RESOLUTION - ACTION REQUESTED 2017-711

MEETING: October 17, 2017

TO: The Board of Supervisors

FROM: Chevon Kothari, Human Services Director

RE: Approve Agreement with Gilmore Magness Janisse

RECOMMENDATION AND JUSTIFICATION:
Approve an agreement with Gilmore Magness Janisse to perform investigative services for an amount not-to-exceed $50,000 and authorize the Board of Supervisors Chair to sign the Agreement.

Dan Rowley of the Gilmore Magness Janisse law firm has provided investigative services to the County in the past on other matters and he is again willing to provide his services.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On February 12, 2013, the Board approved a Professional Service Agreement with this firm to provide investigative services relative to a confidential Human Resources matter.

On August 5, 2014, the Board approved an amendment to the Professional Service Agreement, increasing the not to exceed amount by $15,000 for a new not to exceed amount of $40,000.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
A negative action would result in the current confidential matter continuing without the obligatory investigation as Human Resources does not have the staffing to commit to conducting an investigation of this size.

FINANCIAL IMPACT:
Budgeted funds will accommodate expenses for services that are provided. There is no impact to the County General Fund.

ATTACHMENTS:
GMJ Agreement - Wésignature (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
September 25, 2017

County of Mariposa
Human Services
Attn: Dumile Wilson
5362 Leme Lane
P.O. Box 99
Mariposa, CA 95338

Re: Confidential Workplace Investigation Fee Agreement

To Whom it May Concern:

Thank you for retaining Gilmore Magness Janisse, P.C. ("the firm") and specifically me as an attorney to perform objective and impartial fact finding investigations. For purposes of this investigation Mariposa County ("County") is my client.

Specifically, the scope of the objective and impartial investigations I am being retained to perform shall consist of complaints/grievances made by former clients and/or members of the public. The investigation will stay within this scope unless you specifically authorize me to modify or expand the scope of the investigation.

This investigation is limited to making factual findings with respect to statements and/or conduct that is the subject of the investigation and does not extend to whether any statements and/or conduct rises to the level of a violation of law and/or violation of County policy. Please note that because I am being retained as an attorney with the limited assignment to perform an independent and impartial fact finding investigation, I will not provide any legal advice or, in the event of litigation or an administrative claim, representation of the County or anyone else involved in the investigation. It is my understanding that my report will be used to enable you to obtain legal advice from another attorney of the County’s choice regarding this matter.

This letter is designed to explain the terms and conditions under which the firm will provide services in this matter. We put these terms in writing both because California law requires a written agreement between
lawyers and clients in almost all cases, and because we find that it helps the firm and our clients to have a written statement of the terms of representation. Please review this letter carefully and call me if you have any questions. After you have reviewed the letter, and if the terms are satisfactory to the County, please have it signed by an authorized representative of the County and return a copy of the letter to me.

It is intended that this fee engagement letter creates an attorney-client relationship between the firm and County. Therefore, the investigation I will perform and my communications with County regarding the investigation are intended to be protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine unless otherwise directed by County.

I will take reasonable steps to keep you informed of the progress of the investigation and respond to inquiries and communications as appropriate. Please understand that I expect and require the County to be truthful with me regarding the circumstances related to the investigation and to fully cooperate with my efforts, and to keep me informed of any information or developments which may come to the County’s attention related to the investigation. The County also needs to make employees available for interviews, provide all information, documents and policies requested and to make all payments required under this agreement.

After I have completed confidential interviews of witnesses and gathered all other information I need to form my conclusions, I will prepare and send to you a written report containing my factual findings. Thereafter, the firm will close and retain the file consistent with its file retention and destruction policy, as amended from time to time. Currently, that policy provides for the destruction of the file five years after it is closed.

As a condition of this engagement, County agrees to defend, indemnify, and hold me and the firm harmless for and against any and all actions, claims and complaints, formal and informal, arising from or in any way related to the investigation services rendered under this agreement, including, but not limited to claims for defamation for reporting statements or comments made by persons interviewed during the course of the
investigation, except for any willful misconduct or failure by me to follow applicable standards of professional care in the performance of the investigative services.

In addition, in the event I am called to serve as a witness, respond to a subpoena, respond to discovery requests, consult with anyone and/or expend time in connection with any claim, action, suit or proceeding to which I am not a party, the County hereby agrees to indemnify me against all expenses actually and reasonably incurred and compensate me for actual time I spend on such matters at my then current hourly rate.

Our legal fees are based primarily on the time spent on particular matters, but may be increased or decreased to reflect the difficulty of the matter involved, the degree of expertise required, unusual time demands, extraordinary results obtained, or other unusual considerations. The firm’s attorney time is currently billed at rates ranging from $185.00 per hour to $450.00 per hour, depending upon the experience and specialty of the attorney involved. Our minimum charge for services including, without limitation, review of correspondence and telephone calls is one-tenth hour. My personal rate for this investigation will be $290.00 per hour. The firm also uses law clerks, legal assistants and paralegals at rates that depend upon the qualifications of the law clerk, legal assistant or paralegal involved (generally those rates are $50 to $140 per hour). Periodically (normally once a year and early in each year) the firm reviews its billing rates for attorneys, law clerks, legal assistants and paralegals to consider whether inflation or other causes necessitate an increase in our rates. Rates may also be modified to reflect additional experience, efficiency or expertise of a given attorney. It is our normal practice to bill all time unbilled as of the date of such adjustment at the new revised rate. The bill will reflect any such changes.

The firm also bills its clients for the cost of disbursement for photocopying, special delivery services, messenger and process servers, Lexis-Nexis, Westlaw, and other charges for which the firm is billed on a monthly basis by the service provider. A schedule setting forth those charges is attached hereto as Appendix 1. In the event these charges are changed, the firm will provide you with a revised schedule. The firm requires that all other
costs be paid directly by the County, as the firm does not advance out-of-pocket costs absent an emergency. When it becomes necessary to incur costs on your behalf the firm will ask that you advance the costs before the costs are incurred. In circumstances where costs are incurred and the firm is billed by the vendor for those costs, the firm will forward the bills to you for payment. The firm requires that you pay those costs directly to the vendor in a timely fashion. Your failure to pay the costs in a timely fashion will be grounds for termination of this agreement.

The firm ordinarily bills monthly for services rendered and for disbursements. Payment of such bills is due upon receipt.

Nothing in this agreement should be construed as a promise or guarantee a particular result. I will reach my findings based on my impartial and professional evaluation of the evidence I obtain during the course of the investigation.

The firm may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit withdrawal include, but are not limited to, the following: (a) the County consents; (b) the County’s conduct renders it unreasonably difficult for the firm to carry out the employment effectively; and/or (c) the County fails to pay attorney’s fees or costs as required by this agreement.

Notwithstanding the withdrawal of the firm, the County will remain obligated to pay the firm at the agreed rates for all services already provided and to reimburse the firm for all costs advanced before the withdrawal.

The County may discharge the firm at any time by written notice. Any such notice will be effective when received by the firm. Unless specifically agreed by both the County and the firm, the firm will provide no further services and advance no further costs on behalf of the County after receipt of the notice.
Notwithstanding the discharge, the County will remain obligated to pay the firm at the agreed rate for all services provided and to reimburse the firm for all costs advanced.

The laws of the State of California shall govern as to the construction, interpretation and enforcement of this agreement, and the venue or place for resolving any disputes shall be Fresno, California.

California law requires that we advise the County that this firm carries errors and omissions insurance coverage applicable to the services to be rendered to you.

We obviously cannot advise you regarding this agreement. Therefore, you should not hesitate to consult with other counsel concerning this agreement.

If the foregoing is acceptable, please indicate your agreement on behalf of the County by have a copy of this letter dated and signed below by an authorized representative of the County and returning a copy of this letter to me.

Our firm is under no obligation to provide any services until we receive those items.

I trust that the information provided above is of value to you. If you do not understand any portion of this letter, or if you have any questions related to the services to be provided or the terms of representation, please let me know immediately.

Respectfully,

[Signature]

Daniel W. Rowley
County of Mariposa
September 25, 2017
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APPROVED:

Date: 10-18-17 Mariposa County

[Signature]

By: Marshall Long
Title: Board Chair

APPROVED AS TO FORM:

[Signature]

STEVEN W. DAHLEM
COUNTY COUNSEL
COUNTY OF MARIPOSA
September 25, 2017
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APPENDIX 1

RATE SCHEDULE
(as of January, 2016)

Professional Services
Attorneys Rates range from $185 to $450 per hour
Paralegals Rates range from $50 to $140 per hour

Costs
Photocopies $.20 per page
Mileage $.54 per mile
Other charges At the cost to the Firm

The total cost of the agreement is not to exceed $50,000. An increase in the amount may occur through an amendment to this agreement.
REG. Z DISCLOSURES

YOUR BILLING RIGHTS--KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill. If you think your bill is wrong, or if you need more information about a service on your bill, write us on a separate sheet at P. O. Box 28907, Fresno, California 93729-8907. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

(a) Your name and account number.

(b) The dollar amount of the suspected error.

(c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice. We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including service charges, and we can apply any unpaid amount against your retainer. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.
If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn’t make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don’t follow these rules, we can’t collect the first $50 of the questioned amount, even if your bill was correct.