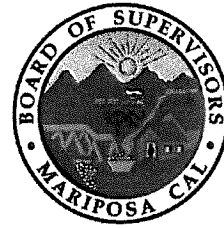


MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2016-607

MEETING: November 22, 2016

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: First Amendment to Legal Services Agreement with Silver & Wright, LLP

RECOMMENDATION AND JUSTIFICATION:

Approve a First Amendment to the Legal Services Agreement with Silver & Wright, LLP to Provide Legal Services to the County; and Authorize the Board Chair to Sign the Amendment.

This First Amendment provides the additional compensation necessary to continue the receivership and code enforcement actions that Silver & Wright are seeking on the County's behalf.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On October 6, 2015 the County entered into a Legal Services Agreement with Silver & Wright, LLP to provide legal advice, representation and assistance to the County regarding receivership and code enforcement actions.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the amendment. County counsel may need to retain these services elsewhere at a greater cost.

FINANCIAL IMPACT:

The County will be seeking recovery of the funds spent in this matter.

ATTACHMENTS:

1st Amendment to Legal Svs. Agreement-Silver&Wright (PDF)

Legal Services Agreement-Silver&Wright (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 11/16/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT

THIS FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT is made and entered into this 22nd day of November, 2016, by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "County" and Silver & Wright, LLP, hereinafter referred to as "Contractor".

WHEREAS, the County and Contractor have heretofore entered into an Agreement dated October 6, 2015, wherein Contractor agreed to provide legal advice, representation and assistance to the County regarding receivership and code enforcement actions as described in the Legal Services Agreement; and

WHEREAS, County and Contractor desire to amend said Agreement to change the compensation to be provided to Contractor;

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants herein recited, hereby agree as follows:


1. Paragraph 3.3, "Compensation", is hereby amended as follows: "In consideration for the services to be performed by Contractor, County agrees to pay Contractor for services as described in the Legal Services Agreement attached hereto at the rates set forth in Exhibit A attached thereto. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County."

2. Except as herein amended, the agreement dated October 6, 2015 shall remain in full force and effect.


IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

COUNTY OF MARIPOSA:

CONTRACTOR:




JOHN CARRIER, Chairman
Mariposa County Board of Supervisors



MATTHEW SILVER, Partner
Silver & Wright, LLP

ATTEST:

APPROVED AS TO FORM:



RENE LAROCHE
Clerk of the Board



STEVEN W. DAHLEM
County Counsel

**AGREEMENT BETWEEN SILVER & WRIGHT, LLP
AND THE COUNTY OF MARIPOSA
FOR CODE ENFORCEMENT LEGAL SERVICES**

1. PARTIES AND DATE.

This agreement ("Agreement") is made and entered into on _____ by and between the COUNTY OF MARIPOSA ("County"), and SILVER & WRIGHT LLP, a California limited liability partnership engaged in the practice of law in the State of California ("Law Firm"). Law Firm and the County are sometimes individually referred to herein as "Party" and collectively as "Parties." In consideration of the mutual promises set forth herein, the parties agree to the terms of this Agreement as set forth herein.

2. RECITALS.

2.1 The County wishes to engage the services of Law Firm to provide certain code enforcement services as described further in this Agreement. Law Firm wishes to provide all such services and has the necessary expertise and competency to provide such services.

3. TERMS.

3.1 Scope of Services. Law Firm shall provide legal advice, representation and assistance to the County regarding receivership and code enforcement actions, as assigned to Law Firm.

3.2 Responsibilities of Attorneys and Client. Law Firm shall fully cooperate with the County and will keep the County and its staff informed of the status and progress of all pending matters and all legal matters of importance with which Law Firm is involved. Law Firm will manage and control the delivery of all legal services described hereunder in a professional, competent, and cost-effective manner. The County agrees to provide all information and documentation necessary for the attorneys at Law Firm to perform their obligations under this Agreement.

3.3 Compensation. For all legal services provided in this Agreement the County will compensate Law Firm as described in Exhibit "A", which is attached hereto and incorporated herein by reference.

3.4 Cost Reimbursement. The County shall reimburse Law Firm for all out-of-pocket expenses incurred by Law Firm in providing legal services under this Agreement, including charges for printing and copying expenses at \$.15 for black and white copies and \$.60 for color copies, postage, research, litigation costs, courier and messenger services and automobile mileage at the current IRS rate for travel on behalf of the County. However, no separate charge shall be made by Law Firm for secretarial or word processing services.

3.5 Statements and Billing. Law Firm shall submit monthly invoices to the County indicating attorney fees and costs incurred for the legal services provided under this Agreement. The monthly invoice shall describe the nature of the work performed, the attorney performing

the work and the time spent for each task as well as the nature of any reimbursable expenses incurred. Upon the request of and as directed by the County, Law Firm shall generate separate invoices pertaining to specific accounts, matters and/or departments. The County shall process and cause such invoices to be paid promptly, typically within thirty (30) days of receipt. If no attorneys' fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month.

3.6 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of the attorneys at Law Firm were a substantial inducement for the County to enter into this Agreement. Therefore, Law Firm shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of the County. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the County.

3.7 Conflicts of Interest. Law Firm shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving the County and matters upon which Law Firm is providing legal services under this Agreement. Law Firm shall not reveal confidential information of the County except with the consent of the Board of Supervisors or as otherwise required by law. Law Firm shall notify the County of any conflict of interest related to matters upon which it is providing legal services under this Agreement upon discovery of any such conflicts. In the event that such conflict is not or cannot be waived or resolved County shall retain legal counsel and Law Firm shall assist and cooperate with legal counsel retained by the County on the matter for which the conflict arose.

A. Law Firm represents that neither Law Firm for any of its attorneys or other persons employed by Law Firm have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of County that may be affected by the services to be provided to County pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public.

B. If Law Firm or an attorney or other person employed by Law Firm acquires such an interest while this Agreement remains in effect, Law Firm will immediately disclose such interest to the County, and the interested individual shall not participate in or influence the performance of the services to be provided to the County pursuant to this Agreement.

C. In addition to the prescriptions regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, Law Firm agrees that unless waived in writing by the County, neither Law Firm nor any attorney employed by Law Firm shall represent clients before any board, commission, committee or department of County or represent a client adverse to County for a period of one (1) year from the date of completion of the services to be provided to County pursuant to this Agreement or the early termination of the Agreement as provided for in Section 3.10.

3.8 Client Files.

A. At the conclusion of this Agreement, the original client files for the work performed under this Agreement for the County shall be made available to County. Law Firm will be entitled to make copies of the client files. At the conclusion of this Agreement, (whether or not County takes possession of the client files), County shall take possession of any and all original documents that may be in the client files and Law Firm shall have no further responsibility with regard to such documents.

B. If County does not take possession of the client files at the conclusion of the Agreement, Law Firm shall store such client files for a period of at least one (1) year. At any time after the conclusion of such one (1) year period, Law Firm may send to County a notice, advising of Law Firm's intention to dispose of the client files. The County shall have ninety (90) days from the date of such notice to take possession of the client files. If County does not take possession of the client files during that time, County agrees that Law Firm may dispose of the client files without further notice, provided Law Firm has no reason to believe that the items proposed to be destroyed are things required by law to be maintained or that would be reasonably necessary to the County to establish a right or a defense to a claim. If Law Firm has reason to believe that the files contain items that are required by law to be retained or that the County will reasonably need to establish a right or a defense to a claim, Law Firm will inspect the files for such items and will retain the items for the period required by law or according to the reasonably foreseeable needs of the County, at the discretion of the County Manager.

3.9 Independent Contractor. No employment relationship is created by this Agreement. Law Firm shall perform all legal services required under this Agreement as an independent contractor of the County and shall remain a wholly independent contractor of the County with only such obligations as are required under this Agreement. Neither the County, nor any of its employees, shall have any control over the manner, mode, or means by which Law Firm, its agents or employees, render the legal services required under this Agreement or its internal employment or compensation decisions, except as otherwise set forth herein.

3.10 Term; Termination of Agreement. The term of this Agreement shall commence on the Effective Date set forth in this Agreement and shall continue in full force and effect until terminated as provided herein. County or Law Firm may terminate this Agreement at any time, with or without cause, on thirty (30) days' written notice to the other party. In the event of such termination, Law Firm shall comply with all provisions of the Rules of Professional Conduct for the termination of a client relationship and the County shall pay Law Firm professional fees and costs, in accordance with this Agreement, for all services provided and costs incurred through the date of termination of this Agreement. The County agrees to execute, upon request, a stipulation in such form as to permit Law Firm to withdraw as attorneys of record in any legal action then pending. Law Firm shall cooperate to transition representation to a new attorney or firm in an expedient manner and make available to the County, or to counsel designated by the County, all documents and records of the legal services provided to the County and shall assist to the fullest extent possible in the orderly transition of all pending matters to the County's new counsel.

3.11 Insurance Coverage. Law Firm shall carry errors and omissions insurance of not less than One Million Dollars (\$1,000,000) per year in the aggregate, and any additional insurance required by the State of California. Law Firm shall furnish to the County proof of

insurance required by this Agreement upon request, and shall notify the County of any changes to the insurance.

3.12 Amendment; Modification. This agreement may be modified through a written instrument signed by both parties or by an oral agreement to the extent it is carried out.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

3.14 Time of Performance; Efficiency of Services; Cooperation. The services of Law Firm shall be performed expeditiously in light of the purposes of this Agreement. Law Firm shall follow all procedures as established by the County consistent with its duties. Law Firm shall work cooperatively with appropriate County staff and keep them informed on all matters of importance as they arise.

3.15 Non-Discrimination. In the performance of this Agreement, Law Firm shall not discriminate against any employee or applicant for employment because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, marital status, age, sexual orientation, or medical condition.

3.16 Waiver. No delay or omission to exercise any right, power or remedy accruing to County under this Agreement shall impair any right, power or remedy of County, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement: (1) shall be deemed effective unless it is in writing and signed by County; (2) shall be deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

3.17 Governing Law and Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. The section captions and headings in this Agreement have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

3.18 Severability. If any portion or all of this Agreement is held to be unenforceable for any reason, the remainder of that provision and the remainder of the Agreement shall remain in full force and effect.

3.19 Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Law Firm:

3350 Shelby Street
Suite 250
Ontario, CA 91764
(949) 385-6431

(Fax) (949) 385-6428
Attn: Matthew Silver

To County:


County Counsel
5100 Bullion St.
P.O. Box 189
Mariposa, CA 95338
(209) 966-3222
(Fax) (209) 966-5147
Attn: County Counsel

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

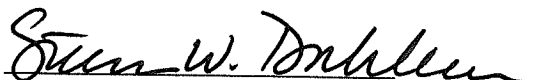
3.20 Indemnification. Law Firm shall defend, indemnify and hold the County, its officials, officers, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons arising out of any negligent errors or omissions of Law Firm, arising out of performance of Law Firm's services as provided in this Agreement.

3.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

COUNTY OF MARIPOSA

By: 
Mary Hodson
County Administrative Officer

Approved as to Form:

By: 
Steven W. Dahlem
County Counsel

SILVER & WRIGHT LLP

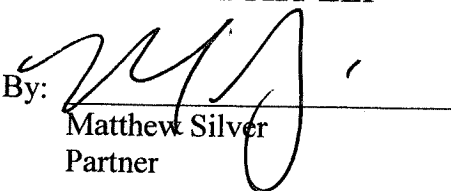
By: 
Matthew Silver
Partner

EXHIBIT "A"
COMPENSATION

For all services provided by Law Firm, the County shall compensate Law Firm as follows:

Attorneys - \$195/hour

Paralegals/clerks - \$120/hour

Fees shall not exceed \$10,000 unless approved by the County. Fees shall increase by three percent on January 1st of each year to offset rising costs.