

**June 29, 2010****SUBJECT: Amendment of Outside Counsel Agreement with Bertrand, Fox & Elliot for Litigation Advice and Services****REPORT IN BRIEF**

Approval is requested for a Third Amendment to a contract with the law firm of Bertrand Fox & Elliot, to provide legal services, advice, and representation in police liability and civil rights issues, including grievance arbitration, litigation in state and federal courts, administrative proceedings, and related assignments. The current contract began in 2007 and provides for fees not to exceed \$250,000. This third amendment is required to reflect the fact that the City is currently defending several complex police civil rights cases, as well as other police liability cases, which will continue for several more years and involve substantial additional work and trial preparation.

BACKGROUND

Gregory Fox, a specialist in the areas of constitutional and civil rights issues and partner in the law firm of Bertrand Fox & Elliot, was retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services, advice, and representation in police liability, and civil rights issues, including grievance arbitration, litigation, administrative proceedings, and related assignments.

The City's current contract with Bertrand Fox & Elliot has a limit of \$250,000. Bertrand Fox & Elliot is the City's outside counsel in the Canas shooting case, the complex Oberg constitutional rights case, and several other cases involving police liability and civil rights claims. Since it is anticipated that the work on these pending matters will continue for 2 years, and the City may have additional civil rights cases it is required to defend in the next several years, an increase in the contract maximum amount is required to accommodate the anticipated additional work and representation.

DISCUSSION

Due to ongoing and future litigation, the City will continue to require the specialized legal services of Bertrand Fox & Elliot in the area of police liability and civil rights. The City Attorney finds the billing rate for this firm to be highly competitive with other legal firms providing similar services and that the work performed to date has been efficient and demonstrated good cost control.

FISCAL IMPACT

Funds are available in the budgeted 09-10 and 10-11 City Attorney operating budget, and are anticipated to be budgeted in future operating budgets.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve a third amendment to increase the contract with the law firm of Bertrand Fox & Elliot in an amount not to exceed a total contract amount of \$450,000 and extending the term to 2013.
2. Do not approve a third amendment to the contract with Bertrand Fox & Elliot.

RECOMMENDATION

Alternative 1, Council approve a Third Amendment to the Outside Counsel Services Agreement with Bertrand Fox & Elliot for legal services in an additional amount not to exceed a total contract amount of \$450,000 and extending the term to 2013.

Prepared and reviewed by:

David E. Kahn, City Attorney
City Attorney's Office

Attachments:

Attachment A – Draft Third Amendment to Outside Counsel Agreement

**THIRD AMENDMENT TO
OUTSIDE COUNSEL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
BERTRAND, FOX & ELLIOT, LLP**

THE OUTSIDE COUNSEL SERVICES AGREEMENT commencing March 12, 2007, by and between the CITY OF SUNNYVALE, a municipal corporation (“City”) and BERTRAND, FOX & ELLIOT, LLP (“Outside Counsel) is hereby amended, effective June 29, 2010, as to Sections 2.0 and 4.0, as follows:

1. Section 2.0 is hereby amended to read as follows:

2.0 TIME OF PERFORMANCE. The term of this Agreement shall be from March 12, 2007, through December 31, 2013.

2. Section 4.0 is hereby amended to read as follows:

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 fees and expenses shall not exceed \$450,000.00.

3. Except as amended above, all other terms and conditions of the Agreement commencing, March 12, 2007, shall remain in effect.

IN WITNESS WHEREOF, City and Outside Counsel have executed this Third Amendment to Outside Counsel Agreement.

Dated: _____, 2010

Dated: _____, 2010

CITY OF SUNNYVALE
A Municipal Corporation

BERTRAND, FOX & ELLIOT, LLP
A Professional Corporation

By _____
David E. Kahn, City Attorney

By _____
Gregory M. Fox

EXHIBIT A

BERTRAND, FOX, & ELLIOT

RATE SCHEDULE

Partners (litigation matter)	\$165
Partners (non-litigation matter)	\$195
Associates	\$155