

**THIRD AMENDMENT TO
OUTSIDE COUNSEL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
BERTRAND, FOX, ELLIOT, OSMAN & WENZEL,
A PROFESSIONAL CORPORATION
(Rivera v. City of Sunnyvale)**

THIS THIRD AMENDMENT TO OUTSIDE COUNSEL SERVICES AGREEMENT is entered into this ____ day of _____, 2016, by the CITY OF SUNNYVALE (“City”), a municipal corporation and BERTRAND, FOX, ELLIOT, OSMAN & WENZEL, a professional corporation, engaged in the practice of law in California (“Outside Counsel”).

RECITALS

WHEREAS, on May 13, 2013, City and Outside Counsel entered into an agreement entitled, “Outside Counsel Services Agreement between the City of Sunnyvale and Bertrand, Fox, Elliot, Osman & Wenzel (Rivera v. City of Sunnyvale)” (“Agreement”) to advise and represent City in the litigation matter referred to as Rivera v. City of Sunnyvale, et al.; and

WHEREAS, the City settled the case with the original plaintiff Rivera, the co-defendant Casa de Amigos Mobilehome Park filed a cross-complaint against the City, and the litigation continues; and

WHEREAS, on November 18, 2015, City and Outside Counsel entered into a First Amendment to the Agreement to increase the amount of total compensation and extend the term; and

WHEREAS, on April 26, 2016, City and Outside Counsel entered into a Second Amendment to the Agreement to increase the amount of total compensation; and

WHEREAS, City and Outside Counsel desire to amend the amended Agreement to increase the amount of total compensation allowed by \$100,000;

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Section 3.0 is hereby amended to read as follows:

3.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.

- 3.1 Compensation.** Fees for all legal services provided hereunder shall be charged in accordance with Second Revised Exhibit “A” which is attached and incorporated by reference. Second Revised 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 \$325,000.00. Outside Counsel shall notify the City prior to incurring billable costs in excess of 95% of the not-to-exceed amount.

3. First Revised Exhibit A, "Fee Schedule" is amended to read as shown in Second Revised Exhibit A, attached and incorporated into this Third Amendment.

4. All of the terms and conditions of the amended Agreement not specifically modified by this Third Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

CITY OF SUNNYVALE, a municipal
corporation

**BERTRAND, FOX, ELLIOT, OSMAN &
WENZEL**, a California professional
corporation

By _____
JOHN A. NAGEL
City Attorney

By _____
GREGORY M. FOX
Vice President

Dated: _____

Dated: _____

SECOND REVISED EXHIBIT A

FEE SCHEDULE

BERTRAND, FOX, & ELLIOT

RATE SCHEDULE

Partners (litigation matter)	\$185
Partners (non-litigation matter)	\$185
Associates	\$170