

**FIRST AMENDMENT TO AGREEMENT FOR LEGAL SERVICES
BETWEEN
THE CITY OF RICHMOND
AND
DOWNEY BRAND LLP**

This First Amendment to the Agreement for Legal Services between the **CITY OF RICHMOND** (“City”) and **DOWNEY BRAND LLP** (“Special Counsel”) (the “First Amendment”) is entered into as of **JUNE 1, 2022**, by and between the City and Special Counsel with reference to the following facts:

RECITALS

WHEREAS, the City and Special Counsel on May 3, 2022, entered into that certain Legal Services Agreement (“Original Agreement”) for representation of the City and City-related entities in the *Guidiville v. United States* litigation matter in an amount not to exceed \$60,000; and

WHEREAS, the City now desires for Special Counsel to continue its representation of the City, to amend the scope of representation, and to increase the compensation limit by One Hundred and Twenty Thousand Dollars (\$120,000); and

WHEREAS, the City and Special Counsel desire to amend the Original Agreement pursuant to this First Amendment.

NOW, THEREFORE, in consideration of the recitals hereof, and other mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Special Counsel agree as follows:

1. Amendment. **Exhibit A** of the Original Agreement, “Scope of Work and Schedule of Fees & Charges,” is hereby amended to read as shown in Attachment 1 to this First Amendment.
2. Effect of First Amendment. Except as provided in this First Amendment, all other terms of the Original Agreement shall remain in full force and effect.
3. Counterparts. This First Amendment may be executed in counterparts each of which shall be an original and all of which shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the City and Special Counsel have caused this First Amendment to be effective as of the last date written below.

CITY OF RICHMOND

DOWNEY BRAND LLP

By _____
Thomas K. Butt, Mayor

By _____
Christian Marsh, Partner

Date: _____

Date: _____

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
Interim City Attorney

Attachment 1

SCOPE OF WORK AND SCHEDULE OF FEES & CHARGES

Scope of work:

The City Council in 2004 entered into a Land Disposition Agreement (“LDA”) with Upstream and Guidiville, granting them certain rights to acquire land and seek to develop a casino project at the former Point Molate Navy Fuel Depot. The City in 2011 ceased consideration of the proposed casino project. In 2012, Upstream and Guidiville commenced litigation against the City in the U.S. District Court, Northern District, alleging a breach of the LDA (*Guidiville v. United States*). The City, Upstream, and Guidiville entered a settlement that was memorialized in a form of judgment entered by the Court on April 12, 2018. The Court entered an Amended Judgment on November 21, 2019 (“Amended Judgment”).

The Amended Judgment ordered the Parties to prepare and submit a joint report to the Court every 120 days regarding efforts to comply with the Amended Judgment. The joint reports were suspended by the 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 parallel lawsuits involving Point Molate, the 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, coordinating among the Parties, assisting with settlement negotiations, and providing advice to and representation of the Richmond City Attorney’s Office in the proceedings.

Further, the City Council in September 2020 entered into a Disposition and Development Agreement (“DDA”) and Development Agreement (“DA”) with Winehaven Legacy, LLC (“Winehaven”) for the sale and development of a mixed-used development project at Point Molate. Winehaven filed a lawsuit on May 27, 2022 in Contra Costa County Superior Court seeking to enforce the DDA and DA against the City. While the City Attorney is not proposing to engage Downey Brand as counsel of record in the new *Winehaven Legacy, LLC v. City of Richmond* matter, the City Attorney’s Office is asking that Downey Brand be available to serve in a supporting role given its experience and knowledge of the Project and underlying claims.

Downey Brand’s litigation fees and expenses incurred in *Guidiville v. United States* and *Winehaven Legacy, LLC v. City of Richmond* are not reimbursable, and shall be paid by the City’s General Fund.

City’s Contact Attorney: Dave Aleshire, Interim City Attorney
Heather McLaughlin, Interim Sr. Assistant City Attorney

Schedule of Fees & Charges:

ATTORNEY HOURLY RATES

Christian Marsh	\$410/hour
Kathryn Oehlschlager	\$410/hour
Hina Gupta	\$365/hour
Megan Unger	\$335/hour
Breana Inoshita	\$320/hour

PARALEGAL HOURLY RATES

Jon Shackelford	\$225/hour
Jessica Wise	\$225/hour

Compensation:

Only those costs and expenses set forth in Section III of Exhibit "B", entitled "Reimbursements" shall be paid to Special Counsel.

Total compensation for legal services and reimbursements shall be charged in accordance with Exhibits "A" and "B" and shall not exceed the sum of One Hundred and Eighty Thousand Dollars (\$180,000) for attorneys' fees.