

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING AN AGREEMENT FOR SPECIAL REDEVELOPMENT LAW LEGAL SERVICES WITH THE LAW FIRM OF MURPHY & DAVIS, LLP**

**WHEREAS**, the Milpitas Redevelopment Agency desires to have the assistance of outside legal counsel to help prepare documents and notices, comply with legal requirements, and provide legal advice on the possible amendment of the redevelopment plan for the Great Mall Redevelopment Project in the City of Milpitas and other redevelopment activities and projects as directed by the Milpitas Redevelopment Agency Counsel; and

**WHEREAS**, the engagement of such outside counsel is permitted under the California Community Redevelopment Law (Health and Safety Code section 33000 et seq.).

**NOW, THEREFORE, BE IT RESOLVED** by the Milpitas Redevelopment Agency that the Milpitas Agency Counsel is hereby authorized to execute the attached Agreement for Legal Services Between the Redevelopment Agency of the City of Milpitas and Murphy & Davis, LLP, and to take other necessary actions related thereto.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**AGREEMENT FOR LEGAL SERVICES**  
**between**  
**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS**  
**and**  
**MURPHY & DAVIS, LLP**

**THIS AGREEMENT** is entered into this 17th day of June, 2008, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic, herein called the "Agency," and MURPHY & DAVIS, LLP, a California limited liability partnership, engaged in the practice of law within the State of California, herein called "Special Counsel."

**Recitals**

A. The Agency is involved in undertaking redevelopment activities pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*).

B. The Agency desires to engage Special Counsel, in association with its General Counsel, to provide special legal services to the Agency as required in connection with its redevelopment activities.

**Agreements**

**NOW, THEREFORE, THE AGENCY AND SPECIAL COUNSEL AGREE AS FOLLOWS:**

1. **Scope of Services.** Special Counsel shall perform legal services as may be required from time-to-time by the Agency and its officers in connection with its redevelopment activities. Special Counsel's services shall include advice, consultation, legal research and opinions regarding redevelopment activities and any actions and documents relating thereto. Initially, Special Counsel's services shall be directed principally toward actions necessary to amend the Redevelopment Plan for the Great Mall Redevelopment Project to extend the duration of that Redevelopment Plan, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. C. Nicole Murphy, a principal member of the firm of Special Counsel, shall be responsible

for the performance of services hereunder and shall supervise any services performed by other members of Special Counsel's firm. It is understood that the Agency has General Counsel (the City Attorney) to render day-to-day and on-going legal services and that Special Counsel shall coordinate its services hereunder with the Agency's General Counsel. Litigation services are not included under this Agreement, and in the event the Agency desires to retain Special Counsel for litigation, a separate agreement shall be entered into.

**2. Time of Performance.** The services of Special Counsel are to commence upon the execution of this Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement.

**3. Compensation, Reimbursement and Methods of Payment.**

**a. Compensation.**

(1) **Fee Basis.** Fees shall be charged on an hourly basis for all legal services rendered.

(2) **Amount of Fees.** The hourly rate for services performed shall be the general client rates established by Special Counsel from time-to-time for its services. At the present time, these rates are \$225 per hour for principal attorneys, \$175 per hour for associate attorneys, and \$75-\$125 per hour for legal assistants. Special Counsel shall notify the Agency's General Counsel of any change in rates at least three (3) months prior to the effective date of the change. All rates shall be valid for at least one fiscal year.

**b. Reimbursement.** In addition to the compensation provided above, the Agency will reimburse Special Counsel for the following expenses:

(1) Necessary subsistence expenses, in connection with the performance of Special Counsel's services pursuant to this Agreement;

(2) Such printing and copying expenses, long distance telephone calls, telegrams and similar costs relating to legal services and generally chargeable to a client; provided, however, such expenses shall not include normal office operating expenses. In lieu of itemizing such chargeable expenses, Special Counsel's firm will add an administrative charge (currently 3%) to monthly billings; and

(3) Extraordinary expenses, such as express mail, courier services, etc.

c. **Methods of Payment.**

(1) **Monthly Statements.** As a condition precedent to any payment to Special Counsel under this Agreement, Special Counsel shall submit monthly to the Agency a statement of account. Such statements shall set forth by date the type of work performed, the time spent on a task and the identity of the attorney performing the task. Statements shall be charged in increments of 1/10th of an hour. Statements shall contain itemized descriptions of any out-of-pocket, reimbursable expenses incurred during the prior month.

(2) **Timing of Payment.** The Agency shall review Special Counsel's monthly statements and pay Special Counsel for services rendered and costs incurred hereunder, at the rates and in the amounts provided hereunder, on a monthly basis in accordance with the approved monthly statements.

d. **Staffing.** The Agency expects business moderation and good judgment with regard to all compensation and expense reimbursement requests. Billing for more than one attorney at an Agency meeting, proceeding or hearing is discouraged unless the Agency's General Counsel has given prior consent.

4. **Employment of Other Counsel, Specialists or Experts.** Special Counsel will not employ or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without prior approval of the Agency's General Counsel.

5. **Termination of Agreement and Legal Services.** This Agreement and all legal services to be rendered hereunder may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, project data and reports shall, at the option of the Agency, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, Special Counsel shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in the light of the particular facts and circumstances involved in such termination.

6. **Interest of Members of Agency.** No member of the governing body of the Agency, and no other officer, employee or agent of the Agency who exercises any functions or responsibilities 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.

7. **Interest of City or Agency Officials.** No member of the governing body of the City of Milpitas and the Milpitas Redevelopment Agency, and no other public official of the City or Agency who exercises any functions or responsibilities in the review or approval of the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

8. **Interest of Counsel.** Special Counsel covenants that it does not now have any interest and shall not acquire any interest, direct or indirect, in the area covered by any project of the Agency to which this Agreement pertains or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. Special Counsel further covenants that in the performance of its duties hereunder, no person having any such interest shall be employed.

9. **Indemnification.** Special Counsel shall indemnify, hold harmless and defend the Agency, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, or negligent acts, errors or omissions of Special Counsel in the performance of this Agreement.

10. **Insurance.** Special Counsel shall procure and maintain, at its cost, general liability, automobile and worker's compensation insurance in the amount of not less than \$1,000,000 per occurrence and professional liability coverage in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall be kept in effect during the term of this Agreement and shall not be canceled without thirty (30) days' advance written notice of proposed cancellation to the Agency. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Special Counsel's performance under this Agreement, and neither the Agency nor its insurers shall be required to contribute to any such losses. Special Counsel shall provide endorsements for such insurance as may be requested by the Agency.

11. **Resolution of Fee Disputes.** At the Agency's sole discretion, the Agency shall be entitled to require that any fee dispute be resolved by binding arbitration in Santa Clara County by JAMS in accordance with its commercial arbitration rules.

12. **General Provisions.**

a. **Assignment.** Special Counsel shall not assign this Agreement, or any of the rights, duties or obligations hereunder.

b. **Independent Contractor.** No employment relationship is created by this Agreement. Special Counsel and its members shall, for all purposes, be an independent contractor to the Agency. Special Counsel and its members shall not be entitled to participate in any pension plan (including, without limitation, the Public Employees Retirement System), insurance, bonus, or other similar benefits provided to Agency employees.

c. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. Except as expressly set forth herein, this Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

d. **Interpretation.** Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

e. **Waiver.** No waiver of any provision of this Agreement by either party hereto shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the Agency and Special Counsel have executed this Agreement as of the date first above written.

**REDEVELOPMENT AGENCY OF THE  
CITY OF MILPITAS**

Signed: \_\_\_\_\_  
          **Michael J. Ogaz**  
Title:   **Agency Counsel**

**“AGENCY”**

**MURPHY & DAVIS, LLP**

Signed: *C. Nicole Murphy*  
          **C. Nicole Murphy**

**“SPECIAL COUNSEL”**

## EXHIBIT A

### SPECIFIC SCOPE OF SERVICES FOR PROPOSED AMENDMENT TO REDEVELOPMENT PLAN FOR GREAT MALL REDEVELOPMENT PROJECT

#### *Overview*

The purpose of the proposed Amendment (the "Amendment") to the Redevelopment Plan (the "Redevelopment Plan") for the Great Mall Redevelopment Project (the "Project") is to extend the duration of the Redevelopment Plan for the longest time legally permitted. The Redevelopment Plan does not include, and is not proposed to include, provisions authorizing tax increment financing. Consequently, the Amendment is not subject to Health and Safety Code Section 33354.6 and may be processed in accordance with the amendment procedures set forth in Article 12 of Chapter 4 thereof (Health and Safety Code Section 33450 *et seq.*).

#### *Scope of Services*

Special Counsel will prepare and update as necessary a schedule of all actions required to be completed during the amendment process, and will coordinate and manage the amendment process with Agency staff. Special Counsel will prepare all required legal documents, including legal notices, resolutions, the Amendment, the ordinance adopting the Amendment, and will review for legal adequacy the evidentiary documents prepared by Agency staff or others, including the Report to the City Council and the Negative Declaration. Special Counsel will also provide advice and consultation, on a day-to-day basis, to Agency staff and will attend meetings with Agency staff as necessary and appropriate. Special Counsel will also attend meetings with the community and meetings of the Planning Commission, Agency Board and City Council associated with the proposed Amendment, including the joint public hearing.

#### *Compensation for Amendment Services*

The total compensation for services to be performed by Special Counsel shall not exceed \$42,075.00, without the prior approval of the Agency. The total compensation is generally itemized as follows, provided, however, that said itemization shall not be deemed to be a limitation on the hours or total amount associated with the task itemized:

<u>Hours by Task</u>	<u>Senior Attorneys</u>	<u>Associate Attorneys</u>	<u>Amount</u>
Schedule	5.00	10.00	\$2,875.00
Notices/Resolutions/Ordinance	20.00	40.00	\$11,500.00
Amendment	5.00	10.00	\$2,875.00
Document Review	15.00	35.00	\$9,500.00
Coordination/Consultation	35.00	15.00	\$10,500.00
Meetings (8)*	16.00		\$3,600.00
Administration (3%)			\$1,225.00
<b>TOTAL</b>			<b>\$42,075.00</b>

\* Attendance at additional meetings will be billed as general legal services at Special Counsel's general rates.

City of Milpitas, California

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
<b>Check one:</b>  <input type="checkbox"/> Budget Appropriation <input checked="" type="checkbox"/> Budget Transfer	100-3811 390-9104640	\$42,075 \$42,075	100-1204252 390-3931	\$42,075 \$42,075

**Explain the reason for the budget change:**

The Great Mall Redevelopment Project Area, comprised of 150 acres, was created in 1998.. The Great Mall Project Area was amended in 2001 to add two non-contiguous parcels that would allow the continued use of freestanding highway signs for the Great Mall Shopping Center. The Great Mall Redevelopment Project Area expires in 2010, extended by two years as part of the SB 1096 extensions.

Extending the life of the Great Mall Project Area will allow for a new sign to be installed, continuing the opportunity for redevelopment project area businesses to advertise along the freeway, regardless of their location. If approved by the Agency, staff will proceed with actions to prepare and process a plan amendment that will allow extension of the Great Mall Redevelopment Project area to 2034, which is the expiration date of the most recently added territory to Project Area No. 1.

If the Agency authorizes staff to proceed with the proposed plan amendment, the CEQA process will begin with notification to all responsible agencies and agencies with jurisdiction by law, as described in the CEQA guidelines.

Agency staff and Agency Counsel also request the approval of an outside legal services contract with the law firm of Murphy & Davis, LLP for an amount not to exceed \$42,075. Such amount would be transfer from the Non-departmental contingent reserve account to the Agency Counsel budget.

Approve the budget transfer of \$42,075 from Non-departmental to the City Attorney for outside legal services.

Check if City Council Approval required.

Meeting Date: June 17, 2008

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date:	
Reviewed by:	Finance Director: <i>W.C. Karl</i>	Date: 6/10/08	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	