

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

This Fifth Amendment to the Agreement for Legal Services between the **CITY OF RICHMOND** (“City”) and **DOWNEY BRAND LLP** (“Special Counsel”) (the “Fifth Amendment”) is entered into as of **June 27, 2023**, by and between the City and Special Counsel with reference to the following facts:

**RECITALS**

WHEREAS, the City and Special Counsel entered into that certain Legal Services Agreement (“Original Agreement”) for \$250,000 representation of the City and City-related entities; and

WHEREAS, the Original Agreement was amended on April 1, 2021, for \$500,000 on November 2, 2021, for \$200,000, May 3, 2022, for \$60,000 and September 13, 2022 for \$40,000; 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 Seventy-Five Thousand Dollars (\$75,000); and

WHEREAS, the City and Special Counsel desire to amend the Original Agreement pursuant to this Fifth 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 Fifth Amendment.
2. Effect of Fifth Amendment. Except as provided in this Fifth Amendment, all other terms of the Original Agreement shall remain in full force and effect.
3. Counterparts. This Fifth 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 Fifth Amendment to be effective as of the last date written below.

**CITY OF RICHMOND**

**DOWNEY BRAND LLP**

By \_\_\_\_\_  
Mayor/City Manager

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
City Attorney

DocuSigned by:  
By Christian Marsh  
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Christian Marsh, Partner  
Date: 6/30/2023

## Attachment 1

### **SCOPE OF WORK AND SCHEDULE OF FEES & CHARGES**

#### **Scope of work:**

The City Council of the City of Richmond on September 8, 2020, certified a Subsequent Environmental Impact Report (SEIR) and adopted a resolution approving land use entitlements for the Point Molate Mixed-Use Development Project. Those approvals were the subject of two lawsuits in the form of peremptory writs of mandate filed in the Contra Costa County Superior Court on or about October 9, 2020, including *Point Molate Alliance, et al., v. City of Richmond* and *North Coast Rivers Alliance, et al. v. City of Richmond*. The lawsuits named the City as respondent and Winehaven Legacy, LLC as real party in interest, and asserted causes of action under the California Environmental Quality Act (CEQA), California Planning and Zoning Law, California Constitution, and the common law public trust doctrine, as well as other grounds. The trial court entered judgment in the City's favor on March 15, 2022, and Petitioners Point Molate Alliance and North Coast Rivers Alliance filed separate appeals in the First District Court of Appeal. The appeals were subsequently consolidated for purposes of briefing, oral argument, and decision, and are now proceeding as *Point Molate Alliance, et al. v. City of Richmond*, First App. Dist. Case Nos. A164906 and A165758. Briefing commenced in the consolidated appeals on January 2, 2023, with petitioners/appellants narrowing their appeal to certain claims under CEQA, California Planning and Zoning Law, and the California Constitution. The City filed answering briefs on April 4, 2023. Appellants' reply briefs are due on June 14, 2023. We are expecting the Court of Appeal to schedule oral argument in late 2023 or early 2024.

Downey Brand will continue to serve as lead trial and appellate counsel for the City in its defense of these actions, and will have responsibility for case management and coordination among defense counsel, assisting with settlement negotiations, and for providing advice to and representation of the Richmond City Attorney's Office in the proceedings. Downey Brand's litigation fees and expenses remain subject to reimbursement by real party in interest Winehaven Legacy, LLC based on the indemnity provisions and conditions imposed under the entitlements and both the Disposition and Development Agreement ("DDA") and Development Agreement ("DA"). However, because Winehaven failed to close escrow under the DDA and is currently in litigation against the City, the fees and expenses authorized herein may not be recoverable by the City.

As part of its services above, Downey Brand shall provide concise written reports to the City Attorney on a monthly basis, which will address important milestones and efforts in the case. The City Attorney will share the reports with the City Council, and will return to the Council for more substantive reports and to further

augment the contract amount as may be necessary for future phases of the litigation, including further appeals or after remand to the trial court.

*City's Contact Attorney: Dave Aleshire, Interim City Attorney  
Shannon Moore, Chief Assistant City Attorney*

**Schedule of Fees & Charges:**

**ATTORNEY HOURLY RATES**

<b>Christian Marsh</b>	<b>\$410/hour</b>
<b>Kathryn Oehlschlager</b>	<b>\$410/hour</b>
<b>Hina Gupta</b>	<b>\$365/hour</b>
<b>Natalie Kirkish</b>	<b>\$365/hour</b>
<b>Megan Unger</b>	<b>\$335/hour</b>

**PARALEGAL HOURLY RATES**

<b>Jon Shackelford</b>	<b>\$225/hour</b>
<b>Jessica Wise</b>	<b>\$225/hour</b>

**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 Million, One Hundred Twenty Five Thousand Dollars (\$1,125,000) for attorneys' fees.**