

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF RICHMOND**

**Contract No. 4859
Vendor No. 6058**

**AND
DOWNEY BRAND, LLP**

PREAMBLE

This legal services agreement ("Agreement") is made and entered into on this 1ST day of JULY, 2019 (the "Effective Date") by and between the City of Richmond, California, a chartered California municipal corporation ("City"), with its principal place of business located at 450 Civic Center Plaza, Richmond, California 94804 and DOWNEY BRAND, LLP comprised of attorneys licensed to practice law in the State of California ("Special Counsel") with its principal place of business located at, 621 CAPITOL MALL, 18TH FLOOR, SACRAMENTO, CA 95814. Special Counsel may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

The following recitals are as follows:

- A. City desires to secure professional services more fully described in this Agreement; and,
- B. Special Counsel represents that it has the professional qualifications, expertise, necessary licenses and desire to provide legal services of the quality and type, which meet objectives, and requirements of City.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. RETENTION OF FIRM.

- A. City hereby confirms, retains and authorizes Special Counsel to represent City and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of City on an as-needed basis. By this Agreement, City is retaining Special Counsel and not individual members of the Special Counsel. Special Counsel's client is the City, as a public entity, and not any of its individual members, groups of individuals or any other entity.
- B. The Special Counsel shall report to and receive direction from the City Attorney only and not from any other Department Head or City staff.
- C. Special Counsel shall perform such legal services for and on behalf of City under the primary direction of the City Attorney. Special Counsel shall undertake, subject to approval of the City Attorney, additional duties as may be authorized by City from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF SERVICES TO BE PROVIDED.

These services may include, but are not limited to, providing advice and counsel on legal matters affecting City, performing legal research, representing City in judicial proceedings in state and/or federal court or other dispute resolution forums or before administrative agencies, negotiating contracts and drafting contracts, correspondence and other legal documents as may become necessary. These services shall also include the preparation and delivery of status reports to City as specified in paragraph 11 of this Agreement.

3. TERM OF AGREEMENT.

The services of Special Counsel are to commence upon the Effective Date of this Agreement and shall terminate on DECEMBER 31, 2021, unless the parties extend the Agreement in writing. The services shall be undertaken and completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care.

4. ASSIGNMENT OF DUTIES.

It is contemplated that no other attorney will be assigned from Special Counsel other than NICOLE E. GRANQUIST AND MELISSA A. THORME. It is agreed by and between the Parties that should it be desirable for any attorney other than NICOLE E. GRANQUIST AND MELISSA A. THORME to work under this Agreement, such attorney may only be added with the express oral consent of the City Attorney. Should any associate in the Special Counsel be assigned any task under this Agreement that exceeds three (3) billable hours per month, City Attorney should approve the assignment of such associate orally.

5. PUBLIC FUNDING.

Special Counsel and City mutually recognize that Special Counsel's services under this Agreement are being paid for with tax dollars from citizens and taxpayers of the City of Richmond, California, and that, given this fact, a heightened duty of care exists in both Special Counsel and City to ensure that Special Counsel scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying forth the goals of this Agreement. Special Counsel and each of its attorneys pledge themselves to scrupulously observe a duty of reasonableness and cost effective representation in all aspects of this Agreement.

6. PAYMENT FOR SERVICE.

In consideration for Special Counsel's performance of legal services on behalf of City under the terms of this Agreement, and upon review and approval of Special Counsel's bill by the City Attorney, Special Counsel shall be compensated at the preapproved hourly rates and for authorized expenses set forth in the "Scope of Work and Schedule of Fees and Charges" set forth in **Exhibit A**, attached and incorporated by this reference. Fees for services performed by retained consultants, subcontractors, experts or other personnel may be billed to City only if approved in writing by the City Attorney. **Exhibit A** may be amended from time to time by letter agreement duly signed and approved by the City Attorney.

7. BILLING INVOICES.

Special Counsel shall, within fifteen (15) days after the end of each month in which services are performed under this Agreement, submit to the City an itemized bill describing in detail the specific services performed as set forth in this Agreement. Special Counsel shall adhere to the Protocols and Guidelines set forth in **Exhibit B**, attached and incorporated by this reference. The bill shall be submitted to:

City Attorney's Office
City of Richmond
Attn : Bruce Reed Goodmiller, City Attorney
450 Civic Center Plaza, Suite 340
Richmond, CA 94804

8. PROJECT PLAN AND BUDGET AND RESERVES.

Special Counsel shall provide a project plan and budget for any project or case assigned to Special Counsel under this Agreement. Project plans and budgets shall conform to the guidelines set forth in **Exhibit C** (Project Plan and Budget) and **Exhibit D** (Mandatory Case Reporting Policy), when the case is reportable to the City's excess insurance carrier, California Joint Powers Risk Management Authority (CJPRMA). If the case is reportable to CJPRMA, Special Counsel shall provide an initial report notifying them of the claim or lawsuit within 30 days of receipt of the assignment and the estimated exposure. The City Attorney and Risk Manager shall be copied on all correspondence sent to CJPRMA.

9. LITIGATION GUIDELINES.

When litigation is included in the scope of work, litigation guidelines as specified in **Exhibit E** are to be followed.

10. BILLING.

Special Counsel shall scrupulously examine all bills submitted for services rendered

under this Agreement to assure that appropriate billing judgment is employed in billing City for service. Special Counsel shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the City Attorney. Special Counsel agrees it will not bill for time, which is not specifically devoted to the task(s). Special Counsel shall not use legal professionals for secretarial work and under no circumstances shall Special Counsel have lawyers billing for making copies, scheduling appointments or taking care of matters or work that would otherwise be work performed by a law clerk, assistant or secretary.

11. STATUS REPORTS.

Special Counsel shall, every thirty (30) days, submit via electronic mail a written update setting forth a summary of activities performed on behalf of City during the preceding month, the current status of each pending matter, results obtained or expected to be obtained, a summary of invoices for the preceding month and other information relating to the services rendered as City may reasonably request. The update should be emailed to the City Attorney with a copy to the Risk Manager and CJPRMA, if applicable. Please keep the status reports brief and spend no more than one (1) hour billing for your time. Please also attach any referenced filings to your status report.

12. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective immediately upon receipt of written notice of termination; provided, however, that Special Counsel may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of Special Counsel under the Rules of Professional Conduct of the State Bar of California; and provided, that in the event of termination, the amount due Special Counsel for services rendered and costs and expenses incurred prior to termination shall remain due and payable. Special Counsel agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) days of any such termination.

13. CONFLICTS OF INTEREST.

- A. No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.
- B. Special Counsel agrees to secure the informed written consent of the City Attorney before accepting any representation adverse to the City (actual or apparent) during the term of this Agreement, and to forego the representation if the City Attorney, in his or her sole discretion, objects for any reason. This provision is intended to supersede all applicable rules of professional conduct relating to conflict of interest.

14. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

City and Special Counsel bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the City Attorney.

15. AUDITS, RECORDS, AND DOCUMENTATION.

- A. The City and any other federal, State or local governmental agency, and any of their authorized auditors or representatives, including auditors, shall have access to, and the right to audit and reproduce any of Special Counsel's records to the extent the City or such other governmental agency deems necessary to ensure that City is paying only the amounts to which Special Counsel is properly entitled or for other purposes relating to the Agreement. Special Counsel shall assist the City in responding to any requests from the City's auditors, and Special Counsel shall not bill the City for any time spent responding to any such audit requests.
- B. Special Counsel shall maintain complete and accurate records of the services provided to City and expenses incurred on behalf of City. Special Counsel shall maintain and preserve all such records for at least three (3) years after termination of the Agreement or until an audit has been completed and accepted in writing by City. Upon written notice by the City, the Special Counsel shall promptly make all such records available to auditors or other representatives of the City or other governmental agencies.

16. NON-DISCRIMINATION.

- A. As set forth in Chapter 2.28 of Richmond Municipal Code, no discrimination will be made in the employment of any person under this Agreement because of race, religious creed, sex, sexual orientation, national origin or ancestry. Special Counsel agrees to meet all requirements of the Richmond Municipal Code pertaining to nondiscrimination in employment.
- B. If Special Counsel is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it will be in default of this Agreement. Thereupon, City will have the power to cancel or suspend this Agreement, in whole or in part.

17. HOLD HARMLESS/INDEMNIFICATION.

Special Counsel agrees to indemnify, hold harmless, release and defend to the maximum

extent permitted by law, and covenants not to sue, the City, its City Council and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of, any negligent acts, errors or omissions (including, without limitation, professional negligence) of Special Counsel, its employees, representatives, subcontractors, or agents in connection with the performance of this Agreement. This Agreement to indemnify, hold harmless, release and defend includes, but is not limited to, personal injury (including death at any time) and property or other damage (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Special Counsel and its employees or agents, and members of the general public).

18. INSURANCE REQUIREMENTS.

Special Counsel shall maintain in full force and effect the following insurance policies:

- A. Commercial general liability policy (bodily injury and property damage);
- B. Worker's compensation/employer's liability policy;
- C. Business automobile liability insurance policy; and,
- D. Professional liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as defined in **Exhibit F**, attached to this Agreement and incorporated by this reference.

19. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by Special Counsel in connection with matters upon which the City has retained Special Counsel shall not be shown or distributed to any other public or private person or entity except as authorized by the City Attorney and in no event prior to having been first disclosed to the City Attorney. All information, documents, records, reports, data or other materials furnished by City to Special Counsel or other such information, documents, records, data or other materials to which the Special Counsel has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of City. Special Counsel shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the City Attorney.

20. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This

Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement.

21. ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS, OR EXPERTS.

Special Counsel will not engage or otherwise incur an obligation to pay other counsel, specialists, or experts for services in connection with this Agreement without the prior written approval of the City Attorney.

22. NOTICES.

All notices, invoices, reports or other communication to the Parties shall be properly sent via electronic mail to bruce_goodmiller@ci.richmond.ca.us and cc to patrick_seals@ci.richmond.ca.us and to Special Counsel at its principal place of business listed on page one of this Agreement.

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

23. LAW GOVERNING AGREEMENT.

This Agreement shall be interpreted under the laws of the State of California. All claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within Contra Costa County.

24. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

25. LICENSE REQUIREMENTS.

Special Counsel shall demonstrate that the attorney(s) who provide legal services to City under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the City Attorney why such license is not required to perform the services required.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

DOWNEY BRAND, LLP

By: 

Title: PARTNER

CITY OF RICHMOND


Mayor/ City Manager

Name: Tom Butt

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Exhibit A

SCOPE OF WORK AND SCHEDULE OF FEES & CHARGES

Scope of work:

Special Counsel shall advise and represent the City of Richmond, and its officers, agents, and employees on matters pertaining to the compliance by the City of Richmond with the settlement agreements reached in the case of *SF Baykeeper, et al., v. City of Richmond*, (Case No. C05-03829 MMC in the United States District Court – Northern District of CA).

(City of Richmond Contact Attorney: Everett, Jenkins, Senior Assistant City Attorney)

Schedule of Fees & Charges:

Law Firm anticipates that the primary attorney working on this matter will be Nicole Granquist. The billing rate for Nicole Granquist shall be \$380 per hour.

Law Firm also anticipates that it may need to assign other attorneys to work on this matter. City of Richmond agrees that Law Firm may allocate work among attorneys and other employees Law Firm Deems appropriate, based on their experience and availability. The hourly rates of other attorneys that may be assigned to this matter as follows:

Hourly Rates

NICOLE E. GRANQUIST	\$380/hour
MELISSA THORME	\$380/hour
ASSOCIATES	\$200- \$295/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 Two Hundred and Fifty Five Thousand Dollars (\$255,000) for attorneys' fees.

Exhibit B

BILLING PROTOCOLS/GUIDELINES

The City of Richmond ("City") has adopted the following protocols for billing, budgeting, and planning for projects involving outside counsel. Special Counsel will be required to comply with this protocol. If you have questions concerning it, please contact the City Attorney for clarification. In the event you wish to negotiate changes due to the internal operation of your firm, please raise them in writing as soon as possible. Any changes to this protocol will need prior, written approval from the City Attorney. In the interest of fairness, all Special Counsel is required to comply with this protocol. This protocol is also to be used in conjunction with any new proposal for services.

These protocols and guidelines are instituted to ensure that Special Counsel conveys the information necessary for the City Attorney to manage outside projects and litigation. Also, because these guidelines are set out in advance, they are designed to minimize any confusion or misunderstanding. Compliance with these guidelines should enhance the attorney-client relationship. If you have any comments or suggestions that could improve this system, please feel free to contact the City Attorney.

I. BILLING FORMAT

Unless otherwise agreed, the following information must be provided in monthly bills:

- a. A detailed description of work, in time increments of .1 hour (one tenth of an hour) for and by each and every individual billing services.
- b. Identification of the lawyer who is in charge of the matter.
- c. Reasonably detailed disbursement breakdowns with backup documentation of any individual charge exceeding \$100.00.
- d. Each billing item must be separately stated on a separate line identifying the attorney, the time spent and the exact nature of the service rendered.
- e. When charges are made for research time, the specific issue being researched and the need for the research should be identified.
- f. Each item billed should be coded to a specific litigation budget line item, if applicable.
- g. The City Attorney reserves the right to request various levels of detail and specific formats (such as columnar comparisons with established budgets).

Exhibit B

II. BILLING GUIDELINES

- a. All tasks set forth in Special Counsel's billing documentation shall be specific and detailed. Overly generalized listings of task descriptions such as "review contract" or "prepare for negotiations" are not acceptable.
- b. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed. Under no circumstances shall Special Counsel use "block billing" procedures, wherein a list or series of activities is done each day with only an aggregate amount of time specified.
- c. Special Counsel shall keep the City advised of the identity and billing rates of those people working on the project account.
- d. All time shall be billed within 30 days of performance of the service.
- e. Counsel shall advise City whenever it anticipates the amount of services necessary to properly execute the task will exceed the amount of the contract. When accrued billings are equal to eighty percent (80%) of the Payment Limit, written notice shall be given to the City as soon as possible, via e-mail, to the City Attorney's Office, of this fact. In order to satisfy this notification requirement, Counsel shall monitor its accrued billings on a weekly basis and immediately notify the City Attorney if the eighty percent (80%) threshold is met. Special Counsel acknowledges the fiscal constraints on City funding and therefore Special Counsel assumes risk of non-payment for services rendered in the event the amount of services rendered exceeds the amount of the contract unless prior written authorization is received. Authorization to exceed the amount set forth in **Exhibit A** may be given only by City Attorney in writing.
- f. Only those attorneys approved by the City may bill on the case.
- g. The City expects the attorney assigned to the case to handle all significant matters in the litigation. The City Attorney must approve in advance the assignment of other attorneys to the litigation or project. The City may request that the assigned work be instead handled by the primary attorney.
- h. Special Counsel shall not charge for more than one attorney at any hearing, deposition, or meeting of any kind without advance approval of the City Attorney.
- i. No more than two paraprofessionals may bill on a particular case without the prior approval of the City.

Exhibit B

- j. The City has retained Special Counsel for its expertise, and therefore expects not to be billed for introductory or background research. City appreciates when Special Counsel has researched an issue previously and uses that research on present cases or projects. Do not charge the City for work Special Counsel has done and billed another client for in the past.
- k. Within thirty (30) days of the Effective Date of this Agreement, Special Counsel shall provide any manuals or policies describing Special Counsel's billing practices.
- l. The City does not allow "double billing" of any sort. If Special Counsel is working on another client's matter, do not bill City for that time. This applies to travel time or any other matter.
- m. Training time is not billable. Law clerks may be used only with prior approval.
- n. City will not pay for new attorneys to "get up to speed" on a file unless it has been preapproved.
- o. If a matter arises that requires Special Counsel to open a new file, the City Attorney should be informed immediately.
- p. City reserves the right to require additional substantiation of any item of claimed expense.

III. REIMBURSEMENTS

- a. The City will reimburse Special Counsel for the following expenses, and for no other expenses:
 - Actual printing costs;
 - Copying costs at \$.12 / page (for legal documents and file materials, but not library materials);
 - Actual cost of postage (including express mail delivery charges);
 - Facsimile charges at the rate of \$0.25 per page;
 - Computer research support services (e.g., Westlaw, LEXIS or computer time or services) at actual cost, but not to exceed 15% of the total fees for all legal services;
 - Actual cost of long distance telephone calls;
 - Transcription and reporter's fees; and
 - Reasonable travel. The City does not pay for meals unless Attorney is required to be away from office for one full day. All meals and/or travel reimbursements will be subject to approval by the City Attorney. Travel expenses are limited to the lesser of actual expenses or expenses that would be authorized for City employee travel pursuant to City policy.

Exhibit B

- b. The City Attorney must approve in advance any single reimbursement item in excess of \$250.
- c. Any expense other than those listed in section "a." must be approved by the City Attorney in writing and in advance in an approved budget.
- d. No compensation shall be allowed for administrative overhead or premiums added to the direct cost of research support or other services.
- e. Court filings shall be prepared in a timely manner so that "rush" or "expedited" messenger fees are not incurred.
- f. Messenger and other charges in excess of actual costs are not permitted. City does not allow cost, plus a percentage, for actual outside costs
- g. City does not pay for secretarial time or secretarial overtime. City does not pay attorneys or paralegals for secretarial tasks or tasks that should not be included in Special Counsel's overhead. For example, faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
- h. City does not pay for billing or discussions of bills, including discussions initiated by the City or City's requests for additional information about a bill.
- i. The practice of minimum billing charges is prohibited. Please charge for actual time spent. For example, a minimum of .2 for phone calls or .4 for letters is unreasonable unless it is an accurate measure of time spent.
- j. Do not charge for file opening or file closing. These are not true legal services, tasks or adequate descriptions of legal activities.

Exhibit C

PROJECT PLAN AND BUDGET

Project plans and budgets should conform to the following guidelines:

- a. The project plan shall include a projection of recommended strategies and actions to be taken in the project and a range of costs for each such strategy or action.
- b. If the scope of work includes representation of the City in litigation, the project plan shall include the following elements, with explanations:
 - Anticipated total costs;
 - The primary issues;
 - The probability of success; and
 - A settlement/trial recommendation

The project plan will be modified during the litigation as the need arises.

- c. The project budget shall include an estimate of the attorneys' hours and fees and disbursements during each phase and/or activity. All anticipated expenses must be listed and costs estimated.
- d. In the event of litigation, the project budget shall include, but not be limited to, estimates for:
 - Pre-commencement (legal and factual research for the complaint or answer);
 - Pleadings;
 - Preliminary motions;
 - Initial discovery;
 - Factual investigation of merits (interviewing clients, employees and third parties);
 - Review and abstract City's documents;
 - Expert (non-medical) investigation and reports;
 - Medical experts and examinations;
 - Legal research on merits;
 - More thorough discovery (including the identity of deponents and expected costs of each deposition and preparation);
 - Settlement negotiations;
 - Trial preparation; and
 - Trial.
- e. The project budget should include the anticipated cost of each line item, the time allotted to complete it and the professional level of the person handling it.
- f. The project budget is not a fixed fee agreement and is subject to revision.
- g. Special Counsel shall provide revisions to the project plan or budget at the request of the City Attorney.

Exhibit C

- h. Special Counsel understands and agrees that major unjustified deviations from the project budget, or failure to timely submit a project budget or revisions, if requested, may constitute a breach and result in termination of this Agreement.

Exhibit D

California Joint Powers Risk Management Authority Mandatory Case Reporting Policy

Pursuant to Section VII (Conditions) of the Memorandum of Coverage, the following rule is applicable to all cases reported to CJPRMA.

The Authority shall be entitled to complete access to the covered party's claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The covered party shall be responsible to report the progress of the litigation and any significant developments at least quarterly to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the covered party by its defense attorneys and/or its agents.

In addition, the CJPRMA Board of Directors has adopted the following mandatory case reporting standards:

- 1) Defense counsel is expected to provide a written analysis of liability and exposure in any reported claim no later than ninety days following receipt of the file from the member agency. CJPRMA understands that the liability picture may develop as discovery is ongoing, but this does not excuse the responsibility of providing an early, objective analysis of the file, subject to later developments. An early analysis not only permits the JPA member to set an accurate reserve level, but also permits the member entity to decide whether to actively litigate the case, try to settle the case, or limit discovery based upon the exposure.
- 2) The initial status report should provide, at a minimum, a brief synopsis of the facts giving rise to the lawsuit; the status of the pleadings, including any discussions of demurrers or motions to dismiss, or cross-complaints; a summary and analysis of plaintiff's injuries, damages and exposures in the case; an initial impression of liability; any requests for additional investigation; a brief outline of the discovery planned; and an evaluation of anticipated litigation costs. The report need not be lengthy, and typically might not exceed three to five pages, but must address the issues directly and in a straightforward manner so that the member entity and CJPRMA can set cost and loss reserves as necessary.
- 3) Defense counsel is responsible to report, in writing, the setting of a trial date, settlement conference date, hearing date on motion for summary judgment or similar dispositive motion in any litigated case, within one week of the date on which a court establishes such date.
- 4) Defense counsel is responsible to report, in writing, all settlement demands or offers within one week of the time the offer is made or the demand is received.

Exhibit D

- 5) Defense counsel is responsible to report, in writing, on the substance of all depositions taken in the case. This need not be a multi-page deposition summary, but must, at a minimum, include a concise report of major events occurring at the deposition, and an evaluation of the effect of the deposition testimony on the case.
- 6) Finally, no later than sixty days before the date set for trial in any case, defense counsel is responsible to report, in writing, on (1) an assessment of liability in the case, (2) the adverse potential exposure if liability is found, (3) a concise summary of injuries sustained and/or claims, (4) an assessment of any other factors (such as local jury tendencies, appearance of important witnesses, etc.) that may affect the liability analysis or exposure assessment, and (5) an opinion on the settlement value of the case.
- 7) All status reports from defense counsel must be copied to the CJPRMA Board member whose entity is involved in the claim.

This policy is designed to protect the member entity and CJPRMA, so that they can make informed litigation decisions on reported cases. Past experience has shown that defense counsel retained by the member entities of CJPRMA are high-caliber, hard working attorneys who have done very well for their clients, and CJPRMA is grateful for their efforts. Defense counsel are cautioned, however, that case reporting is given a high priority by CJPRMA and its members, and is a major consideration in evaluating counsel's performance.

Exhibit E

LITIGATION GUIDELINES

The following guidelines should be followed when the scope of work includes representing the City in litigation:

- a. The Special Counsel shall consult the City Attorney regarding the component parts of litigation handled so that the City Attorney, in consultation with the City Council, if necessary, can determine whether a particular activity is reasonable in light of its costs and benefits.
- b. The City Attorney must approve the identity and number of staff assigned to the litigation, and any changes.
- c. All pleadings shall be submitted to the City Attorney for review prior to filing.
- d. Copies of major work product, pleadings, motions, orders, decisions, research memoranda, reports on significant developments, and quarterly status reports shall be submitted to keep the City Attorney advised of any major developments in the lawsuit. Such copies shall be provided in electronic format compatible with software in the City Attorney's office.
- e. Generally, the City Attorney will rely upon Special Counsel for guidance on litigation strategy. Nonetheless, prior approval from the City Attorney is necessary for demurrers, motions for summary judgment and discovery motions.
- f. City expects that Special Counsel will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the City Attorney immediately. City's intent is to have discovery be fair and open with the money spent on reviewing relevant items that are discovered, not on discovery battles.
- g. Provide full descriptions of legal tasks performed. This will help the City Attorney follow case development and understand Firm's strategy.
- h. Some types of litigation-related expenses require prior approval by the City Attorney, including, but not limited to, experts and investigators. Expenses over a certain dollar amount always require prior approval. See Section III (Reimbursements) of Exhibit B (Billing Protocols and Guidelines) of this Agreement for a list of those expenses that may be reimbursed.

Exhibit F

City of Richmond - Insurance Requirements - Type 2: Professional Services

In all instances where CONTRACTOR or its representatives will provide professional services (*architects, engineers, construction management, counselors, medical professionals, hospitals, clinics, attorneys, consultants, accountants, etc.*) to the City of Richmond (City), the City requires the following MINIMUM insurance requirements and limits.

CONTRACTOR shall procure and maintain for the duration of the contract, agreement, or other order for work, services or supplies, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors. **Maintenance of proper insurance coverage is a material element of the contract. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.**

CONTRACTOR agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability insurance, CONTRACTOR shall look solely to its insurance for recovery. CONTRACTOR hereby grants to CITY, on behalf of any insurer providing Commercial General Liability insurance to either CONTRACTOR or CITY with respect to the services of CONSULTANT herein, a waiver of any right to subrogation which any such insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and original, separate policy endorsements, naming the City as an additional insured for general liability coverage, as well as a waiver of subrogation for Workers' Compensation insurance, shall be received and approved by the City **before any work may begin**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of CONTRACTORS work.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of CONTRACTOR.

Minimum Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001), and including coverage for bodily and personal injury, property damage, and products and completed operations (if applicable).
2. Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto).
3. Original and Separate Additional Insured Endorsement for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
4. Workers' Compensation Insurance as required by the State of California including Employer's Liability coverage.
5. Original and Separate Waiver of Subrogation for Workers' Compensation insurance.
6. Professional Liability or Errors & Omissions Liability Insurance appropriate to the CONTRACTOR's profession (if required.)

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease. If CONTRACTOR is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If contractor is a sole proprietor (has no employees) than contractor must sign "Contractor Release of Liability" found at: http://www.ci.richmond.ca.us/index.aspx?nid=61 .
General Liability (primary and excess limits combined)	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate limit) . Policy shall be endorsed to name the City of Richmond as an additional insured per the conditions detailed below.

Exhibit F

City of Richmond - Insurance Requirements - Type 2: Professional Services

Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage.	
Professional Liability or Errors & Omissions Liability – <i>Required for all professionals including architects, engineers, consultants, construction management, counselors, medical professionals, hospitals, clinics, attorneys and accountants, & other consultants as may be required by the City.</i>	PROJECT COST \$0 - \$1 million \$1 million - \$5 million Over \$5 million	REQUIRED LIMIT \$1 million p/o \$2 million p/o \$5 million p/o
Required Policy Conditions Additional Insured Endorsement	Applicable to General Liability coverage. The City of Richmond, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of the operations by or on behalf of the named insured including bodily injury, deaths and property damage or destruction arising in any respect directly or indirectly in the performance of this contract. <i>ISO form CG 20 10 (11/85) or its equivalent is required. If the Contractor is supplying their product or providing a service then the endorsement must not exclude products and completed operations coverage. If it does, then CG 20 37 (10/01) is also required. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61.</i>	
Primary and Noncontributory	The contractor's insurance coverage must be primary coverage as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.	
Waiver of Subrogation Endorsement Form	Contractor's insurer will provide a Waiver of Subrogation in favor of the City for Workers' Compensation Insurance during the life of this contract. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61 .	
Deductibles and Self-Insured Retentions	Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City or the CONTRACTOR shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses. Contractor is responsible for satisfaction of the deductible and/or self-insured retention for each loss.	
A. M. Best Rating	A:VII or Better. If the A.M. Best Rating falls below the required rating, CONTRACTOR must replace coverage immediately and provide notice to City.	

Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverage's and cover those insured in the underlying policies.

Exhibit F

City of Richmond - Insurance Requirements - Type 2: Professional Services

Claims-Made Policies

If any insurance policy is written on a claims-made form: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work. 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

Subcontractors

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish to the City for review and approval, separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

CONTRACTOR agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either CONTRACTOR or any subcontractor to take out or maintain the required insurance policies. The fact that insurance is obtained by CONTRACTOR, and/or CONTRACTOR's subcontractors, will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

Verification of Coverage

All original certificates and endorsements shall be received and approved by the City before work may begin. The City of Richmond reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage at any time.

Original insurance certificates and required policy endorsements shall be mailed or delivered to the Designated Project Manager for the City of Richmond.

Insurance certificates and endorsements may be faxed to the Designated Project Manager. However, CONTRACTOR must mail the original certificates and endorsements to Designated Project Manager once faxed.

Continuous Coverage

CONTRACTOR shall maintain the required insurance for the life of the contract. Should the CONTRACTOR cease to have insurance as required during this time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the City is provided. In the event that CONTRACTOR fails to comply with the City's insurance requirements, the City may take such action as it deems necessary to protect the City's interests. Such action may include but is not limited to termination of the contract, withholding of payments, or other actions as the City deems appropriate.

If services or the scope of work extend beyond the expiration dates of the required insurance policies initially approved by the City, CONTRACTOR must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the Designated Project Manager.**

Cancellation

CONTRACTOR shall ensure that coverage shall not be cancelled, reduced or otherwise materially changed except after thirty (30) days' prior written notice has been given to the City.

Reporting Requirements

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable