



City Attorney's Office

# AGENDA REPORT

<b>DATE:</b>	July 19, 2022
<b>TO:</b>	Mayor Butt and Members of the City Council
<b>FROM:</b>	Dave Aleshire, Interim City Attorney
<b>Subject:</b>	Amendment of the Downey Brand Agreement For Guidiville v. United States
<b>FINANCIAL IMPACT:</b>	This amendment will add \$120,000, for a total amount not to exceed \$160,000, for Point Molate/Guidiville work. The work will be paid from Risk Management/ General Liability account 50182316-400554
<b>PREVIOUS COUNCIL ACTION:</b>	The original agreement was approved by the City Council on May 3, 2022.
<b>STATEMENT OF THE ISSUE:</b>	To ensure the City has appropriate legal representation relating to the Point Molate litigation Guidiville v. United States litigation, the City Attorney's Office requests approval of a legal services agreement (LSA) amendment.
<b>RECOMMENDED ACTION:</b>	APPROVE a first amendment with Downey Brand in the amount of \$120,000, for a not to exceed total amount of \$160,000, for the Point Molate/Guidiville litigation – City Attorney's Office (Dave Aleshire 510-620-6509).

## DISCUSSION:

To ensure the City continues to have appropriate and adequate representation in litigation pending against the City related to Point Molate, the Interim City Attorney requests approval of an amendment to the legal services agreement for the Guidiville

Rancheria v. United States. The proposed amounts will allow the City to monitor and maintain representation in the above-referenced litigation, as well as to respond in a timely manner to the claims and matters that may arise. Depending on how these matters proceed, it may become necessary to augment the contract amount in the future.

To promote redevelopment of the former Point Molate Naval Fuel Depot, the City in 2004 entered into a Land Disposition Agreement (“LDA”) with Upstream Point Molate LLC (“Upstream”) and Guidiville Rancheria Tribe (“Guidiville”) for the purposes of pursuing a possible casino project. The City prepared and certified an Environmental Impact Report (“EIR”) for the proposed redevelopment. In 2011, the City formally ceased consideration of the proposed casino project.

In 2012, Upstream and Guidiville commenced litigation against the City, alleging a breach of the LDA. After years of litigation, the City, Upstream, and Guidiville entered a settlement that was memorialized in a form of judgment entered by the U.S. District Court on April 12, 2018. The District Court entered an Amended Judgment on November 21, 2019.

The Amended Judgment contains a number of commitments by the City, Upstream, and Guidiville, including obligations to market portions of the site designated as “Development Areas” for sale to one or more qualified developers. The Amended Judgment also ordered the Parties to prepare and submit a joint report to the District Court every 120 days regarding efforts to comply with the Amended Judgment. The joint reports were suspended by the District Court when the City approved the Point Molate Mixed-Use Development Project in September 2020.

In response to requests for emergency relief against the City related to its defense of a parallel lawsuit involving Point Molate (SPRAWLDEF v. City of Richmond), the District Court in November 2021 ordered the Parties to reinstate the reporting requirement of the Amended Judgment, but on a forty-five (45) day basis. Downey Brand will serve as counsel of record for the City in this re-activated case, with responsibility primarily for preparing the Parties’ joint reports, managing the case, making appearances (if necessary), coordinating among the Parties, assisting with settlement negotiations, and providing advice to and representation of the Richmond City Attorney’s Office in the proceedings.

Downey Brand’s litigation fees and expenses incurred in Guidiville v. United States are not reimbursable and will be paid by the City’s General Fund.

#### **DOCUMENTS ATTACHED:**

Attachment 1 – Original Contract

Attachment 2 – Amendment to the Contract