

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services ("AGREEMENT") is made and entered into by and between the CITY OF SARATOGA, a Municipal Corporation in the State of California ("CITY"), and SHUTE, MIHALY & WEINBERGER LLP ("SMW").

WITNESSETH

WHEREAS, it is the desire of the parties hereto to enter this AGREEMENT and establish the terms and conditions for rendition of legal services to the CITY and the compensation therefor; and

WHEREAS, RICHARD S. TAYLOR is a member of the law firm of SMW; and

WHEREAS, JONATHAN WITTWER and his law firm, Wittwer & Parkin, LLP, have associated with SMW for the purposes of the AGREEMENT;

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. **Appointment of City Attorney.** CITY hereby retains RICHARD S. TAYLOR ("ATTORNEY"), as City Attorney for the CITY and ATTORNEY agrees to faithfully represent the legal interests of CITY during the term of this AGREEMENT.
2. **Attorney's Services and Scope of Work.**
 - 2.1 ATTORNEY shall be primarily responsible for providing the services set forth below and, in the absence of extenuating circumstances, shall personally attend all City Council meetings and generally provide four (4) office hours at City Hall on the days of City Council meetings. ATTORNEY shall be assisted in providing these services primarily by Jonathan Wittwer, who will attend City Council meetings if ATTORNEY is unable to attend due to extenuating circumstances. Any alteration in this primary assignment shall be made only after consulting with, and securing the approval of, CITY; provided, however, that nothing in this paragraph shall preclude ATTORNEY from utilizing other partners, members, or employees of SMW or Wittwer & Parkin to provide services

in support of these primary assignments. For the purposes of this AGREEMENT, all further references to "SMW" shall include Jonathan Wittwer and Wittwer & Parkin except as context indicates otherwise.

2.2 Jonathan Wittwer will attend CITY Planning Commission meetings as requested by the City Community Development Director. ATTORNEY shall attend such meetings if Mr. Wittwer is unable to attend.

2.3 ATTORNEY shall provide, through his own services and those such other attorneys of SMW as ATTORNEY shall determine, all legal services usually and normally provided by City Attorneys, and specifically those duties and services described in Government Code Sections 41801, 41802, and 41803.5. Such services shall include, but not be limited to:

2.3.1 Attendance at City Council and, as requested, Planning Commission meetings;

2.3.2 Preparation of ordinances, resolutions, leases, contracts or other legal documents;

2.3.3 Preparation of all findings, decisions or other documents pertaining to legislative or quasi-judicial actions or decisions made by the City Council, boards, commissions or officers;

2.3.4 Rendering legal advice (both oral and written) to members of the City Council, commissions, boards, and to the City Manager, department heads and employees with respect to City matters;

2.3.5 Negotiating and/or rendering advice with respect to negotiations pertaining to CITY's contracts, leases and memoranda of understanding;

2.3.6 Representing CITY in litigation and/or arbitration or other judicial, administrative or quasi-judicial proceedings;

2.3.7 Furnishing legal services for assessment district or bond proceedings; and

2.3.8 Furnishing legal services for the Public Finance Authority or other agencies or entities which are not operated as an integral part of CITY, but which are or may be created by CITY as independent agencies.

2.4 ATTORNEY and SMW shall provide the services required with the level of care, skill, and expertise customarily exercised by licensed attorneys providing similar services in the San Francisco Bay Area. All persons assigned by ATTORNEY to provide legal representation in court shall, at all times during the term of this AGREEMENT, be members in good standing of the State Bar of California.

2.5 If ATTORNEY determines that the best interests of CITY would be served by retaining outside counsel ("COUNSEL") to represent CITY on a particular matter, ATTORNEY shall so inform CITY and request authorization to retain such COUNSEL. ATTORNEY shall only retain COUNSEL with prior authorization from CITY. SMW will bill CITY for the services provided by any COUNSEL without adding on any additional markup. SMW may bill CITY for ATTORNEY's time spent supervising and coordinating with COUNSEL.

3. Independent Contractor.

ATTORNEY shall provide legal services to CITY as an independent contractor, with control over his offices, hours, support staff, and other matters except as provided herein.

4. Compensation.

4.1 CITY shall compensate SMW in accordance with the Rate Schedule set forth in Attachment A to this agreement. The rates in the Rate Schedule shall be adjusted annually on July 1 to reflect changes in the December to December Consumer Price Index for San Francisco/Oakland/San Jose for the Urban Wage Earners (hereinafter "CPI/W") rounded to the nearest \$1.00 increment.

4.2 The rates referenced above include general photocopying, facsimile, telephone costs, and travel expenses between the City of Saratoga and the ATTORNEY's office in San Francisco and Jonathan Wittwer's office in Santa Cruz and these costs will not be billed to CITY except that CITY shall reimburse SMW for occasional costs, including court costs, deposition and witness fees, large-scale copying, transcript preparation, travel to meetings outside the City of Saratoga and similar expenses, which expenses shall be itemized separately on bills submitted to CITY.

- 4.3 SMW shall provide CITY with detailed monthly billing statements, which CITY shall pay within 30 days of billing.
- 4.4 CITY shall not pay for more than one attorney to appear at any meeting unless otherwise approved in advance by the City Manager. ATTORNEY shall endeavor to avoid duplication of effort wherever possible and shall not bill CITY for consultations between ATTORNEY and Jonathan Wittwer, or for time spent by ATTORNEY that would have been unnecessary had ATTORNEY been providing the services provided by Jonathan Wittwer. Similarly, CITY shall not be billed for time spent by Jonathan Wittwer that would have been unnecessary had Jonathan Wittwer been providing the services provided by ATTORNEY.
- 4.5 As set forth in section 2.1 of this Agreement, the references to SMW in this section 5, and elsewhere in this Agreement include Jonathan Wittwer and Wittwer & Parkin, LLP. Accordingly, all compensation and reimbursements to Jonathan Wittwer and Wittwer & Parkin, LLP shall be in accordance with the foregoing provisions of this Section 5 and CITY shall be billed solely by SMW on behalf of Shute, Mihaly & Weinberger and Jonathan Wittwer and Wittwer & Parkin, LLP.

5. No Assignment.

This AGREEMENT is entered into by CITY and SMW and, except as set forth herein, the rights and obligations of ATTORNEY may not be assigned or delegated to any other attorney of SMW without the express written consent of the City Council. This AGREEMENT is not assignable.

6. Municipal Professional Memberships, Meetings.

It is understood and agreed that CITY and ATTORNEY mutually benefit from ATTORNEY's participation in certain professional activities relating to municipal law. Therefore, ATTORNEY shall maintain active participation in the City Attorney's Department and activities of the League of California Cities. CITY shall advance or reimburse to ATTORNEY his costs and expenses incurred in attending the semi-annual City Attorney's Department meeting of said League. In the event ATTORNEY shall represent other city or cities as City Attorney, ATTORNEY shall be reimbursed for his costs and expenses (or registration fee and lodging) for attending the annual City Attorneys' Department meeting of said League only in proportion that the number of cities represented by ATTORNEY as City Attorney bears to one.

Subject to prior authorization of City's City Council, and limited to the amount budgeted for such activity in the CITY budget, ATTORNEY may enroll, attend, participate in conferences, courses, seminars, committee work, or other activities in addition to that hereinabove specified of the League of California Cities, or other organizations related to the practice of Municipal Law. Upon such authorization, ATTORNEY may incur costs and expenses in connection with the particular event or activity so authorized, which shall be advanced or reimbursed by CITY.

It is further understood and agreed that Jonathan Wittwer may participate in the above referenced memberships and meetings provided, however, that CITY shall advance costs and expenses for no more than one individual at any particular event or activity.

7. Insurance.

SMW agrees to carry malpractice insurance in full force and effect during the term of this AGREEMENT in an amount not less than One Million dollars (\$1,000,000) per claim and Two Million dollars (\$2,000,000) in aggregate and to ensure that Jonathan Wittwer carries malpractice insurance in full force and effect during the term of this AGREEMENT in an amount not less than Five Hundred Thousand dollars (\$500,000) per claim and One Million dollars (\$1,000,000) in aggregate.

8. Annual Review.

Annually, during the month of July, ATTORNEY and CITY's City Council shall meet to review the performance of ATTORNEY, Jonathan Wittwer and members or associates of SMW in furnishing the services provided hereunder, and to review the compensation provisions hereof. The parties may agree to changes or amendments hereto, including, but not necessarily limited to changes in compensation provisions, which changes or amendments shall be evidenced by written amendment hereto.

9. Compliance with Federal, State and Local Laws.

SMW shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations affecting the performance of this AGREEMENT, including without limitation laws requiring licensing and nondiscrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.

12. Conflict of Interest.

SMW and Jonathan Wittwer hereby covenant that they have no interest not disclosed to CITY and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as CITY may consent to in writing prior to the acquisition by SMW or Jonathan Wittwer of such conflict.

13. Term.

This AGREEMENT shall be terminable by either party upon 60 days' written notice. CITY shall pay SMW for any compensation owed hereunder up to the time of any such termination.

14. Effective Date.

This AGREEMENT shall be effective on the date last signed below and on that date shall replace in its entirety the Agreement for Legal Services between the parties executed by CITY on July 7, 1999 except that the rates for legal services set forth in the 1999 agreement shall remain in effect through June 30, 2005 after which date the rates in this AGREEMENT shall apply.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT the day and year last set forth below.

CITY OF SARATOGA
A Municipal Corporation

Dated: 3/14/05

By: Kathleen M King
KATHLEEN KING, MAYOR

SHUTE, MIHALY & WEINBERGER LLP

Dated: 3/8/05

By: [Signature]
RICHARD S. TAYLOR

Attachment A
Legal Services Agreement Rate Schedule
City of Saratoga

	<i>Rate/Hour</i>
First 90 hrs of Service per Month	\$175.00

Rate Schedule A (Service in Excess of > 90 hrs)

Partner	\$185.00
Sr. Associate	\$160.00
Jr. Associate	\$145.00
Paralegal	\$90.00
Law Clerk	\$45.00

Rate Schedule B (for litigation services)

Partner	\$215.00
Sr. Associate	\$175.00
Jr. Associate	\$145.00
Paralegal	\$90.00
Law Clerk	\$50.00

Rate Schedule C (for reimbursable services)

Partner	\$240.00
Sr. Associate	\$220.00
Jr. Associate	\$190.00
Paralegal	\$110.00
Law Clerk	\$60.00

Rate Schedule C applies to legal services incurred on matters for which the City is fully reimbursed by City applicants through the applicable fee schedule.