RESOLUTION - ACTION REQUESTED 2014-332

MEETING: July 8, 2014

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator


RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with J.K. Mortuary Services for removal of deceased bodies, and Authorize the Board of Supervisors Chair to Sign the Agreement. If approved this agreement will begin on July 1, 2014 and will terminate on June 30, 2015.

The Mariposa County Sheriff’s Office wishes to enter into a contract for services with J.K. Mortuary Services for the removal/transport of deceased bodies from Mariposa County to the Stanislaus County Coroner Facility in Modesto, California for the purpose of autopsy. The Sheriff has budgeted $10,000 for this service in anticipation of less than 50 coroner investigations for the 2014/2015 fiscal year.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors has approved a Contract Service Agreement with other providers as well as this provider. This is a sensitive venue in which to operate and as of this date J.K. Mortuary Services has provided a reliable service to other counties and was the transport service used by the last holder of this contract for Mariposa County.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the agreement is not signed, the Mariposa County Sheriff’s Office will need to locate another removal service, with no previous rapport and the probability of a higher cost.

FINANCIAL IMPACT:
Line item was fully funded in 2013-2014 fiscal year and fully funded in 2014-2015 proposed budget for the Sheriff’s Office.

ATTACHMENTS:
2014-2015 Removal/Transport of Deceased Bodies Agreement (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Janet Bibby, District III Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
CONTRACT FOR SERVICES

This Contract made this 1 day of July, 2014 between:

COUNTY:

Mariposa County
PO Box 784
Mariposa, CA 95338

and

CONTRACTOR:

J.K. Mortuary Services
4460 West Shaw Ave Suite 581
Fresno, CA 93722

ARTICLE I. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on July 1, 2014 and shall terminate on June 30, 2015, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venture or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to the Sheriff Doug Binnewies or his designee who will review the activities and performance of the Contractor and administer this Contract.
ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor unless approved in advance
in writing by the County stating the dollar value of the services, the method of
payment, and any adjustment in contract time. All such services are to be
coordinated with County and the results of the work shall be monitored by Sheriff
Douglas A. Binnewies or his designee. However, the means by which the work is
accomplished shall be the sole responsibility of the Contractor.

3.02 Method of Performing Services: Contractor will determine the method, details, and
means of performing the above-described services including measures to protect the
safety of the traveling public and Contractor’s employees. County shall not have the
right to, and shall not, control the manner or determine the method of accomplishing
Contractor’s services.

3.03 Employment of Assistants: Contractor may, at the Contractor’s own expense,
employ such assistants as Contractor deems necessary to perform the services
required of Contractor by this Contract. County may not control, direct, or supervise
Contractor’s assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation
and expenses of these assistants and for all state and federal income tax,
unemployment insurance, Social Security, disability insurance and other applicable
withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor,
County agrees to pay Contractor in proportion to the services satisfactorily performed
in the not to exceed amount of 13,000.00 as set forth in Exhibit “B”. 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 as follows:

[X] Incremental payments based on the following schedule: Invoices are to
be mailed to the Mariposa County Sheriff’s Office at PO Box 276
Mariposa, CA 95338 or delivered in person to the Mariposa County
Sheriff’s Office at 5099 Old Highway North Mariposa, CA 95338.
4.02 **Invoices:** Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County within thirty (30) days of service being provided.

4.03 **Date for Payment of Compensation:** County will endeavor to make payment within forty-five (45) days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 **Expenses:** Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

**ARTICLE 5. OBLIGATIONS OF CONTRACTOR**

5.01 **Tools and Instrumentalities:** Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 **Indemnification:** Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 **General Liability and Automobile Insurance:** During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees,
volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 **Certificate of Insurance:** Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 and 5.03 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.05 **Workers’ Compensation:** During the term of this Contract Contractor agrees to provide workers’ compensation insurance for Contractor’s employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor’s employees or agents.

5.06 **Public Employees Retirement System (CalPERS):** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.07 **State and Federal Taxes:** As Contractor is not County’s employee; Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;

b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;

c. County will not withhold state or federal income tax from payment to Contractor;

d. County will not make disability insurance contributions on behalf of Contractor;

e. County will not obtain workers’ compensation insurance on behalf of Contractor.
5.08 Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 Contractor’s Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.10 Assignability of Contract: It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor’s duties under this Contract.

6.02 Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF CONTRACT

7.01 Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.
7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County’s option, may terminate this Contract by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.
8.03 **Partial Invalidity:** If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 **Attorney's Fees:** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.

8.05 **Conformance to Applicable Laws:** Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

8.06 **Waiver:** In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 **Governing Law:** This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

**CONTRACTOR:**

J.K. Mortuary Services  
4460 West Shaw Ave., Suite 581  
Fresno, CA 93722

By: [Signature]  
(Date)

**COUNTY:**

Mariposa County  
PO Box 784  
Mariposa, CA 95338

By: [Signature]  
(Date)

By [Signature]  
(Date)

**APPROVED AS TO FORM:**

Steven W. Dahlem  
County Counsel  
(Date)

Kristy Aguere  
(printed name)
EXHIBIT “A”

SCOPE OF WORK

Contractor will provide all labor and materials, transportation, and incidentals to provide deceased transportation services for the County. Contractor will provide the following services:

1. Contractor shall transport deceased persons from locations, including but not limited to, crime scenes, accident scenes, homes, public or private properties, vehicles, board and care facilities, convalescent facilities, public or private hospitals, or any location where a deceased person is located and transport them directly to the Stanislaus County Sheriff-Coroner’s Office for autopsy located at 939 Oakdale Road, Modesto, CA 95355. Transports to the Stanislaus County Sheriff-Coroner’s Office occurring between 5:00 p.m. and 8:00 a.m., or Saturdays and Sundays, Contractor will place one (1) telephone call to the Stanislaus County Sheriff-Coroner’s Office at (209-552-2468), and request the on-call Coroner to meet with said Contractor upon arrival. The telephone call must provide no less than 30 minutes notice prior to arrival at the Stanislaus County Sheriff-Coroner’s Office. No call will be required if estimated arrival time is during normal operational hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.).

2. Contractor will be on-call 24 hours each day, 7 days per week, for body removal services.

3. Contractor shall respond to any location requested by the Sheriff-Coroner’s Division or Sheriff’s Dispatch within the parameters as outlined below (all response times are one-way travel):

   A. Mariposa County area: Contractor shall provide one (1) removal staff member responding within two (2) hour arrival time to the location designated.

   B. Yosemite National Park area: Contractor shall provide one (1) removal staff member responding within three (3) hours arrival time to the location designated. Contractor shall deliver all Yosemite National Park coroners’ reports to Mariposa County Sheriff’s Office staff, prior to leaving Mariposa County.

4. Contractor shall remove all bodies and body parts, including decomposed, burned, or other dismemberment. All items collected shall be transported to the Stanislaus County Sheriff-Coroner’s Office located at 939 Oakdale Road Modesto, CA 95355.

5. Contractor shall deliver all bodies and body parts to the Stanislaus County Sheriff-Coroner’s Office located at 939 Oakdale Road Modesto, CA 95355 and place all bodies and parts in the appropriate storage facility as directed by the Stanislaus County Sheriff-Coroner’s representative. If Contractor is required to wait for Stanislaus County Sheriff-Coroner’s representative to arrive a stand-by can be charged at a rate identified in Exhibit “B”

6. Contractor shall provide all vehicles (without company logo’s or markings), gurneys, stretchers, safety equipment (such as reflective vests for removal at traffic accidents), personnel or any other equipment and supplies necessary for the extraction and removal of deceased persons including those weighing in excess of 350 pounds.

7. Contractor’s personnel shall be professional in appearance and demeanor and shall wear no company logos or markings on their clothing. Business casual attire is acceptable and recommended.
8. The County reserves the right to select the appropriate mode of transportation in the event of unusual or hazardous circumstances.

9. Contractor shall provide all body bags as part of the transportation services. Contractor shall provide 7 mil. u-shaped zipper pouches or 7 mil. heavy duty plastic sheets for routine cases. Contractor will not provide body bags for homicide cases or other officer-involved shootings. Body bags for homicides and officer-involved shootings will be provided by the Mariposa County Sheriff’s Office. Disaster pouches and floater bags will also be provided by the Mariposa County Sheriff’s Office for decomposed cases.

10. The Mariposa County Sheriff’s Office shall designate which cases will be transported by the Mariposa Sheriff-Coroner’s staff and which cases will be the responsibility of Contractor. Contractor may be requested to provide all transport services, or a portion thereof, depending upon the need of the Mariposa County Sheriff-Coroner’s personnel.

11. The Contractor awarded the Contract derived from this proposal will be required to abide by all applicable Federal and State laws and regulations. Including, but not limited to:

OSHA Requirement
All material, equipment, or labor submitted under this proposal by Contractor shall meet the required standards of OSHA 1970 and CA-OSHA 1973 as last revised. Contractor warrants that the described material, equipment, or labor meets all appropriate OSHA safety and health requirements including blood borne pathogens, hazardous materials, and aerosol transmissible diseases, training, personal protective procedures and equipment. Further, Contractor warrants that the said material or equipment or operations will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or came into contact with the material or equipment.

12. Contractor shall issue a consolidated invoice to the Mariposa County Sheriff’s Office by the 10th of each month for all services rendered during the prior month. Each invoice shall list the name of the decedent, the date, address decedent was transported from, time of notification, and scene arrival times. Late, incomplete, or inaccurate invoices will not be processed for payment.

13. When requested, Contractor’s employees will be required to pass an annual background check.

14. County will contact Contractor at the following numbers for service:
   Main number: 209-417-9577
   Back-up number: 559-978-5289
### Exhibit “B”

**J.K. Mortuary Services**  
Price List for Mariposa County Sheriff-Coroner’s Office

<table>
<thead>
<tr>
<th>1:</th>
<th>Mariposa County to Stanislaus County Coroner's Office</th>
<th>$160.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Transport from Mariposa County directly to the Stanislaus County Sheriffs-Coroner’s Office</td>
<td></td>
</tr>
<tr>
<td>2:</td>
<td>Yosemite National Park, Coulterville and Buck Meadows to Stanislaus County Coroner’s Office</td>
<td>$200.00</td>
</tr>
<tr>
<td></td>
<td>Transport from Yosemite National Park or areas east of Highway 49 North (Coulterville, Greeley Hill, and Buck Meadows areas) to Stanislaus County Coroner’s Office</td>
<td></td>
</tr>
<tr>
<td>3:</td>
<td>Mariposa County to Ivers &amp; Alcorn Funeral Home</td>
<td>$120.00</td>
</tr>
<tr>
<td></td>
<td>Transport from Mariposa County to Ivers &amp; Alcorn Funeral when Stanislaus County Coroner’s Office is not accessible</td>
<td></td>
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<tr>
<td>4:</td>
<td>Yosemite National Park to Ivers &amp; Alcorn Funeral Home</td>
<td>$150.00</td>
</tr>
<tr>
<td></td>
<td>Transport from Yosemite National Park to Ivers &amp; Alcorn Funeral Home when Stanislaus County Coroner’s Office is not accessible.</td>
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<tr>
<td>5:</td>
<td>Mariposa County to Merced County Coroners Office</td>
<td>$120.00</td>
</tr>
<tr>
<td>6:</td>
<td>Yosemite National Park to Merced County Coroners Office</td>
<td>$150.00</td>
</tr>
<tr>
<td>7:</td>
<td>Removal from outside of Mariposa County, per mile</td>
<td>$2.00</td>
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<tr>
<td></td>
<td>$2.00 per mile, one-way, from place of removal anywhere outside of Mariposa County to destination.</td>
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<tr>
<td>8:</td>
<td>Storage fee</td>
<td>$40.00</td>
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<tr>
<td></td>
<td>Fee, per day, for holding decedent at Ivers &amp; Alcorn Funeral Home</td>
<td></td>
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<tr>
<td>9:</td>
<td>Transport from Ivers &amp; Alcorn F.H. to Stanislaus County Coroners Office</td>
<td>$80.00</td>
</tr>
<tr>
<td>10:</td>
<td>Removal excess 350 lbs. (per extra person needed)</td>
<td>$50.00</td>
</tr>
<tr>
<td>11:</td>
<td>Heavy Duty Disaster Bag (each)</td>
<td>$50.00</td>
</tr>
<tr>
<td>12:</td>
<td>A $25.00 per hour standby fee</td>
<td>$25.00</td>
</tr>
<tr>
<td></td>
<td>A Stand-By fee will be charged when J.K. Mortuary Staff is required to wait for Stanislaus County Coroners Office for staff to arrive. When the wait time is less than one (1) hour the rate will be charged in fifteen (15) minutes intervals to reflect total real time that J.K. Mortuary staff were required to wait.</td>
<td></td>
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</tbody>
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