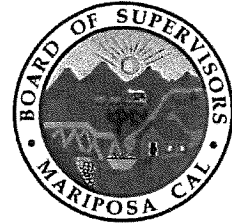




# MARIPOSA COUNTY

County Counsel • (209) 966-3222



## RESOLUTION - ACTION REQUESTED 2019-518

MEETING: September 10, 2019  
TO: The Board of Supervisors  
FROM: Steve Dahlem, County Counsel  
RE: Legal Services Agreement with Silver & Wright LLP

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### RECOMMENDATION AND JUSTIFICATION:

Approve a Legal Services Agreement with Silver & Wright LLP to Provide Legal Services to Mariposa County and its Officials and Employees; and Authorize the Board of Supervisors Chair to Sign the Agreement.

This Agreement retains Silver & Wright LLP to represent Mariposa County and its officials and employees in a legal action filed by Jerry Cox in the United States District Court.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

On August 12, 2019, a Complaint was filed in the United States District Court, Eastern District of California, Fresno Division, by Jerry Cox against Mariposa County, Mariposa County Sheriff's Office, Sheriff Deputies William Atkinson and Wesley Smith, Ashley Harris, California Receivership Group and Mark Adams.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

#### FINANCIAL IMPACT:

**The funding for this agreement will be paid from the County's Liability fund and there is currently sufficient money in this fund for this Legal Services Agreement.**

#### ATTACHMENTS:

**Silver&Wright LSA-Jerry Cox (PDF)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Rosemarie Smallcombe, District I Supervisor

**SECONDER:** Merlin Jones, District II Supervisor

**AYES:** Rosemarie Smallcombe, Merlin Jones, Marshall Long

**EXCUSED:** Kevin Cann, Miles Menetrey

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

**1. PARTIES AND DATE.**

This agreement ("Agreement") is made and entered into on September 10, 2019 ("Effective Date") by and between the COUNTY OF MARIPOSA (the "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 legal 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 defense to the County and its officials and employees in litigation against them, including the defense of the action entitled, *Jerry Cox v. Mariposa County, et al.*, United States District Court for the Eastern District of California, case number 1:19-at-00576, and other matters as assigned by the County 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 \$0.15 for black and white copies and \$0.60 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 attorneys' 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(s) 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, the 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 nor 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 the County that may be affected by the services to be provided to the 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 the County or represent a client adverse to the County for a period of one (1) year from the date of completion of the services to be provided to the 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 the County. Law Firm will be entitled to make copies of the client files. At the conclusion of this Agreement (whether or not the County takes possession of the client files), the 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 the 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 the 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 the County does not take possession of the client files during that time, the 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.

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. The 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 or other document 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 Indemnity and Defense. Law Firm will defend the County against any actions stemming from Law Firm's gross negligence to the extent that Law Firm's insurers accept that

duty of defense. In the event Law Firm is adjudicated to be at fault for any such liability imputed to the County, Law Firm shall indemnify the County in proportion to Law Firm's fault. Otherwise, the County shall indemnify, defend, and hold Law Firm harmless for any claims, actions, liabilities, or losses by any third-parties against Law Firm arising out of any matters related to the County to the same extent the County does for its employees. This is intended to protect Law Firm from common lawsuits filed against the County in which agents of the County are often named despite only being involved in the matter within their official capacity as agents of the County. The County is not waiving Law Firm's professional liability obligations to the County.

3.12 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.

3.13 Amendment; Modification. This Agreement may be modified through a written instrument signed by both Parties.

3.14 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.

3.15 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 the appropriate County staff and keep them informed on all matters of importance as they arise.

3.16 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.

3.17 Waiver. No delay or omission to exercise any right, power, or remedy accruing to the County under this Agreement shall impair any right, power, or remedy of the 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 the 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.

3.18 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.

3.19 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.

3.20 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:

Silver & Wright LLP  
3 Corporate Park, Suite 100  
Irvine, CA 92606  
(949) 385-6431  
(Fax) (949) 385-6428  
Attn: Cindy Bennett, COO

To the County:

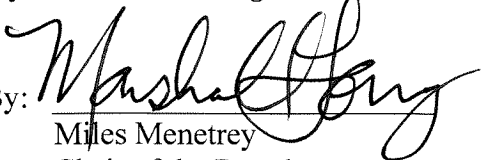
County Counsel  
5100 Bullion St.  
P.O. Box 189  
Mariposa, CA 95338  
(209) 966-3222  
(Fax) (209) 966-5147  
Attn: County Counsel

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.


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

**COUNTY OF MARIPOSA**

By: Marshall Long, Pro-Tem Chair

By:   
Miles Menetrey  
Chair of the Board

**SILVER & WRIGHT LLP**

By:   
Matthew Silver  
Partner

*Approved as to Form:*

By:   
Steven W. Dahlem  
County Counsel

**EXHIBIT A  
COMPENSATION**

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

Attorneys - \$250/hour

Paralegals/clerks - \$120/hour

Fees shall increase by three percent on January 1<sup>st</sup> of each year to offset rising costs.