



November 1, 2011

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

Approval is requested for a Fourth 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 \$450,000. The City has expended an average of \$100,000 per year in litigating these police civil rights matters. This fourth amendment is required to reflect the fact that the City is continuing to defend several complex police civil rights cases, as well as other police liability cases, which will most likely continue for several more years and involve substantial additional trial preparation, summary judgment and motion work.

**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. Mr. Fox has extensive experience in police civil rights litigation and has aggressively litigated cases on behalf of DPS and the City, with a significant number of claims dismissed or adjudicated in favor of the City.

The City's current contract with Bertrand Fox & Elliot has a limit of \$450,000. Bertrand Fox & Elliot is the City's outside counsel in the Canas shooting case, the Oberg constitutional rights case, and recently completed litigating the Millar case. Since it is anticipated that the work on these pending matters will continue for several more years and the current contract amount represents the legal costs over the last five 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 of high quality, efficient and demonstrated cost control measures.

**FISCAL IMPACT**

Funds are available in the budgeted 11-12 and 12-13 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 fourth amendment to increase the contract with the law firm of Bertrand Fox & Elliot in an amount not to exceed a total contract amount of \$650,000.00 and extending the term to 2015.
2. Do not approve a fourth amendment to the contract with Bertrand Fox & Elliot.

**RECOMMENDATION**

Alternative 1, Council approve a Fourth 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 \$650,000.00 and extending the term to 2015.

Prepared and reviewed by:

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

**Attachments:**

Attachment A – Draft Fourth Amendment to Outside Counsel Agreement

**FOURTH 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 October 1, 2011, 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, 2015.

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 \$650,000.00.

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 Fourth Amendment to Outside Counsel Agreement.

Dated: \_\_\_\_\_, 2011

Dated: \_\_\_\_\_, 2011

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, &amp; ELLIOT

## RATE SCHEDULE

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