



# City of Rialto

## Legislation Details (With Text)

**File #:** 22-721      **Version:** 1      **Name:**  
**Type:** Agreement      **Status:** Adopted  
**File created:** 7/28/2022      **In control:** City Council/Rialto Utility Authority  
**On agenda:** 8/9/2022      **Final action:** 8/9/2022  
**Title:** Request City Council/Rialto Utility Authority Board to (1) Pursuant to Section 2.48.290 (Special Expertise Procurement) of the Rialto Municipal Code, Approve a Professional Services Agreement with ARUP North America, Ltd. in the Amount of \$120,830 for Preparation of 2019-2021 Triennial Review of the Concession Agreement, and (2) Authorize the City Manager to Execute All Related Documents.  
(ACTION)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment 1 - Schedule A-10 of Concession Agreement.pdf, 2. Attachment 2 ARUP PSA 20220729 Vers 1.pdf, 3. Attachment 3 Form Disclosures Required by Persons or Entities Contracting\_Arup 1 Aug 2022.pdf

Date	Ver.	Action By	Action	Result
8/9/2022	1	City Council		

For City Council and Rialto Utility Authority Meeting [August 9, 2022]

**TO:** Honorable Mayor and City Council

**APPROVAL:** Marcus Fuller, City Manager

**FROM:** Thomas J. Crowley, P.E., Utilities Manager

Request City Council/Rialto Utility Authority Board to (1) Pursuant to Section 2.48.290 (Special Expertise Procurement) of the Rialto Municipal Code, Approve a Professional Services Agreement with ARUP North America, Ltd. in the Amount of \$120,830 for Preparation of 2019-2021 Triennial Review of the Concession Agreement, and (2) Authorize the City Manager to Execute All Related Documents.  
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### **BACKGROUND:**

As we enter the 10th year of the Concession Agreement (CA), the CA calls for triennial reviews at 3-year intervals during the life of the agreement to be funded by the Rialto Utility Authority (RUA). The reviews are performed by an independent third-party provider. The specific language in the concession governing the triennial review reads as follows:

*Commencing upon the third (3rd) anniversary of the Effective Date, and every third (3rd) year thereafter during the Term, the Authority shall perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Wastewater [and Water] Facilities, including testing of equipment to determine its physical and operational conditions, and inspection of*

*the general status of repairs of all equipment and structures, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Such inspection and review shall be performed by or on behalf of the Authority, at the Authority's expense, and shall take place at such time as the Authority shall determine upon three (3) months' written notice to the Concessionaire. The principal purpose of the inspection and review shall be to permit the Authority to ascertain on a comprehensive and focused basis the extent to which the Maintenance, Repairs and Replacements performed with respect to the Wastewater Facility are in accordance with this Agreement.*

Previous reviews were performed by the City's independent consultant, Stephen Dopudja, however, Mr. Dopudja's current firm (Dopudja & Wells Consulting) lacks the capacity to undertake the triennial review at this time. Staff recommends that the triennial review be performed by ARUP North America, Ltd. (ARUP). ARUP serves as the independent engineer retained by the investors financing the Concession Agreement (CA), and evaluate the Concessionaire's performance under the terms and conditions of the CA. On that basis ARUP is intimately familiar with all aspects of the City's performance requirements under the CA related to the water and wastewater utilities, customer billing and collections, and customer service assets, and other CA activities and responsibilities.

The City's Purchasing Ordinance includes provisions that allow for certain exceptions to competitive solicitations and bidding. In this case, Section 2.48.290 (Special Expertise Procurement) allows for an exception that applies. Section 2.48.290 states:

**2.48.290 - Special expertise procurement.**

*A contract may be awarded without competition when it is determined by the awarding authority that an unusual or unique situation exists, in that due to experience and expertise demonstrated in prior contracts with the city, or experience or expertise with similarly described contracts with other public agencies, a particular contractor is uniquely qualified for a particular procurement, that makes the application of this chapter contrary to the public interest. Any special expertise procurement shall be made with such competition as is practicable under the circumstances.*

In addition, Stephen Dopudja has continued to coordinate with ARUP on behalf of the City with regard to the services ARUP is required to perform in its independent engineering reviews for the investors, and will provide oversight for the City, evaluating the triennial review reports prepared by ARUP to ensure they are fair, impartial and unbiased.

**ANALYSIS/DISCUSSION**

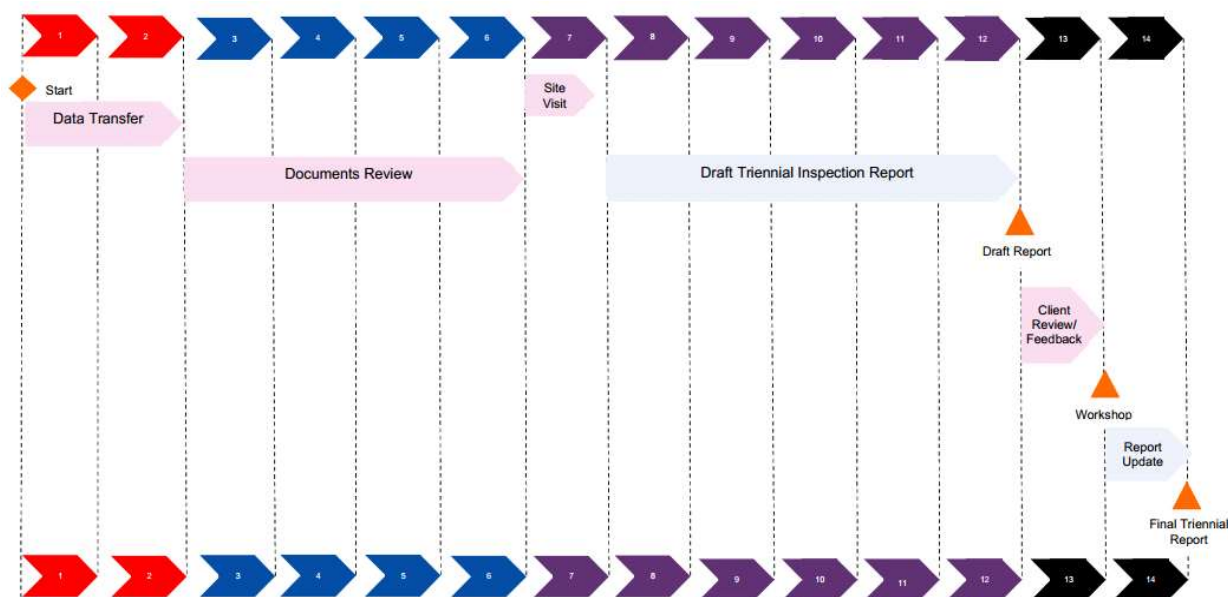
ARUP's proposal outlines a 14-week process which includes a full-scale inspection of the assets and provides two copies of the final report to the City in conjunction with a list and description of deficiencies for water, wastewater and customer service assets and activities.

After two weeks of data transfer/collection, the assignment will include a 4-week desktop document review, and one (1) site visit to the Project Site. ARUP will issue draft reports five (5) weeks after the site visit and upon incorporating the feedback, ARUP will issue Final Triennial Inspection Reports for water, wastewater, customer service and management activities for the Concession Agreement within 2 weeks. A workshop will be scheduled to go over the feedbacks.

The scope and fee comprise of the following assumptions:

- The documents, reports, verbal communications, and operating records for the three years ending August 2022 provided to us are accurately represented for the performance of the assets.
- The detailed cost and overall financial performance of the assets will not be reviewed.
- ARUP will only observe the testing of equipment and structure and any associated cost for testing of equipment or structure shall be borne by the Concessionaire.
- ARUP will not determine the validity and enforceability of any contract, agreement, rule, or regulation applicable to the assets and their operation. It is assumed the Operator fulfils with the terms specified in the contracts, agreements, rules, and regulations.
- It is assumed the Concessionaire executes all pre-approved capital projects described in Schedule A-10 under Article VI of the CA. Schedule A-10 of the Concession Agreement is included as **Attachment 1**.

Below is a schedule of the work to be completed. It is anticipated that it will take approximately 14 weeks to complete:



The proposed Professional Services Agreement (PSA) and Disclosure Statement are included as **Attachments 2** and **3**, respectively. The triennial review is anticipated to be completed by January 2023.

## **ENVIRONMENTAL IMPACT**

This report is not a “Project” as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. According to Section 15378(b), a Project does not include: (5)

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

### **GENERAL PLAN CONSISTENCY**

This action is consistent with Guiding Principle 3 in the General Plan:

*Our City government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.*

Approval of this action also complies with the City of Rialto General Plan Goal and Policies:

**Goal 3-8: Promote affordable and quality water service capable of adequately meeting normal and emergency water demands to all areas in Rialto.**

Policy 3-8.7: Develop new sources of water supply, including drilling additional water wells that are free from perchlorate, and expanding recycling water opportunities.

Policy 3-8.8: Work with municipal water districts to explore new water conservation opportunities within Rialto.

Policy 3-8.9: Conserve potable water and utilize reclaimed water for meeting landscaping and irrigation demands as much as possible.

### **LEGAL REVIEW**

The City Attorney has reviewed and recommends approval of the staff report and Professional Services Agreement.

### **FINANCIAL IMPACT:**

#### **Operating Budget Impact**

The total cost of the review is \$120,830 evenly distributed between the water and wastewater utilities impacting account 680-500-7860-2011 and 680-500-7960-2011. The last Triannual review conducted by West Yost in FY 20/21 was budgeted at \$90,000.

#### **Capital Improvement Budget Impact**

The proposed action will not impact the Capital Improvement Budget.

#### **Licensing**

Prior to execution of the Professional Service Agreement, ARUP shall submit a business license application and pay a Business License tax at the rate of \$179.00 in addition to Administration and State fees.

### **RECOMMENDATION:**

Staff requests for the City Council/Rialto Utility Authority Board to:

- (1) Pursuant to Section 2.48.290 (Special Expertise Procurement) of the Rialto Municipal Code, approve a Professional Services Agreement with ARUP North America, Ltd. in the amount of \$120,830 for Preparation of 2019-2021 Triennial Review of the Concession Agreement, and
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