost to do this work.

### **Task 1 – Record of Survey Review**

During initial research, it would found that Hunsaker and Associates filed a Record of Survey (RoS) in Contra Costa County. A brief review of this map shows substantial information.

A 'desk review' of the map is being proposed. We propose that 16 hours of Senior Land Surveyor and 16 hours of a Survey Technician be allocated to this task.

The RoS will be compared to the provided title report. We will compare the boundary shown on the RoS with the metes and bounds description in the title report to confirm that they represent the same property. Since all subsequent work will be based on the RoS, it is important to understand the US Government does own all property that will be subsequently described and disposed of.

No field surveys will be done related to this task.

#### Task 1 Deliverables

- Report discussing the boundary of the parcel as shown on the RoS compared to the title report, and if any easements from the title report or missing

### **Task 2 – Review Canal Information**

Another 'desk study' will be conducted regarding the canals across the property. The RoS shows a discrepancy with the location of the canals. We propose that 24 hours of Senior Land Surveyor and 16 hours of a Survey Technician be allocated to this task.



The goal would be to develop a clearer understanding of the history of the canals by reading the original deeds and confirm that there are no other rights or easements associated with the canals that may impact the remaining properties. We will prepare a written report of our findings, and participate in meetings to facilitate understanding by others.

No field surveys will be done related to this task.

#### Task 2 Deliverables

- Report of findings regarding canals
- Participating in calls and meetings as requested

### **Task 3 – Legal Descriptions to Support Transfers**

Towill will prepare multiple legal descriptions to support the first EDC (Economic Development Conveyance) Transfer Parcel to the City and other property transfers. Exhibit B highlights these areas. These include:

- The Economic Development Conveyance Parcel to the City of Concord (12 distinct areas)
- The Public Benefit Conveyance for the Fire/Police site (1 distinct area)
- The Public Benefit Conveyance for the East Bay Regional Park site (7 distinct areas)
- The areas to be excluded from said First EDC Transfer Parcel (14 distinct areas)

Prior to preparing any legal description, Towill will conduct a final check of the existing RoS. The map will be independently calculated and up to 4 field days of a two-person survey crew will check the monuments shown on said RoS, confirming their positions. Once checked, the RoS will be the basis for all of the legal descriptions we prepare for this project.

The limits of the areas of interest will be provided to Towill by ARUP or the City of Concord. It is assumed that these will be on the same coordinate system as the RoS and the existing aerial mapping, and that no additional field work will be needed to define the limits of these areas.

#### Task 3 Deliverables

- Plat and Legal Description for areas of interest
- CAD file with linework defining the final limits of these areas

### **Exceptions and Special Considerations**

- Timely access to the site, including on adjoining properties if necessary, will be provided and coordinated by client or the project owner. Site escorts, if needed, will be likewise provided.
- Any CAD standards will be provided at NTP.
- This Proposal does not include any responsibility regarding submittal or payment of fees, permits, or other items not specifically mentioned in our scope of work.
- Any work above and beyond the described scope above will be negotiated separately and billed at a time-and-materials basis per the project rate schedule.



### **Summarized Cost**

Our proposed costs for the above described work is as follows and is based on our current Rate Schedule, shown as Exhibit A:

Items	Task Prices
<b>Task 1 – Record of Survey Review</b>	\$4,800
<b>Task 2 – Review Canal Information</b>	\$6,280
<b>Task 3 – Legal Descriptions to Support Transfers</b>	\$64,992
<i>EDC Parcel for City of Concord - \$22,472</i>	
<i>Public Benefit Conveyance – Fire/Police - \$5,960</i>	
<i>Public Benefit Conveyance – EBRPD - \$12,680</i>	
<i>Areas Excluded - \$23,880</i>	
<b>Total</b>	\$76,072

### **Schedule**

Timing of deliverables will be further discussed when a contract is in place.

Thank you for requesting this proposal from Towill, Inc. **If for any reason this proposal does not meet your budget or time constraints, please contact me to discuss options to revise the proposal to meet your needs.**

Sincerely,

Frank Borges, PLS  
Project Manager



*Exhibit A*



**NORTHERN CALIFORNIA SURVEY SERVICES FEE SCHEDULE**  
*Effective January 1, 2016*

<u>Labor Description</u>	<u>Hourly Rate</u>
Principal Land Surveyor	\$235.00
Senior Project Manager / Senior Land Surveyor	\$195.00
Survey Project Manager	\$185.00
Project Surveyor	\$155.00
Associate Surveyor	\$140.00
Survey Technician (Office)	\$115.00
CADD Technician	\$ 95.00
Project Coordinator	\$ 90.00
Project Assistant	\$ 75.00

***Field Survey Rates by Crew Composition***

2-Person Survey Crew (1 Party Chief, 1 Chain Person)	\$236.00
1-Person Survey Crew (1 Party Chief)	\$147.00

***Prevailing Wage Rates by Field Survey Personnel Classifications***

Party Chief	\$127.00
Instrument Person	\$115.00
Chain Person	\$109.00
Apprentice	\$ 95.00

**Notes:**

- Field survey personnel and crews are billed at a minimum of 8 hours per day only.
- Field survey crew rates are inclusive of the survey vehicle, vehicle mileage up to 50 miles from the crew's home office, conventional and GPS survey equipment, and standard safety equipment.

**SPECIAL LABOR RATES**

<u>Labor Description</u>	<u>Hourly Rate</u>
Hazmat Crew Supplement	Field Survey Crew or Personnel Rate plus \$10.00 per Person per Hour
Night Shift Work	Field Survey Crew or Personnel Rate plus 12.5% Premium per Hour

**AUTHORIZED OVERTIME LABOR RATES**

<u>Labor Description</u>	<u>Hourly Rate</u>
Saturdays and in Excess of 8 hours on Weekdays	1.5 times Regular Rate
Sundays and Holidays	2.0 times Regular Rate

**EQUIPMENT AND OTHER DIRECT COSTS**

<u>Equipment Description</u>	<u>Rate</u>
Terrestrial Laser Scanner	Quote Provided per Project

Client shall pay the costs, plus 10%, for any applicable governmental fees, title company charges, subconsultant fees, outside vendor costs, reproduction costs, vehicle mileage (except as noted above), travel related costs, rental vehicles and boats, rental and specialty equipment, consumable materials, digital delivery media, and delivery or messenger services incurred on Client's behalf.



Exhibit B

**Concord Reuse Project  
Navy Transfer EDC/PBC  
GIS Boundaries\*  
July 25, 2016**

**EDC/PBC Ultimate Boundaries  
(7/2016)**

- PBC - EBRPD - 2,284 acres
- EDC - 1,303 acres
- PBC - County - 78 acres

**Parcels to be Transferred  
at a Later Date**

- Excluded from First EDC Transfer Parcel - 1,073 acres
- Excluded from First PBC-EBRPD Transfer Parcel - 233 acres

- 1 PORTION OF EDC
- A PORTION OF PBC FOR EBRPD
- AA PORTION OF PBC FOR COUNTY

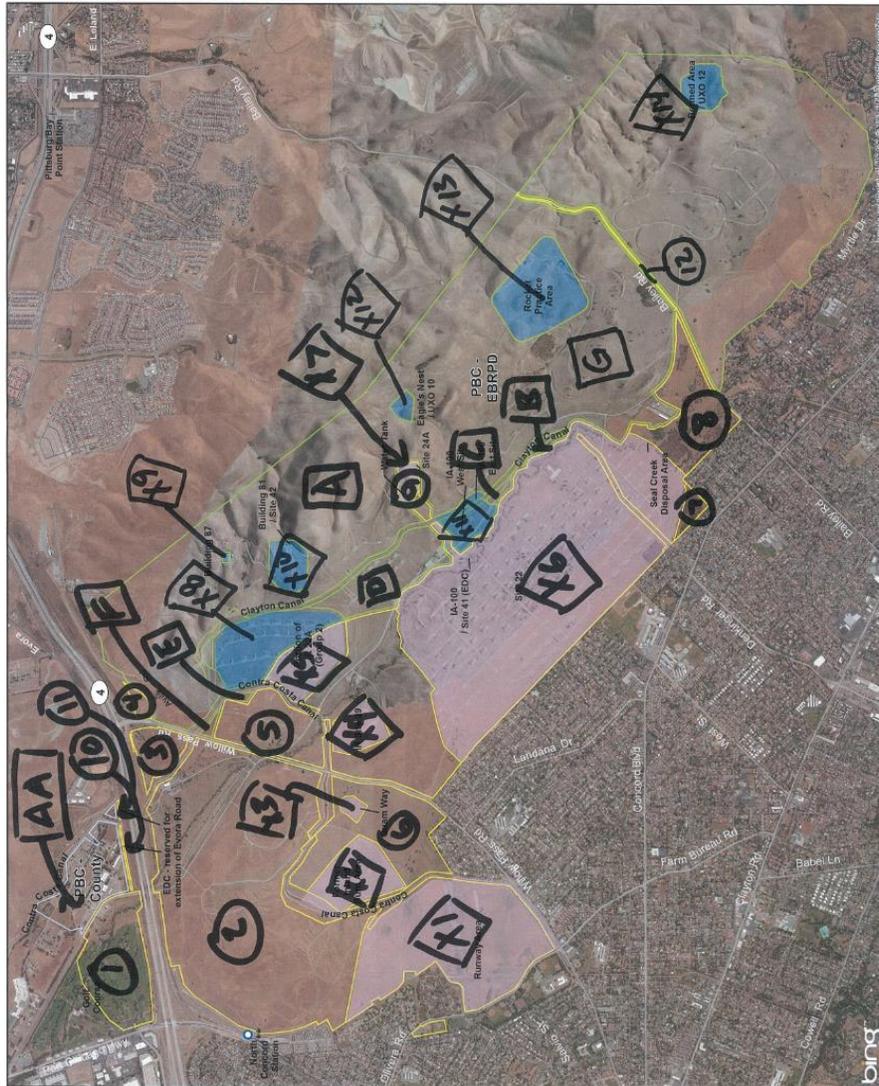
\* The boundaries shown on this map are based on mapping in geographic information systems (GIS). Prior to transfer a legal survey will be prepared.

\*\* BART property included in planning for future development and belongs to BART and will be transferred to the County. Parcels are excluded out as part of the EDC or PBC properties.

X1 EXCLUDED PARCELS



Map Date: 7/25/2016



**AGREEMENT FOR PROFESSIONAL SERVICES**

1 THIS AGREEMENT ("Agreement") is entered into on September 27, 2016 between the City  
2 of Concord ("CITY") and Towill, Inc., 2300 Clayton Road, Suite 1200, Concord, CA 94520  
3 ("CONSULTANT").

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

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

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

10 1. **TERM.** This Agreement shall commence on September 27, 2016 and expire on  
11 June 30, 2017.

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

16 3. **PAYMENT.** The compensation to be paid to CONSULTANT including payment for  
17 professional services and reimbursable expenses, shall be at the rate and schedules in detail in  
18 Exhibit A. However, shall in no event shall the amount CITY pays CONSULTANT exceed  
19 Eighty Thousand Dollars (\$80,000) for the term of this Agreement. Any Amendment to this  
20 Agreement that includes an increase to this compensation amount shall be made in accordance with  
21 Section 5 below.

22 CONSULTANT may submit monthly statements for services rendered; all statements shall  
23 include adequate documentation demonstrating work performed during the billing period. It is  
24 intended that CITY review such statement and pay CONSULTANT for services rendered within 30  
25 days of receipt of a statement that meets all requirements of this Agreement. Payment by CITY shall  
26 not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the  
27 time of payment.  
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1           **4.     AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent  
2 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered  
3 by CONSULTANT under this Agreement except where approval for the CITY is specifically required  
4 by the City Council. The CITY's authorized representative is Guy Bjerke, Director of Community  
5 Reuse Planning. The CONSULTANT's authorized representative is Randy Smith, Vice President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26               **B.    Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply  
27 with all federal regulations relative to nondiscrimination in federally assisted programs.  
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1           **C. Solicitations for Subcontractors including Procurement of Materials and**  
2 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by  
3 CONSULTANT for work to be performed under a subcontract including procurement of materials or  
4 leases of equipment, each potential subcontractor, supplier or lessor shall be notified by  
5 CONSULTANT of CONSULTANT’S obligation under this Agreement and the regulations relative to  
6 nondiscrimination on the grounds of race, religion, color, sex, or national origin..

7           **16. CONFLICT OF INTEREST.**

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

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

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

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

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

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

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

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

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

24 **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**  
25 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,  
26 assigns, and legal representatives to the terms and obligations of this Agreement. CONSULTANT  
27 shall not assign or transfer any interest in the Agreement without the CITY's prior written consent,  
28

1 which consent shall be in the CITY's sole discretion. Any attempted assignment or transfer in breach  
2 of this provision shall be void. This Agreement is not intended and shall not be construed to create  
3 any third party benefit. This Agreement is not intended and shall not be construed to create a joint  
4 venture or partnership between the parties. CONSULTANT, its officers, employees and agents shall  
5 not have any power to bind or commit the CITY to any decision.

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

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

14  
15 To CITY: **Guy Bjerke, Director of Community Reuse Planning**  
**City of Concord**  
**1950 Parkside Drive**  
**Concord, CA 94519-2578**  
**Phone: (925) 671-3076**

16  
17  
18 To CONSULTANT: **Randy Smith, Vice President**  
**Towill, Inc.**  
**2300 Clayton Road, Suite 1200**  
**Concord, CA 94520**  
**Phone: (925) 682-6976**

19  
20  
21 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent  
22 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or  
23 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in  
24 interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

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

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

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

7 **CONSULTANT**

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

9  
10 By: \_\_\_\_\_  
11 Name: Randy Smith  
12 Title: Vice President  
13 Company: Towill, Inc.  
14 Address: 2300 Clayton Road, Suite 1200  
15 Concord, CA 94520  
16 Telephone: (925) 682-6976

10 By: \_\_\_\_\_  
11 Name: Valerie J. Barone  
12 Title: City Manager  
13 Company: City of Concord  
14 Address: 1950 Parkside Drive  
15 Concord, CA 94519  
16 Telephone: (925) 671-3150

17 APPROVED AS TO FORM:

17 ATTEST:

18 \_\_\_\_\_  
19 City Attorney

18 \_\_\_\_\_  
19 City Clerk

20 FINANCE DIRECTOR'S CERTIFICATION:

21 Concord, California

22 Date: \_\_\_\_\_, 2016

23 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
24 DURING THE CURRENT FISCAL YEAR 16/17 TO PAY THE ANTICIPATED  
25 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

26 THE SUM OF **\$80,000**. Account Code \_\_\_\_\_.

27 \_\_\_\_\_  
28 Finance Director's Signature



### **Task 1 – Record of Survey Review**

During initial research, it would found that Hunsaker and Associates filed a Record of Survey (RoS) in Contra Costa County. A brief review of this map shows substantial information.

A 'desk review' of the map is being proposed. We propose that 16 hours of Senior Land Surveyor and 16 hours of a Survey Technician be allocated to this task.

The RoS will be compared to the provided title report. We will compare the boundary shown on the RoS with the metes and bounds description in the title report to confirm that they represent the same property. Since all subsequent work will be based on the RoS, it is important to understand the US Government does own all property that will be subsequently described and disposed of.

No field surveys will be done related to this task.

#### **Task 1 Deliverables**

- Report discussing the boundary of the parcel as shown on the RoS compared to the title report, and if any easements from the title report are missing

### **Task 2 – Review Canal Information**

Another 'desk study' will be conducted regarding the canals across the property. The RoS shows a discrepancy with the location of the canals. We propose that 24 hours of Senior Land Surveyor and 16 hours of a Survey Technician be allocated to this task.

The goal would be to develop a clearer understanding of the history of the canals by reading the original deeds and confirm that there are no other rights or easements associated with the canals that may impact the remaining properties. We will prepare a written report of our findings, and participate in meetings to facilitate understanding by others.

No field surveys will be done related to this task.

#### **Task 2 Deliverables**

- Report of findings regarding canals
- Participating in calls and meetings as requested

### **Task 3 – Legal Descriptions to Support Transfers**

Towill will prepare multiple legal descriptions to support the first EDC (Economic Development Conveyance) Transfer Parcel to the City and other property transfers. Attachment 2 highlights these areas. These include:

- The Economic Development Conveyance Parcel to the City of Concord (12 distinct areas)
- The Public Benefit Conveyance for the Fire/Police site (1 distinct area)
- The Public Benefit Conveyance for the East Bay Regional Park site (7 distinct areas)
- The areas to be excluded from said First EDC Transfer Parcel (14 distinct areas)

Prior to preparing any legal description, Towill will conduct a final check of the existing RoS. The map will be independently calculated and up to 4 field days of a two-person survey crew will check the monuments shown on said RoS, confirming their positions. Once checked, the RoS will be the basis for all of the legal descriptions we prepare for this project.

The limits of the areas of interest will be provided to Towill by ARUP or the City of Concord. It is assumed that these will be on the same coordinate system as the RoS and the existing aerial mapping, and that no additional field work will be needed to define the limits of these areas.

#### **Task 3 Deliverables**

- Plat and Legal Description for areas of interest
- CAD file with linework defining the final limits of these areas

*Attachment 1*



**NORTHERN CALIFORNIA SURVEY SERVICES FEE SCHEDULE**  
*Effective January 1, 2016*

<u>Labor Description</u>	<u>Hourly Rate</u>
Principal Land Surveyor	\$235.00
Senior Project Manager / Senior Land Surveyor	\$195.00
Survey Project Manager	\$185.00
Project Surveyor	\$155.00
Associate Surveyor	\$140.00
Survey Technician (Office)	\$115.00
CADD Technician	\$ 95.00
Project Coordinator	\$ 90.00
Project Assistant	\$ 75.00

***Field Survey Rates by Crew Composition***

2-Person Survey Crew (1 Party Chief, 1 Chain Person)	\$236.00
1-Person Survey Crew (1 Party Chief)	\$147.00

***Prevailing Wage Rates by Field Survey Personnel Classifications***

Party Chief	\$127.00
Instrument Person	\$115.00
Chain Person	\$109.00
Apprentice	\$ 95.00

**Notes:**

- Field survey personnel and crews are billed at a minimum of 8 hours per day only.
- Field survey crew rates are inclusive of the survey vehicle, vehicle mileage up to 50 miles from the crew's home office, conventional and GPS survey equipment, and standard safety equipment.

**SPECIAL LABOR RATES**

<u>Labor Description</u>	<u>Hourly Rate</u>
Hazmat Crew Supplement	Field Survey Crew or Personnel Rate plus \$10.00 per Person per Hour
Night Shift Work	Field Survey Crew or Personnel Rate plus 12.5% Premium per Hour

**AUTHORIZED OVERTIME LABOR RATES**

<u>Labor Description</u>	<u>Hourly Rate</u>
Saturdays and in Excess of 8 hours on Weekdays	1.5 times Regular Rate
Sundays and Holidays	2.0 times Regular Rate

**EQUIPMENT AND OTHER DIRECT COSTS**

<u>Equipment Description</u>	<u>Rate</u>
Terrestrial Laser Scanner	Quote Provided per Project

Client shall pay the costs, plus 10%, for any applicable governmental fees, title company charges, subconsultant fees, outside vendor costs, reproduction costs, vehicle mileage (except as noted above), travel related costs, rental vehicles and boats, rental and specialty equipment, consumable materials, digital delivery media, and delivery or messenger services incurred on Client's behalf.



Attachment 2

**Concord Reuse Project  
Navy Transfer EDC/PBC  
GIS Boundaries\*  
July 25, 2016**

**EDC/PBC Ultimate Boundaries  
(7/2016)**

- PBC - EBRPD - 2,294 acres
- EDC - 1,303 acres
- PBC - County - 78 acres

**Parcels to be Transferred  
at a Later Date**

- Excluded from First EDC Transfer Parcel - 1,073 acres
- Excluded from First PBC-EBRPD Transfer Parcel - 233 acres

①.. PORTION OF EDC

Ⓐ.. PORTION OF PBC FOR EBRPD

ⒶⒶ.. PORTION OF PBC FOR COUNTY

\* The boundaries shown on this map are based on mapping in geographic information systems (GIS). Prior to transfer a legal survey will be prepared.

\*\* BART property included in planning for future development. The land belongs to BART and will not be transferred, so is not called out as part of the EDC or PBC properties.

ⒶⒶ EXCLUDED PARCELS



Map Date: 7/25/2016

