



## Staff Report

**Date:** July 12, 2016

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

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

**Prepared by:** Guy S. Bjerke - Director, Community Reuse Planning  
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(925) 671-3076

**Subject:** **Considering approval of an Agreement for Legal Professional Services with Garrity and Knisely regarding property transfer and remediation for the Community Reuse Project at the former Concord Naval Weapons Station (CNWS) in an amount not to exceed \$130,000 (Funding will be provided by the Master Developer or 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 Legal Professional Services with Garrity and Knisely to authorize the expenditure of up to \$130,000. The term of this agreement is July 1, 2016 to June 30, 2017.

Garrity and Knisely's scope of work will provide continued support of the Community Reuse Project with a focus on remediation issues and disposition transfer documents.

Funding will be provided by the Master Developer or a loan to the Local Reuse Authority (LRA) from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget. The loan will be repaid, with interest, from land sales or leases within the former Concord Naval Weapons Station (CNWS). Total funding since 2007 including this agreement is \$730,000. Previous funding support came from the Concord Redevelopment Agency (\$250,000) and a previous loan (\$350,000) from the General Fund.

### Recommended Action

Staff recommends the Local Reuse Authority approve an agreement for Legal Professional Services with Garrity and Knisely in the amount of \$130,000 and authorize

the City Attorney to execute the agreement on behalf of the City, subject to approval of the City Attorney.

### **Background**

David Knisely of the law firm Garrity and Knisely has provided specialized legal and advisory services relative to the closure and reuse of the Concord Naval Weapons Station (CNWS) since the fall of 2004. His support and guidance to the LRA on Base Realignment and Closure (BRAC) related policy has been instrumental in achieving an adopted reuse plan and developing successful solutions to various issues associated with the homeless accommodation, remediation clean up levels and property disposition.

### **Analysis**

This agreement will continue David Knisely's services related to the full range of LRA BRAC activities. Among these activities will be Navy and environmental regulatory meetings, federal disposition strategies, and environmental remediation processing.

Summary tasking is shown below:

- Assist the City staff and Council in communications with the Department of Navy (DON) and the Department of Defense (DOD).
- Provide City staff support in property disposition and environmental cleanup review processes under base closure law and environmental cleanup laws in anticipation of the initiation of disposition and environmental cleanup negotiations with the DON, Environmental Protection Agency (EPA) and the California Department of Toxic Substances Control (DTSC) and the state Regional Water Quality Control Board (RWQCB).
- Assist in the maintenance of relationships and communications with Congressional Delegation staff, including meetings and the provision of background memos and information to Congressional Delegation staff.
- Provide City staff and Council with detailed analysis of property disposition methods, including discussion of advantages and disadvantages of each method, and guidance as to how to structure value negotiations with the Navy.
- Coordinate with Navy/Regulatory Agencies on FOST 1 and Future FOST's.
- Support EDC negotiations with the Navy.
- Coordinate with City Team on DDA, Master Developer/Navy value negotiations.
- Support document preparation to allow for initial property transfers.
- Support "Early Transfer" strategies and negotiations with the Navy.

**Financial Impact**

The City Attorney and LRA Executive Director are requesting the LRA approve an agreement for Legal Professional Services with Garrity and Knisely in an amount not to exceed \$130,000, with additional authority for the City Attorney to approve amendments for additional compensation not to exceed \$20,000, during the twelve (12) month performance period.

Funding will be provided by the Master Developer or through a loan to the LRA from the General Fund that was approved and appropriated as part of the adoption of the FY 2016/2017 budget, depending on the task. The loan will be repaid, with interest, from land sales and leases within the former CNWS. Total funding since 2007 including this agreement is \$730,000. Previous funding support came from the Concord Redevelopment Agency (\$250,000) and a previous loan (\$350,000) from the General Fund.

**Public Contact**

The City Council Agenda was posted.

**Attachments**

1. Agreement with Garrity and Knisely



1 methods, including discussion of advantages and disadvantages of each  
2 method, and guidance as to how to structure value negotiations with the  
3 Navy.

- 4 5) Coordinate with Navy/Regulatory Agencies on FOST 1 and Future FOST's.
- 5 6) Support EDC negotiations with the Navy.
- 6 7) Coordinate with City Team on DDA, Master Developer/Navy value  
7 negotiations.
- 8 8) Support document preparation to allow for initial property transfers.
- 9 9) Support "Early Transfer" strategies and negotiations with the Navy.

10 **B.** CONSULTANT shall obtain prior CITY approval for the retention of any  
11 subconsultants and/or expert witnesses.

12 **2. Term.** The term of this Agreement shall be from the EFFECTIVE DATE, set forth  
13 above until June 30, 2017 or unless otherwise terminated by either party in accordance with the terms  
14 of this Agreement, subject to available funds.

15 **3. Consideration.** As full consideration for the work to be performed by  
16 CONSULTANT, CITY shall pay CONSULTANT based upon the hourly rates for its attorney(s)  
17 assigned to assist CITY to be paid upon submission and approval of invoices. The hourly rates are as  
18 follows:

19 Partner - \$210 per hour

20 Associates/Senior Counsel/Junior Partners - \$150 per hour

21 CONSULTANT will bill time monthly on a straight hourly basis. CONSULTANT charges  
22 clients for actual costs for travel and other extraordinary expenses such as courier services and express  
23 mail, but does not separately charge for long-distance telephone calls, copying, postage, etc., adding  
24 instead for these itemized charges a four percent (4%) administrative charge to the monthly billing.

25 For each matter or case for which CONSULTANT provides services during the period covered  
26 in each monthly billing, invoices shall include a separate cover letter identifying the total amount  
27 billed for each matter or case. As these cover letters will be subject to disclosure through the  
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1 California Public Records Act (California Government Code §§ 6250, *et seq.*), CONSULTANT shall  
2 ensure that the case or matter descriptions used therein do not reflect CONSULTANT impressions,  
3 conclusions, opinions, or legal research or strategy.

4 The total amount paid to CONSULTANT pursuant to this Agreement shall not exceed One  
5 Hundred Thirty Thousand Dollars (\$130,000) for fiscal year 2016/2017, without CITY's express  
6 written authorization. If requested by CITY, the "not to exceed" amount described in this Paragraph 3  
7 may be increased upon execution of an amendment setting forth the new "not to exceed" amount, all  
8 in accordance with Paragraph 14 of this Agreement.

9 **4. Records.** CONSULTANT shall maintain accounting records and other evidence  
10 pertaining to the cost incurred and shall make the records available to authorized representatives of  
11 CITY or other governmental agency or district authorized by CITY to inspect such records. These  
12 records shall be available at all reasonable times during the Agreement period and for four (4) years  
13 from the date of final payment for work performed hereunder.

14 **5. Key Personnel.** All of the services required hereunder shall be performed by  
15 CONSULTANT or under his/her/its supervision, and all personnel engaged in the work shall be fully  
16 qualified to perform such services. Any change in the key personnel shall be subject to the written  
17 approval of CITY. The following are the key personnel for the subject of this Agreement:

18 David Knisely, Esq.

19 **6. CITY-Authorized Representative.** An authorized representative shall represent  
20 CITY in all matters pertaining to the services rendered by CONSULTANT under this Agreement. All  
21 documents and requests for information shall be submitted through this representative and CITY will  
22 cooperate with CONSULTANT in all matters relating to this Agreement in such manner as will result  
23 in the performance of such work without delay. The CITY-authorized representative is the City  
24 Attorney.

25 **7. Termination.**

26 **A.** Either party may terminate this Agreement at any time, without cause, upon  
27 seven (7) days notice of discontinuance and termination of said Agreement given in writing. Such  
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1 notice shall be sufficient and complete when same is deposited in the United States mail, first class  
2 postage prepaid, to the address shown in the paragraph herein concerning notice.

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4 **B.** CITY may at any time, at its discretion, abandon or suspend any portion of  
5 work to be done under the terms of this Agreement.

6 **C.** In the event of CITY's abandonment or suspension of CONSULTANT's work  
7 under this Agreement, or in the event of the termination of this Agreement, CONSULTANT shall stop  
8 work at the stage directed by CITY and shall deliver to CITY all reports, pleadings, discovery, and file  
9 materials relating to the Savage Arbitration. At the discretion of CITY, CONSULTANT shall also  
10 cancel all orders for goods or services connected with this Agreement which have not been delivered  
11 or received,

12 **8. Equal Opportunity Assurance.** During the performance of this Agreement,  
13 CONSULTANT agrees as follows:

14 **A.** CONSULTANT will not discriminate against any employee or applicant for  
15 employment because of race, sex, creed, physical handicap, color, sexual orientation, or national  
16 origin. CONSULTANT will take affirmative action to ensure that employees are treated equally  
17 without regard to race, gender, creed, physical handicap(s), color, sexual orientation, or national  
18 origin. Such action shall include but not be limited to the following: employment, upgrading,  
19 demotion, or transfer; recruitment or recruitment advertising; layoffs and terminations, rates of pay or  
20 other forms of compensation; and selection for training, including apprenticeship. CONSULTANT  
21 agrees to post, in conspicuous places, available to employees and applicants for employment, notices  
22 setting forth the provisions of this nondiscrimination clause.

23 **B.** In the event of CONSULTANT's noncompliance with the nondiscrimination  
24 clause of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in  
25 part.

26 **9. Insurance.** CONSULTANT shall, at its own expense, procure and maintain in full  
27 force at all times during the term of this Agreement the following insurance:

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

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

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

14           **D.     Compliance with State Workers' Compensation Requirements.**  
15 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation  
16 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all  
17 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being  
18 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall  
19 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and  
20 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision  
21 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

22           **E.     Other Insurance Provisions.** The policies are to contain, or be endorsed to  
23 contain the following provisions:

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

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

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

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

14 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with  
15 certificates of insurance and the original endorsements effecting coverage required by this Agreement.  
16 The certificates and endorsements for each insurance policy are to be signed by a person authorized by  
17 that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an  
18 insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and  
19 shall be delivered to CITY at the time of the execution of this Agreement or before work commences.  
20 Such policies and certificates shall be in a form approved by the City Attorney. CITY reserves the  
21 right to require complete certified copies of all required insurance policies at any time.

22 **10. Indemnification.** CONSULTANT shall indemnify, defend, and hold harmless CITY  
23 against and from any and all claims or suits for damages or injury arising from CONSULTANT'S  
24 negligence, errors or omissions in the performance of this Agreement, and shall further indemnify,  
25 defend, and hold harmless CITY against and from any and all claims or suits arising from any breach  
26 or default of any performance of any obligation of CONSULTANT hereunder, and against and formal  
27 costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought  
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1 within the scope of this indemnification.

2       **11. Independent Contractor.** CONSULTANT is an independent contractor retained by  
3 CITY to perform the work described herein. All personnel employed by CONSULTANT, including  
4 subcontractors and personnel of said subcontractors approved by CITY, are not and shall not be  
5 deemed to be employees of CITY. CONSULTANT and approved subcontractors shall comply with  
6 all State and Federal laws pertaining to employment and compensation of their employees or agents,  
7 including the provision of Workers' Compensation. CITY shall not, under any circumstances, be  
8 liable to CONSULTANT or any person or persons acting for him/her/it for any death, injury, or  
9 property destruction or damage received or claimed relating to or stemming from the activities  
10 undertaken pursuant to this Agreement.

11       **12. Notice.** All notices required herein shall be sent via First Class U.S. Mail with postage  
12 prepaid thereon to the parties as follows:

13       To CITY:                               Susanne Meyer Brown, Esq.  
  City Attorney  
14    City of Concord  
  1950 Parkside Drive MS/08  
15    Concord, CA 94519

16       To CONSULTANT:                    David Knisely, Esq.  
17    Garrity and Knisely, Inc.  
  21 Merchants Row, Suite 3B  
18    Boston, MA 02109

19       Notices shall be deemed effectively served upon deposit in the United States Mail.

20       **13. Assignment.** CITY is entering into this Agreement in consideration of the rendition  
21 of the services required herein by CONSULTANT. CONSULTANT shall not assign any of the  
22 duties, responsibilities, or obligations of this Agreement to any other firm, company, entity, or  
23 individual, except with the express written consent of CITY. Nothing set forth in this paragraph shall  
24 preclude CONSULTANT from assigning any of the monies due and owing to him/her/it from CITY.

25       **14. Amendment.** This Agreement may be amended, modified, or changed by the parties  
26 provided that said amendment, modification, or change is in writing and approved by both parties.

27       **15. Entire Agreement.** This Agreement contains the entire agreement between the  
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1 parties hereto. No promise, representation, warranty, or covenant not included in the Agreement has  
2 been or is relied upon by any party hereto.

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7 **IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year  
8 written above.

9 **CONSULTANT**

10  
11 By: \_\_\_\_\_  
12 Name: \_\_\_\_\_  
13 Its: Garrity and Knisely

14 **CITY OF CONCORD**

15  
16 By: \_\_\_\_\_  
17 Susanne Meyer Brown, City Attorney

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