

November 2, 2022

**Via E-Mail**

Scott A. Miles, Interim County Counsel  
Natalie A. Duke, Deputy County Counsel  
Office of County Counsel  
County of Humboldt  
825 Fifth Street  
Eureka, California 95501  
[smiles@co.humboldt.ca.us](mailto:smiles@co.humboldt.ca.us)  
[nduke@co.humboldt.ca.us](mailto:nduke@co.humboldt.ca.us)

Re: Representation of County of Humboldt on Lower Eel River Valley Groundwater

Dear Mr. Miles and Ms. Duke:

Thank you for engaging Downey Brand LLP (“Downey Brand”) to represent the County of Humboldt (hereinafter “Humboldt”) with regard to counseling and advice related to its administration of groundwater in the Lower Eel River Valley under the common law public trust doctrine. You have also asked Downey Brand to represent Humboldt in defense of related litigation threatened by Friends of the Eel River, which is seeking to force Humboldt to regulate groundwater pumping in the Lower Eel River Valley under the public trust doctrine (together, the “Matter”). The purpose of this Engagement Letter and the attached Terms of Engagement is to confirm the terms and conditions upon which Downey Brand will provide legal services to Humboldt in this Matter. A mutual understanding of the terms of our engagement from the beginning of any matter helps us to maintain a good and effective working relationship and is vital to our effective representation of Humboldt.

At Downey Brand, I will be primarily responsible for this Matter. We will seek to staff this Matter in an effective and efficient manner, while best serving Humboldt’s needs. We currently anticipate that the following attorneys are likely to work on this Matter due to their experience and expertise relevant to this engagement (public trust, groundwater, and related litigation): Austin Cho and Breana Inoshita. If any other attorneys are needed due to particular workloads or expertise, it is my practice to confer with my client first. If, at any time, you have any concerns about staffing or about our billing statements, please contact me.

Downey Brand charges fees on an hourly basis and bills in tenths of one hour (.1 hour = 6 minutes). My current standard rate is \$580 per hour. As a public agency, however, I am pleased to offer Humboldt a special counsel rate of \$445 per hour. The rates for Austin and Breana are \$375 and \$320 per hour, respectively. Billing rates are set based upon seniority and depth of experience, and are subject to annual firm-wide fee adjustments on January 1 of each year.

Downey Brand also charges for costs and disbursements that the firm incurs in rendering its services, as described more fully in the attached Terms of Engagement Agreement.

Downey Brand customarily requests, as a condition of undertaking new representations, that the client provide us with an advance fee deposit. A required advance fee deposit is being waived in this case. However, we reserve the right to, and Humboldt agrees we may, require a further advance fee deposit in the future. Downey Brand will provide written notice prior to requiring such a deposit, and if Humboldt declines to provide such a deposit, we may withdraw from our representation. Should we require an advance fee deposit in the future, that deposit will be handled and applied as described more specifically in the accompanying Terms of Engagement Agreement.

### **REQUEST FOR CONSENT AND WAIVER OF CONFLICTS**

Downey Brand has represented Humboldt with regard to a threatened citizen suit under the Clean Water Act (“CWA”), liability and recovery under the Resource Conservation and Recovery Act (“RCRA”), Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), and related contract law, as well as related environmental compliance issues arising from localized groundwater contamination. Humboldt is now seeking to retain Downey Brand for advice and litigation related to its administration of groundwater in the Lower Eel River Valley under the common law public trust doctrine. As we have discussed, Downey Brand currently represents several existing clients in matters where there is potential adversity now or in the future with Humboldt.

The rules of legal ethics governing attorneys prohibit our firm from representing one current client who is adverse to another current client, absent both clients’ informed written consent after disclosure of the conflict and the opportunity to seek the advice of independent counsel. This is the case even if the representations are unrelated. (See Rule 1.7(a).) The California Rules of Professional Conduct also prohibit our firm from representing a client if there is a significant risk that the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client. (See Rule 1.7(b).) Consequently, we are asking for Humboldt’s consent and waiver with regard to the following current and future unrelated client matters.

#### **A. Nordic Aquafarms California, LLC**

Downey Brand currently represents Nordic Aquafarms California, LLC (“Nordic Aquafarms”) on environmental review and permitting, as well as land use and coastal development permitting before Humboldt for a land-based aquaculture system facility for production of salmon. While Humboldt recently certified the Environmental Impact Report and approved certain land use and coastal development permits for the facility, that permitting may be appealed by third parties to the California Coastal Commission or otherwise challenged in Superior Court. In that event, Nordic Aquafarms and Humboldt would generally be aligned. However, the possibility exists that the parties might take differing positions in defense of Humboldt’s environmental review and permit approvals. Humboldt and Nordic Aquafarms previously executed mutual waivers approving Downey Brand’s concurrent representation in the Nordic Aquafarms matter.

**B. Humboldt Bay Municipal Water District**

Downey Brand currently represents the Humboldt Bay Municipal Water District (“District”) on discrete matters related to water rights and dam operations on the Mad River and on permitting for improvements to certain pipelines and other District infrastructure. Specifically, the District has asked Downey Brand partner Kathryn Oehlschlager to assist in permitting the repair, maintenance, relocation, or replacement of certain sections of a six-mile water pipeline in the Coastal Zone on the Samoa Peninsula. While unrelated to the Lower Eel River Valley, it is possible that the District may need certain land use or coastal permits from the Humboldt on its pipeline and related infrastructure improvements, in which case the District and Humboldt would technically be adverse. We are therefore asking for the Humboldt’s waiver and consent to Downey Brand’s continued representation of the District on the pipeline permitting matter, even if the matter involves permitting or litigation before the Humboldt.

**C. Mendocino County Inland Water and Power Commission**

Downey Brand acts as Special Counsel for the Mendocino Inland Water and Power Commission (“Mendocino”). In that role, we advise and advocate for Mendocino to continue to receive water from the Upper Eel River, in particular water diverted to the Russian River watershed. Mendocino is undertaking efforts with its individual members to acquire all or some portion of the water rights along with some of the infrastructure associated with the Potter Valley Project—key infrastructure necessary for inter-basin conveyances—from Pacific Gas & Electric (“PG&E”).

Mendocino is also currently a partner agency along with Humboldt as part of the Two Basin Partnership, advocating for water to restore a healthy fishery on the Eel River while also allowing diversions to continue from the Upper Eel River (the “Upper Eel River Representation”). While the interests of Humboldt and Mendocino are currently aligned, it is possible that alignment could disappear in the future, and that adversity could arise between Humboldt and Mendocino. For example, the parties could become adverse in formal administrative proceedings concerning the transfer of water rights or infrastructure from the Potter Valley Project or associated rights or conveyances of water that might arise before the Federal Energy Regulatory Commission, California Public Utilities Commission, State Water Resources Control Board, or other state and federal agencies. The parties might disagree about the conditions of transfer or whether the transfer and conveyance of water should occur at all. Such adversity could devolve into litigation between or among the parties in state or federal court.

Downey Brand thus seeks the informed consent of Humboldt, and in the event of litigation would seek a waiver of Mendocino, with respect to the proposed representation of Humboldt in the Lower Eel River Representation, to allow Downey Brand to meet the needs of its existing clients, while remaining available to other clients, and rendering its legal services with vigor and competence. The purpose of this waiver is to: (i) inform both Humboldt about this potential conflict and the foreseeable adverse consequences of waiving that conflict; and (ii) obtain the informed consent to the waiver of that conflict from this representation or from any other existing representation of Humboldt. Another purpose of this consent is to ensure that Downey Brand can continue its representation of Mendocino in the Upper Eel River

Representation, including in future potential litigation adverse to Humboldt on matters relating to the Upper Eel River Representation if such litigation arises.

Our agreement to represent Humboldt is conditioned upon the understanding that we are free to represent Mendocino, and to take positions either adverse to Humboldt or an affiliate of Humboldt in any matters that do not involve the same or substantially related factual and legal issues and where we have not obtained confidential information of Humboldt material to the representation of Mendocino. Such representation may include, but is not limited to appearances on behalf of Mendocino adverse to Humboldt in litigation, arbitration, or formal administrative proceedings before the above-referenced agencies. Such representation of Mendocino may also involve examination or cross-examination of Humboldt's personnel.

As we have discussed, the scope of Downey Brand's proposed representation of Humboldt is narrow. Under the auspices of the common law public trust doctrine, Friends of the Eel River is seeking to force Humboldt to implement restrictions on groundwater pumping in the Lower Eel River Valley. Thus, our proposed representation of Humboldt would relate to the administration and pumping of groundwater, while the Upper Eel River Representation for Mendocino relates to the ownership and operation of the Potter Valley Project and rights to and diversions of surface water. In addition, the geographic scope of the Lower Eel River Representation for Humboldt is the Lower Eel River Valley where groundwater pumping occurs; whereas, our Upper Eel River Representation for Mendocino relates to surface water diversions from the Upper Eel River. Thus, these two representations are unrelated as to the factual and legal issues presented, and we do not believe that there is any confidential information from Humboldt that would be relevant or material to Downey Brand's Upper Eel River Representation of Mendocino. Finally, our representation of Humboldt would be led by Downey Brand partner Christian Marsh utilizing a team based in our San Francisco Office, while Mendocino's representation is led by Scott Shapiro based in our Sacramento Office. In an abundance of caution, we would erect an ethical screen between these two teams as part of this representation.

By this waiver, Humboldt is consenting to this representation and waives any actual or potential conflict that may arise from the Upper Eel River Representation described above, or future matters that the firm may handle for Mendocino related to the Upper Eel River Representation, so long as those other representations do not involve the same or substantially related factual and legal issues as a current active engagement for Humboldt. By consenting to this arrangement, Humboldt understands and agrees that our scope of engagement on this Matter is narrow and that Humboldt is waiving our obligation of loyalty to it with respect to any matters involving Mendocino, so long as we maintain Humboldt's confidentiality and adhere to the foregoing limitations. Humboldt further agrees that it will not seek to disqualify Downey Brand from representation of Mendocino in any matter related to the Upper Eel River Basin, as described herein. We will, of course, hold in confidence Humboldt's secrets and confidences. Likewise, Humboldt understands that, while Downey Brand may obtain confidential information from Mendocino or other clients that may be of interest to Humboldt, Downey Brand cannot and will not share such information with Humboldt.

## CONSEQUENCES OF HUMBOLDT'S CONSENT

In order to obtain a client's consent and waiver, we must disclose to each affected client the relevant circumstances and reasonably foreseeable adverse consequences of concurrent representation. Theoretically, the following foreseeable and adverse consequences to Humboldt could result from Downey Brand's simultaneous representation of its existing clients referenced above.

### 1) Duty of Loyalty

While there is no current conflict of interest within the scope of our representation, it is possible that the interests of Humboldt and Downey Brand's existing clients may in the future diverge. Attorneys have a duty of loyalty requiring them to do their professional best to serve each client they represent. This standard requires our attorneys to pursue each client's position(s) vigorously, which may require attorneys to take advantage of an opposing party's weaknesses, if they are known and it is ethical to do so. Thus, when we represent two existing clients that foreseeably could have diverging interests or adversities, either or both clients might be concerned that we could favor the relationship with or interests of one or another client and, as a result, fail to press the one client's interests as vigorously as possible in order to gain favor with the other client.

At this time, we believe that we are able to provide competent and diligent representation to each client. But if at any time the clients have diverging interests or become adverse to one another in any matter, or we do not feel that we are able to provide competent and diligent representation to each client, we may need to re-evaluate our representation of Humboldt, discuss a further conflict waiver, and/or we may need to withdraw from our representation of Humboldt.

### 2) Client Communication and the Duty of Confidentiality

California attorneys have two duties that may conflict when they represent clients involved in related or even unrelated matters. First, under the duty of confidentiality, attorneys must guard client confidences and secrets at every peril to themselves. Second, attorneys must keep their client reasonably informed about significant developments related to their clients' representation. Thus, under the duty of confidentiality, Downey Brand is not allowed to reveal to Humboldt any confidences received from its existing clients, and conversely, Downey Brand is also not allowed to reveal any confidences or secrets obtained from Humboldt to its existing clients. At the same time, if Downey Brand possesses any such confidences or secrets that constitute or relate to significant developments in a client's representation, it would have a duty to disclose those confidences and secrets to that client.

Thus, for Downey Brand to represent Humboldt and its existing clients, each client must waive the conflict posed by the collision of these two rules. Specifically, Humboldt and existing clients must each waive any right it might otherwise have for Downey Brand to reveal confidences or secrets of the other, or to use such confidences or secrets of the other to its benefit, including such information that may constitute a significant development in this matter.

The most obvious foreseeable adverse consequence related to such a waiver is that, even if Downey Brand attorneys representing Humboldt possess confidences and secrets of existing clients that may be helpful in the representation of Humboldt, Downey Brand will not reveal those to Humboldt or use such confidences or secrets. Conversely, Downey Brand will similarly not reveal to its existing clients confidences or secrets it obtains from Humboldt even if such confidences or secrets would be helpful in the representation of the existing clients.

By signing below, Humboldt acknowledges that potential consequence, and waives any right Humboldt might otherwise have for Downey Brand to reveal the confidences or secrets of existing clients or to use such confidences or secrets to Humboldt's benefit. We also note that in theory there could be other adverse consequences to Humboldt from this representation that we cannot now reasonably foresee.

### **GENERAL TERMS**

This Engagement Letter and the accompanying Terms of Engagement Agreement will be effective upon execution of this letter, but their effective date will be retroactive to the date Downey Brand first performed services related to the Matter. This engagement agreement may be executed in counterparts, and an electronically transmitted signature will be deemed the legal equivalent of an original signature.

If this letter, together with our attached Terms of Engagement Agreement, accurately reflect our agreement, please confirm by signing the attached Terms of Engagement Agreement and returning it to me. If you have any questions regarding this agreement, please contact me. I encourage you to review this agreement with separate counsel, if you wish, to answer any questions or concerns you may have before signing.

### **CONCLUSION**

Thank you again for this opportunity to assist you. I look forward to working with you on this important matter for Humboldt County.

Sincerely,

DOWNEY BRAND LLP



Christian L. Marsh

## **TERMS OF ENGAGEMENT AGREEMENT**

In order to avoid any misunderstandings, it is the Firm's policy to set out the terms of our engagement at the beginning of our relationship in our Terms of Engagement Agreement, which is incorporated into the Engagement Letter provided with this Agreement. This Agreement sets forth the terms, promises, and conditions of our representation and provision of legal services to Humboldt County ("Client"). Except as modified in writing by the accompanying Engagement Letter or in another agreement signed by the Client and Downey Brand, the following provisions apply to the relationship between Downey Brand and Client.

### **I. CLIENT**

Our engagement is only on behalf of Client, as identified in the Engagement Letter accompanying these Terms of Engagement, and whose signature is set forth in this Agreement. Our representation of the Client does not extend to or encompass any other person or entity affiliated with Client, including, but not limited to, any business, corporation, subsidiary, officer, director, shareholder, manager, partner, member or employee of Client ("Client's Affiliates"). Accordingly, Client understands and agrees that any representation by Downey Brand of another client adverse to any of Client's Affiliates or other third parties does not constitute a conflict of interest and does not require the Client's consent.

### **II. SCOPE OF LEGAL SERVICES**

Downey Brand's services shall be limited to the scope identified in the accompanying Engagement Letter and upon conclusion of those services the representation shall be concluded. If Client desires that we provide additional services, Downey Brand's agreement to any expansion of the scope of its representation of the Client will be subject to, among other things, Downey Brand's approval and such additional conflict checks, consents/waivers, fee deposits, retainers, approvals, and other arrangements as Downey Brand may, in its professional judgment, deem necessary or appropriate. Unless otherwise provided in a written engagement letter between Downey Brand and Client (or written amendment of a prior engagement letter between them), the agreement reflected in these Terms of Engagement, and in the accompanying Engagement Letter, applies to Downey Brand's current representation of the Client and to any subsequent matters that Downey Brand agrees to undertake on the Client's behalf. Please note that unless specifically indicated otherwise, our engagement does not include representing Client in any adversarial proceeding, such as a court action.

### **III. FEES, COSTS AND DISBURSEMENTS**

Our fees are based on the amount of time spent on the Matter, billed in six-minute increments (tenths of one hour). Each attorney, legal assistant or other timekeeper assigned to any Matter at the firm has an hourly billable rate based on experience and seniority. Our billing rates are adjusted on January 1 of each year. The billing rates of attorneys assigned to your matter are set forth in the attached Engagement Letter.

In addition to fees, Client will also be billed for costs and expenses we incur in connection with our representation of Client. Costs and expenses include, but are not limited to,

filing fees, telephone charges, mileage at the Internal Revenue Service mileage rate, parking, document reproduction, computerized legal research, witness fees, transcript costs, consultant and expert witness fees, messenger services, out-of-town travel, and the like. Subject to our ethical obligations, certain items may be charged at more than Downey Brand's direct cost to cover its estimated associated administrative costs, overhead and materials. More specific information regarding our cost and disbursement policies is available upon request. For larger expenses (like transcript costs or consultant or expert fees), we may request that Client directly pay the specific payee involved.

If any claim or action is brought against Downey Brand or any of its personnel, which alleges negligence or wrongdoing of the Client or a third party, or if Downey Brand or any current or former attorney or employee of Downey Brand is asked or required by a third party to testify or produce documents as a result of Downey Brand's representation of the Client, the Client agrees to pay Downey Brand for any resulting costs or expenses, including Downey Brand's time, even if Downey Brand's representation of the Client has ended. This paragraph is not intended to apply to any claim brought by or on behalf of the Client alleging wrongdoing by Downey Brand.

Although Downey Brand may already have provided you, or may in the future provide you, estimates of fees or costs that the firm anticipates will be incurred, any such estimates shall not be binding. Estimates are subject to unforeseen circumstances and are, as a matter of course, inexact. Actual fees or costs may vary from any estimates provided.

#### **IV. BILLING AND PAYMENT**

##### **A. Billing Statements**

Downey Brand will bill Client on a monthly basis for services. Our billing statements are payable promptly upon receipt. Payment is required within 30 days following the invoice date. The duty to timely pay our billing statements is solely the Client's and is not contingent upon, nor shall the payment due date be extended or otherwise affected by, any judgment or settlement; any right the Client may have for reimbursement, indemnification or insurance; or the Client's receipt of any other form of payment the Client may claim or expect to receive from any other party.

Each statement is fully due and payable upon receipt, but in no event later than thirty (30) days of its issuance date. Any statement not paid within thirty (30) days of its issuance date will accrue interest on the principal balance (fees, costs and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .8333% per month (ten percent (10%) annual percentage rate). The unpaid balance will bear interest until paid. Our failure to charge Client interest on any particular statement will not constitute a waiver of our right to do so on future bills.

If the Client has any question, concern, or disagreement regarding any bill, the Client should notify us promptly, and must nevertheless promptly pay any portion of the bill that is not the subject of your question, concern or disagreement.



Our policy is to discontinue work on pending matters for a client who has not paid a statement in full (or in full having deducted for any question, concern or disagreement, as set forth above) within 75 days of the billing statement's issuance, to the extent consistent with our obligations under the applicable rules of professional conduct. In addition, and notwithstanding the previous sentence, we reserve the right to withdraw from Client's representation and immediately cease performing all services if we do not receive full payment of amounts owed to us within thirty (30) days of issuance of any billing statement.

Billing statements are confidential communications to Client that, either individually or taken together, are reasonably apt to reveal the nature, strategy and status of our representation of Client, including information regarding legal opinions formed or advice given by us to Client in the course of our attorney-client relationship. We therefore consider billing statements to be confidential attorney-client communications, subject to the attorney-client privilege, that may also contain attorney work product. Client agrees that billing statements reflect attorney-client communications, subject to the attorney-client privilege, that may also contain attorney work product, and signifies that understanding and agreement by executing this Agreement.

#### **B. Advance Deposit**

As noted in the attached Engagement Letter, while we are not requiring an advance fee deposit from Client at this time, we reserve the right to do so. By signing below, Client agrees that Downey Brand may require an advance fee deposit in the future by giving Client written notice that we require such a deposit, and if Client declines to provide such a deposit, we may withdraw from representing Client. Should we require an advance fee deposit in the future, that deposit will be applied against attorney's fees and costs incurred in connection with the services we provide under this Agreement. This deposit amount will be applied against each statement, and Client agrees to make further payments toward Client's deposit in the amount necessary to replenish the original amount of the deposit. Such further amounts are due and payable under the same terms and conditions as Client's required payment of periodic statements. All further amounts paid to replenish Client's deposit shall be held and applied in the same manner as Client's initial deposit.

**Interest on Lawyers Trust Account (IOLTA) Trust Account:** Client's advance fee deposit will be placed in our client trust account in Client's name. The interest on that trust account is paid to the California State Bar in accordance with California law. Client authorizes the firm to withdraw the principal from the trust account to pay Client's bill for fees and costs as they are incurred. Any unused deposit remaining at the conclusion of our services will be refunded to Client.

#### **V. WAIVER CONCERNING INTERNAL DOWNEY BRAND LLP ATTORNEY-CLIENT PRIVILEGE**

We may need to consult, at our own expense, with our own counsel (for example, our General Counsel, other firm lawyers who do not perform work for the Client on the Matter, or our own outside counsel) regarding our engagement with Client. To the extent that we are addressing our own rights and responsibilities, a conflict of interest could be considered to exist between us and Client as to any such consultation or resulting communications, particularly if a

dispute were to arise between Downey Brand and the Client regarding the Matter, as described in the accompanying Engagement Letter.

By signing this Agreement, and as a condition of this engagement, Client consents to such consultation occurring and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify us from continuing to represent the Client or from acting in our own behalf, even if such consultation or communications might be deemed adverse to the interests of Client. By signing this Agreement, Client further acknowledges and agrees that any such consulting and communications are protected from disclosure to the Client, by Downey Brand's own attorney-client privilege.

## **VI. OUR RESPECTIVE RESPONSIBILITIES**

### **A. Downey Brand**

Downey Brand will represent Client as described in the scope of services set forth in the accompanying Engagement Letter and in this Agreement. Downey Brand will take reasonable steps to keep Client informed about significant developments relating to the representation.

By signing below, Client agrees that it understands that Client should not, and will not, look to or rely upon Downey Brand for any investment, accounting, financial or other non-legal advice, including, without limitation, any advice regarding the character or credit of any person or entity with whom the Client may be dealing.

Although Downey Brand will, at times, communicate with Client by email, letter, or written form, we may provide much of our counsel and assistance in person in meetings, or in telephone conversations with Client. If Client ever wishes for us to confirm any advice in writing, please be sure to let us know.

We also have a duty of confidentiality to Client, and to each of our other clients. We take this duty very seriously and, except to the extent permitted by the applicable rules of professional conduct, we will not disclose any confidential information of Client to any other client or person. Likewise, we cannot and will not disclose to Client the confidences of any other client, even when such information relates to matters that might affect Client.

### **B. Client**

Our effective representation of Client requires accurate and complete information, and the necessary help of Client. Client agrees to provide us with complete and candid information regarding the Matter, and to keep us informed of any relevant developments or changes in facts or circumstances. Client further agrees to make decisions necessary for us to fulfill our responsibilities in the Matter and otherwise provide us with Client's reasonable assistance and cooperation during the course of this representation.

Because Client has retained us to represent Client in potential litigation, Client's responsibilities include, but are not limited to, providing necessary information and documents, responding to discovery requests, and appearing when necessary at legal proceedings, such as

depositions, court hearings and trial. In addition, Client is legally responsible for preserving all potentially relevant documents and material, whether in paper, digital, or electronic format, that is related in any way, even tangentially, to the litigation.

#### **VII. INSURANCE COVERAGE**

While Client has not retained Downey Brand to represent Client in connection with issues relating to insurance coverage, it is important that Client consider notifying any relevant insurance carriers of the Matter, in order to determine whether there is insurance coverage for the Matter involved or any claim(s) asserted or anticipated in connection with the Matter.

#### **VIII. WAIVER OF POTENTIAL CONFLICTS OF INTEREST**

By consenting to Downey Brand's representation of existing clients as set forth in the accompanying Engagement Letter, Client is waiving Downey Brand's obligation of loyalty to it so long as we maintain Client's confidentiality and adhere to the foregoing limitations. We seek this consent to allow our Firm to meet the needs of existing clients, and to remain available to those other clients, and to render legal services with vigor and competence. We will, of course, hold in confidence Client's secrets and confidences. Likewise, Client understands that, while Downey Brand may obtain confidential information from other clients that may be of interest to Client, Downey Brand cannot and will not share such information with Client.

#### **IX. TERMINATION OR END OF REPRESENTATION**

##### **A. Termination by Client**

Client may terminate this representation at any time, with or without cause, but in the case of litigation (which is not currently anticipated in this Matter), court approval may be necessary.

##### **B. Termination by Downey Brand**

Subject to the application of the applicable rules of professional conduct, Downey Brand also reserves the right to withdraw if, among other things, Client fails to timely pay our billing statements; Client fails to cooperate or follow Downey Brand's advice on a material matter; or any fact or circumstances arise that, in Downey Brand's view, renders our representation unlawful or unethical, or we otherwise have the right to withdraw pursuant to the applicable rules of professional responsibility. Any termination of our representation of Client would be subject to such approval as may be required from any court(s) or tribunal(s) in which we are appearing on Client's behalf. In the event of termination by either of us, Client agrees to pay us fees and costs for work performed prior to termination, to the extent permitted by law.

##### **C. End of Representation and Applicable Date**

Unless otherwise agreed in writing, Client agrees, by signing this Agreement, that our representation will be considered to be complete, and to have ended, upon the earliest date of: (i) Client's termination of the representation (if applicable); (ii) Downey Brand's withdrawal

from the representation (if applicable); (iii) the substantial completion Downey Brand's substantive work for Client; (iv) our sending you our final billing statement for services rendered in the Matter; or (v) that date upon which Downey Brand has provided no services to client for a six-month period, except where we are awaiting an action or decision by a court, tribunal or governmental agency, or specific actions are necessary to complete the representation that extend beyond the six-month period. We may send you a letter to confirm the end of representation, but our failure to send such a letter shall not change the Agreement set forth in this paragraph, and shall not be considered to be an extension of our services.

When our representation ends, all unpaid charges for fees or costs shall be due and payable immediately.

#### **X. FILES**

Unless otherwise required by outside counsel guidelines or specific client instruction, Downey Brand will retain all hardcopy and electronic records for a period of three years following the end of our representation of Client. When that time expires, Downey Brand's policy is to destroy all records related to the Matter in a manner that preserves confidentiality. Downey Brand will make best efforts to contact Client, using the most up to date contact information in its possession, prior to the destruction of any records so that you may provide alternate retention instructions as necessary. Client understands, and agrees, that records related to the Matter will be destroyed in the absence of such alternate instruction or if Downey Brand is unable to establish contact with Client. If Client has a Records Retention Policy in place with which outside counsel will need to comply, please advise us so that we may so inform our Records Manager.

We reserve the right to make, at our expense, certain copies of all documents generated or received by us in the course of our representation. When you request copies of documents from us, copies that we generate will be made at Client's expense. We will maintain the confidentiality of all documents throughout this process.

Our own files pertaining to the Matter will be retained by the firm (as opposed to being sent to Client) or destroyed. These firm files include, for example, internal communications, firm administrative records, time and expense reports, personnel and staffing materials, and credit and account records. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any of our own files within a reasonable time after the engagement has concluded.

#### **XI. ARBITRATION**

##### **A. Fee Disputes**

Client has the right to have any fee dispute handled in accordance with the Mandatory Fee Arbitration Act set forth in Business and Professions Code sections 6200, *et. seq.* Venue for any mandatory fee arbitration proceeding shall be the Sacramento County Bar Association's Mandatory Fee Arbitration Program. Any *de novo* proceeding following (or in lieu of)

arbitration under the Mandatory Fee Arbitration Act shall be subject to binding arbitration in Sacramento County, California, before a single retired judge or justice.

**B. Other disputes**

Any other dispute arising from this Agreement or services provided pursuant to this Agreement, including without limitation any claim for breach of contract, breach of fiduciary duty or of any duty to any of the parties hereto, or legal malpractice, also shall be subject to binding arbitration in Sacramento County, California, before a single retired judge or justice.

**C. Discovery**

Pursuant to Code of Civil Procedure section 1283.1(b), the provisions of Code of Civil Procedure section 1283.05, which addresses discovery in arbitration, are incorporated into and shall be applicable to an arbitration conducted pursuant to subsection (B) of this Section of this Agreement, but not to an arbitration conducted pursuant to subsection (A) of this Section of the Agreement. *Client acknowledges that, by agreeing to binding arbitration, client waives any right to (1) engage in formal discovery pursuant to the Code of Civil Procedure (except as may be permitted within the arbitration proceeding as set forth above), (2) a jury trial, (3) a court trial, or (4) an appeal.*

**XII. CHOICE OF LAW, JURISDICTION, AND SEVERABILITY**

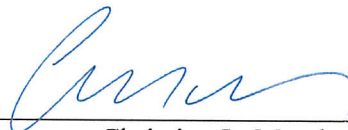
This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Venue of any action or proceeding arising out of this Agreement, or out of services performed pursuant to this agreement, shall be the Superior Court of the State of California, in and for the County of Sacramento. If any provision of this Agreement is held in whole or part to be unenforceable, the remainder of that provision and of the entire Agreement will be severable and remain valid, enforceable and in effect.

**XIII. BINDING AGREEMENT**

The accompanying Engagement Letter and this Terms of Engagement Agreement represent the entire understanding and agreement between Client and Downey Brand with respect to the subject matter referred to herein. By signing below, Client acknowledges that Client has carefully reviewed the accompanying Engagement Letter and these Terms of Engagement Agreement, understands their content, and agrees to be bound by all of the terms and conditions set forth in such documents. *Furthermore, Client acknowledges that Downey Brand has made no representations or guarantees regarding the outcome of the Matter or the time necessary to complete the Matter.*

DATED: November 2, 2022

BY: \_\_\_\_\_



Christian L. Marsh


**ACCEPTANCE**

The undersigned hereby accepts the terms and conditions set forth in this Agreement and the accompanying Engagement Letter pertaining to the engagement of Downey Brand LLP for the legal services described in this Agreement and the accompanying Engagement Letter. In doing so, the undersigned represents and warrants that the County of Humboldt has read and understood the terms disclosures and provisions of this Agreement, and further warrants and represents that the undersigned is authorized and competent to execute this agreement.

DATED: 11/03/2022 BY: Phillips, Amanda Digitally signed by Phillips, Amanda  
Date: 2022.11.03 08:49:44 -0700'  
Amanda Phillips, Risk Manager  
OFFICE OF HUMAN RESOURCES  
COUNTY OF HUMBOLDT

**CONSENT AND WAIVER**

Further, the County of Humboldt has read the foregoing letter concerning the potential conflicts of interest associated with retaining Downey Brand on this Matter and Downey Brand's simultaneous representation of its existing clients in the current and future matters referenced above. After having the opportunity to consult with independent counsel, the County of Humboldt hereby consents to and waives any and all conflicts that may arise from this representation, as set forth in the in this Agreement and accompanying Engagement Letter.

DATED: 11/3/22 BY:   
Scott A. Miles, Interim County Counsel  
Natalie A. Duke, Deputy County Counsel  
OFFICE OF THE COUNTY COUNSEL  
COUNTY OF HUMBOLDT