

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

**THIS AGREEMENT** is entered into this \_\_\_\_ day of September, 2010, by and between the CITY OF MILPITAS, a municipal corporation, herein called the “City”, the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic, herein called the “Agency,” and MURPHY & ASSOCIATES PC, a California professional corporation, engaged in the practice of law within the State of California, herein called “Special Counsel.”

**Recitals**

A. The Agency and the City have been sued by the County of Santa Clara incident to redevelopment activities the Agency and the City have undertaken pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*).

B. The Agency and the City desire to engage Special Counsel, in association with their General Counsel, to provide litigation legal services to the Agency and the City in connection with the lawsuit filed against them by the County of Santa Clara.

**Agreements**

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

1. **Scope of Services.** Special Counsel shall perform litigation legal services to the Agency, the City, and its officers in connection with the lawsuit captioned County of Santa Clara vs. All Persons Interested in the Matter of the Sixth Amendment to the Great Mall Redevelopment Project and the Thirteenth Amendment to the Redevelopment Plan for Milpitas Project Area No. 1 as Adopted by Ordinances No. 192.23 and No. 192.24 by the Milpitas City Council, City of Milpitas, Milpitas City Council, Milpitas Redevelopment Agency, and Does 1 through 50; Santa Clara County Superior Court case number 1-10-CV-173645. Special Counsel’s services shall include representation in litigation, advice, consultation, legal research and opinions regarding

the subject litigation. C. Nicole Murphy 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 and City have General Counsel (the City Attorney) presently serving as litigation counsel in this action and that Special Counsel shall serve as co-counsel in this litigation and shall coordinate its services hereunder with the City Attorney.

**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. This Agreement shall terminate on December 31, 2011, unless otherwise extended by the parties in writing.

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

**a. Compensation.**

(1) The total compensation for services to be performed by Special Counsel shall not exceed \$150,000.00, without the prior approval of the Agency and City.

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

(3) **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 \$250 per hour for principal attorneys, \$200 per hour for associate attorneys, and \$100-\$175 per hour for legal assistants. Special Counsel shall notify the City Attorney 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 and City 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 City Attorney 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 City Attorney shall review Special Counsel's monthly statements and Special Counsel shall be paid 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 and City expect business moderation and good judgment with regard to all compensation and expense reimbursement requests. Billing for more than one attorney at a meeting, proceeding or hearing is discouraged unless the City Attorney 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 City Attorney.

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 any party, with or without cause. In such event, all finished and unfinished documents, project data and reports shall, at the option of the Agency or City, 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 Officials.** No member of the governing body of the City, and no other public official of the City 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 or City 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 \$1,000,000 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 and City. 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, the City, nor their 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 and City.

**11. Resolution of Fee Disputes.** At the City's and Agency's sole discretion, the City and 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 and City. 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.

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

This Agreement was approved by the Milpitas City Council at its meeting of September 7, 2010.

**APPROVED AS TO FORM:**

**REDEVELOPMENT AGENCY AND  
CITY OF MILPITAS**

\_\_\_\_\_  
**Michael J. Ogaz,  
City Attorney, City of Milpitas**

Signed: \_\_\_\_\_  
**Thomas C. Williams  
Title: City Manager and  
Executive Director**

**“AGENCY”**

**MURPHY & ASSOCIATES PC**

Signed: \_\_\_\_\_  
**C. Nicole Murphy**

**“SPECIAL COUNSEL”**

City of Milpitas, California

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
<b>Check one:</b> <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	390-2940	\$150,000	390-120-4255	\$150,000

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

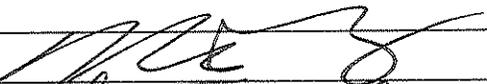
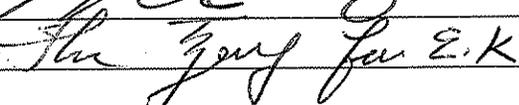
**Background:** The City and Redevelopment Agency were sued by the County of Santa Clara. The suit challenges our recent Redevelopment Plan amendments. Association of Counsel is for purposes of assisting the City Attorney and General Counsel Offices in defending the lawsuit.

**Fiscal Impact:** Appropriation of \$150,000 from Redevelopment Unreserved Undesignated Fund Balance.

**Recommendation:** Approve contract with Murphy and Associates in an amount not to exceed \$150,000, and approve appropriation from Redevelopment Unreserved Undesignated Fund Balance in that amount.

Check if City Council Approval required.

Meeting Date: September 07, 2010

Itemization of funds, if needed:		Amount
Requested by:	Division Head:	Date:
	Department Head: 	Date: 8-24-10
Reviewed by:	Finance Director: 	Date: 8/24/10
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: