



# MARIPOSA COUNTY

County Counsel • (209) 966-3222



## RESOLUTION - ACTION REQUESTED 2019-628

MEETING: November 5, 2019  
TO: The Board of Supervisors  
FROM: Steve Dahlem, County Counsel  
RE: Approve Legal Services Agreement with Ellis and Makus

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### RECOMMENDATION AND JUSTIFICATION:

Approve a Legal Services Agreement with Ellis & Makus LLP to conduct a workplace investigation; and authorize the County Administrative Officer to sign the agreement.

The County has retained the law firm of Ellis & Makus LLP to conduct an investigation into allegations raised by a current employee. Ellis & Makus LLP will conduct an impartial, confidential investigation into the allegations.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors has approved other legal services agreements with other law firms in the past.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve as recommended; amend the action as the Board desires and approve.

### FINANCIAL IMPACT:

**Funding is budgeted in the liability insurance budget.**

### ATTACHMENTS:

**Ellis & Makus LSA (PDF)**

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

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

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

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey



October 17, 2019

Dallin Kimble  
County Administrative Officer  
County of Mariposa  
5100 Bullion Street, 2nd Floor  
Mariposa, CA 95338

Re: Engagement for Legal Services

Dear Mr. Dahlem:

We are pleased that the County of Mariposa (Client) has engaged Ellis & Makus LLP (Firm) to conduct a workplace investigation. This letter will confirm the terms of this engagement. This engagement will become effective upon our receipt of a signed copy of this letter.

**Scope of Engagement**

The Client has retained the Firm to conduct an investigation into allegations raised by a current employee. The Firm will conduct an impartial investigation into the allegations.

The Client understands that there are no guarantees as to the outcome of the investigation. As an independent contractor, the Firm has the right to determine means, manner and findings related to the investigation. The Client agrees to allow the Firm full discretion to undertake the investigation and otherwise make findings without influencing or interfering with the outcome. The Client understands and acknowledges that the Firm will exercise independent judgment to make whatever findings it deems are warranted based on the evidence developed in the investigation, and that this engagement is not dependent on the Firm making or failing to make a particular credibility determination, finding of fact or conclusion. After conducting relevant interviews and reviewing relevant documents and information, the Firm will, if requested by the Client, prepare a written report summarizing the investigation and findings.

**Ellis & Makus LLP**

980 9th Street, 16th Floor  
Sacramento, CA 95814

916.426.9180

[www.ellismakus.com](http://www.ellismakus.com)

## **Legal Services**

It is understood that in this engagement, the Firm and the Client have an attorney-client relationship and that the Firm is providing professional legal services based on its professional experience and expertise. The Firm has been retained to use its legal skills to assist the Client in developing a response to the concerns. Specifically, the Firm will use its expertise in employment law to arrive at findings based on its professional evaluation of the evidence. The parties intend that the investigation, including the Firm's communications, work product and final investigation report, will be covered by the attorney-client privilege and attorney work product protections to the extent legally permissible, unless waived by the Client.

## **Limited Scope Agreement**

The scope of this attorney-client representation is limited. The Firm will render legal advice to the Client on issues limited to the investigation process. The Firm will conduct the investigation as an attorney in furtherance of the Client seeking legal advice to resolve the underlying issues. The Client will seek legal advice, as appropriate, from other counsel regarding what action to take as a result of the investigation. The scope of the investigation does not include rendering any legal conclusions, making recommendations or, in the event of litigation or administrative claim, representation of the Client or anyone else involved in the litigation.

Specifically, the Client expressly agrees that it will look to its regular legal counsel for such services, as well as for advice with respect to issues which may arise relating to the investigation. This includes, without limitation, the admonitions, if any, to be made to employees who are interviewed concerning confidentiality; the consequences of employee failure to cooperate in the investigation; the accessing of electronic and other data; document retention; litigation holds; appropriate interim employment measures pending investigation; compliance with the federal Fair Credit Reporting Act; and compliance with the California Investigative Consumer Reporting Agencies Act. Client agrees it will comply with employer-required notice and consent rules to the extent applicable, including those under Civil Code sections 1786 et seq.

Client also agrees it will look to its regular outside counsel for advice with respect to issues of attorney-client privilege, scope of privilege, waiver and work product in connection with the Firm's services.

## **The Client's Duties and Communication**

The Client acknowledges that its cooperation and support is required for the Firm to provide services effectively. Therefore, the Client will keep the Firm fully informed as to the facts and developments relevant to the Firm's representation of the Client. The Client will provide the Firm with complete and accurate information, including written materials when requested and, in the context of an impartial workplace investigation, full access to witnesses and documents.

The Client has authorized the Firm to communicate about its services with Steven W. Dahlem, County Counsel, or other designee identified by the Client, and with the Client's outside counsel, Shelline Bennett of Liebert Cassidy Whitmore. During the course of the engagement, if requested by the Client or its outside counsel, the Firm will provide status updates on the progress of the engagement.

### **Fees, Expenses and Billing Practices**

The Client understands that Leslie Ellis is the attorney responsible for this matter and her hourly billing rate for this engagement is \$350. From time to time, where appropriate to use other individuals on a matter, the Firm's hourly billing rates for other attorney investigators range from \$285 to \$350, with legal support specialists at \$150.

Time is billed in increments of one-tenth of an hour. If called upon in the future to testify or respond to discovery about the engagement, the investigating attorney agrees to make him or herself reasonably available to testify and perform work related to such testimony or discovery at then applicable current rates for such work. In the event of a rate increase, the Firm will notify the Client in writing before any increase becomes effective.

Firm expenses and direct costs incurred in rendering services under this engagement will be reimbursed by the Client. Such costs will include, but are not limited to, mileage at then current IRS mileage reimbursement rate, messenger delivery services, overnight mail delivery services and other incidental costs. It also includes attorneys' fees for the investigator's separate counsel, in the event of the need to prepare for and testify about the investigation.

The Firm will bill the Client no more than once a month and the Client agrees to pay the invoice within thirty days of receipt. Absent further written agreement from the Client, this matter is not to exceed \$20,000.

### **Indemnification**

The Client agrees to indemnify, defend and hold the Firm, and its respective employees and Partners, harmless from any and all damages, claims, judgments, penalties, losses, costs and expenses, including attorneys' fees, that may arise from or are related to the services rendered under this agreement, except for any intentional misconduct or failure by the Firm to follow applicable standards of professional care.

### **Arbitration**

While we certainly do not anticipate a conflict between us, in the event of any material dispute regarding services provided or fees charged by the Firm that cannot be settled amicably, the Firm and the Client both agree that such dispute shall be submitted, as soon as practicable, to final and binding arbitration in Sacramento County in accordance with the rules and procedures of JAMS Inc., a private mediation and arbitration

facilitator. Any dispute shall be strictly confidential between the Firm and the Client and, except for our own representatives, will not be disclosed to any other person or entity.

#### Termination of Agreement


Either party may terminate this Agreement at any time upon notice to the other. The attorney-client relationship between the Client and the Firm will end when the Firm has concluded all work associated with this engagement. Upon conclusion of the engagement or termination of this Agreement, all unpaid fees are immediately due and payable.

#### Entire Agreement

This Agreement represents the entire agreement between the Client and the Firm and supersedes any prior oral, written or implied agreements. The Client's signature below signifies the acceptance of the terms of this Agreement. Please sign it and return it to the Firm.

We look forward to working with you.

Sincerely,



Leslie D. Ellis  
Partner

I agree to the foregoing terms and conditions of engagement.

Date: 11/6/2019

By: 

Dallin Kimble  
County Administrative Officer

APPROVED AS TO FORM:



STEVEN W. DAHLEM  
COUNTY COUNSEL