OUTSIDE COUNSEL SERVICES AGREEMENT

THIS AGREEMENT dated December 1, 2003, is by and between the CITY OF SUNNYVALE, a chartered city ("City"), and Goldfarb & Lipman engaged in the practice of law in California, hereinafter referred to as "Outside Counsel."

WHEREAS, the City acting through its City Attorney pursuant to Section 908 of the Sunnyvale City Charter desires to retain the services of Outside Counsel for the purpose of redevelopment and related real estate advice and counsel.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1.0. SCOPE OF SERVICES.

Outside Counsel will associate as counsel of record, in association with the City Attorney and her designee, to perform legal services in connection with redevelopment and related real estate advice.

1.1 Responsible Attorneys.

Goldfarb & Lipman, through its partners, Lee C. Rosenthal and Lynn Hutchins, shall serve as Outside Counsel, shall be responsible for the performance of services hereunder shall personally handle all matters except as expressly authorized by the City Attorney or her designee, and shall supervise any services performed by other members or employees of Outside Counsel. Throughout the course of this agreement and while performing services hereunder, Outside Counsel shall perform such services as an independent contractor. Outside Counsel is not an officer, agent or employee of the City.

1.2 City Attorney's Responsibilities.

The City Attorney or her designee shall be chief counsel of record for all purposes relating to the litigation or project. Outside Counsel's performance hereunder shall be subject to the review, direction and supervision of the City Attorney or her designee. Outside Counsel shall coordinate its services hereunder with the City Attorney and her designee. All services provided pursuant to this Agreement by Outside Counsel shall be performed to the satisfaction of the City Attorney and her designee.

2.0. TIME OF PERFORMANCE.

The term of this Agreement shall be from December 1, 2003 through June 30, 2005.

3.0. LITIGATION.

Outside Counsel handling litigation shall develop and comply with litigation planning and budgeting procedures as may be established from time to time by the City Attorney in the exercise of her sole discretion. The general framework of the litigation planning and budgeting procedures is as follows:

3.1 Budget.

3.1.1 On request of the City Attorney, Outside Counsel shall provide a litigation plan and a budget, or revisions thereof, which will include a projection of recommended strategies and actions to be taken in the litigation and a range of costs for each such strategy or action. The litigation budget is not a fixed fee agreement and is subject to revision.

3.1.2 The litigation budget shall call for an estimate of the attorneys' hours and fees and disbursements during each phase and activity, including: pleadings; preliminary motions; initial discovery; factual investigation of merits (interviewing clients, employees and third parties); review of City's documents; 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. All anticipated expenses must be listed and costs estimated.

4.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.

4.1 Compensation.

Fees for all legal services provided hereunder shall be charged in accordance with Exhibit "A" which is attached and incorporated by reference. Exhibit "A" may be amended, from time to time, to alter fees and charges applicable hereto provided that a letter agreement is duly signed and approved by the City Attorney. The total amount of the fees and expenses is not to exceed $86,000.

4.2 Reimbursement.

In addition to the compensation provided above, the City will reimburse Outside Counsel for the following expenses only, and for no other expenses: Printing, external copying costs (for legal documents and file materials, but not library materials), long distance telephone calls, transcription and reporter's fees, and reasonable travel. Any other expense must be approved by the City Attorney in writing and in advance in an approved budget. No compensation shall be allowed for expenses not itemized in an approved budget, including without limitation, word processing, normal or overflow secretarial time or overtime, or computer time or service, or any other expense. No compensation shall be allowed for administrative overhead or premiums added to the direct cost of research support or other services.

4.3 City Attorney Approval Required.

The City Attorney must approve in advance any single reimbursement item in excess of $500, including, but not limited to, investigators, copying and experts.

4.4 Expense Control.

Outside Counsel shall use all available means, consistent with sound professional practices and the exercise of reasonable judgment, to limit and minimize expenses incurred during the performance of this Agreement. Outside 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.

4.5 Method of Billing.

Outside Counsel shall provide monthly bills in the form specified herein. Each bill shall have a cover page summary indicating category totals. Unless otherwise agreed, the following information must be provided in detailed monthly bills in addition to the summary sheet:

A. A detailed description of work, in time increments of .1 hours (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.

D. Each billing item will 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 conferences, the specific reason for each conference will be stated. Conferences between attorneys shall be justified in detail.

F. When charges are made for research time, the specific issue being researched and the need for the research will be identified. The City has retained Outside Counsel for its expertise, and therefore expects not to be billed for introductory or background research.

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. Only those attorneys approved by the City may bill on the case.

H. No more than two support staff or paraprofessionals will bill on a particular case without the prior approval of the City.

I. The City Attorney reserves the right to request various levels of detail and specific formats (such as columnar comparisons with established budgets).

4.6 Timing of Payment.

The City shall pay Outside Counsel for services rendered and costs incurred hereunder, at the rates and in the amounts provided hereunder, on a periodic basis in accordance with the periodic statements, as approved by the City Attorney.

5.0 ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS.

Outside 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 approval of the City Attorney.

6.0 TERMINATION OF AGREEMENT AND LEGAL SERVICES.

The City shall have the right, at any time in its best judgment, with or without reason, to terminate this agreement, and to obtain new Outside Counsel, or take such other steps as City deems proper. In the event that this agreement is so terminated, City shall pay to Outside Counsel the rates, fees and charges accrued for satisfactory work to the time of termination. City shall be entitled to electronic and written copies of files maintained concerning this representation and to the return of all documents submitted to Outside Counsel.

7.0 INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY.

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.

8.0 INTEREST OF COUNSEL.

Outside 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 such representation if the City Attorney, in her sole discretion, objects for any reason.

9.0 GENERAL PROCEDURES.

Copies of major 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. Regular mail should normally be sufficient. Transmissions by e-mail are preferred to faxes. E-mail address is cityatty@ci.sunnyvale.ca.us.

10.0 CONFLICT OF INTEREST.

Outside Counsel certifies that no member, officer or employee of Outside Counsel is an officer or employee of the City of Sunnyvale except to the extent permitted by law.

11.0 MAINTENANCE AND INSPECTION OF RECORDS.

11.1 Audits.

The City and any other federal, state or local governmental agency, and any of their authorized auditors or representatives, including the City Auditor, shall have access to, and the right to audit and reproduce any of Outside 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 Outside Counsel is properly entitled or for other purposes relating to the Agreement.

11.2 Records.

Outside 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 Outside Counsel shall promptly make all such records available to auditors or other representatives of the City or other governmental agencies.

12.0 INSURANCE.

Outside Counsel shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of the Agreement, including any extensions thereto. The policies shall state that they afford primary coverage. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Special Counsel shall immediately notify City and cease all performance under this Agreement until further directed by the City.

12.1 General Liability.

General Liability with minimum limits of at least $1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required.

12.2 Professional Liability.

Professional errors and omissions coverage in a sum of at least $1,000,000. If a claims-made policy is required, a "tail" of at least three years shall be purchased if non-renewed within three (3) years of completion of performance under this Agreement. Applicable aggregates must be identified and claims history provided to determine amounts remaining under the aggregate.

12.3 Workers' Compensation.

Outside Counsel shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job.

13.0 CHOICE OF FORUM.

The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a court within Santa Clara County at a place to be determined by the rules of the forum.

IN WITNESS WHEREOF, City and Outside Counsel have executed this agreement.

CITY OF SUNNYVALE

Valerie J. Armento
City Attorney

Lee C. Rosenthal
Goldfarb & Lipman

EXHIBIT A

ATTORNEYS AND RATE SCHEDULE

M David Kroot	245
Lee C. Rosenthal	245
John T. Nagle	245
Polly V. Marshall	245
Lynn Hutchins	245
Richard A. Judd	235
Karen M. Tiedemann	235
Thomas H. Webber	235
John T. Haygood	235
Dianne A. Jackson McLean	235
Michelle D. Brewer	235
Jennifer K. Bell	235
Claudia Martin	230
Carolyn A. Gold	220
Robert C. Mills	220
Isabel L. Brown	190
William F. DiCamillo	165
Rafael Mandelman	165
Margaret F. Jung	165
Emily B. Longfellow	165
Heather Gould	155
Amy DeVaudreuil	145
Senior Law Clerks	130
Law Clerks	120
Project Coordinators	120