RESOLUTION - ACTION REQUESTED 2014-606

MEETING: November 25, 2014

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: 2014 Estate and Probate Legal Services Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve Legal Services Agreement with the Law Offices of Starchman and Bryant for the Execution of the Estate and Probate of Roma Jean Mason, and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Office of the Mariposa County Sheriff assumed Public Administrator responsibilities on May 1st, 2003. The duties of the Public Administrator are to protect the decedent’s property from waste, loss or theft; make appropriate burial arrangements; conduct a thorough investigation to discover all assets; and, pay outstanding obligations, including taxes. They also locate the persons entitled to inherit from the estate and ensure that these individuals receive their inheritance. The Public Administrator liquidates and disburses the estate according to the decedent’s will, if there is one, or according to probate code. This process can be very lengthy.

All Public Administrative expenses are borne by the estate. Initial legal costs will be covered within the Sheriff’s operating budget and these expenses will be reimbursed by the estate. Staff is confident that there are sufficient assets in the estate to cover these expenses.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Mariposa County Public Administrator has been responsible for past estates.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
By statute the responsibility of the estate falls upon the Public Administrator.

FINANCIAL IMPACT:
The costs associated with the agreement will be reimbursed by the Estate of Roma Jean Mason.

ATTACHMENTS:
CAO RECOMMENDATION
Requested Action Recommended

Mary Hoedson
Mary Hoedson, Interim CAO 11/19/2014

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Janet Bibby, District III Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
LEGAL SERVICES AGREEMENT
REPRESENTATION BY STARCHMAN & BRYANT ATTORNEYS AT LAW

1. IDENTIFICATION OF PARTIES. This agreement is made between STARCHMAN & BRYANT ATTORNEYS AT LAW, hereafter referred to as “Law Firm,” and MARIPOSA COUNTY PUBLIC ADMINISTRATOR, as the Administrator of the Estate of ROMA JEAN MASON, hereafter referred to as “Client.”

This agreement is required by Business and Professions Code §6148 and is intended to fulfill the requirements of that section.

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Client are as follows: To represent MARIPOSA COUNTY PUBLIC ADMINISTRATOR, as the Administrator of the Estate of ROMA JEAN MASON as is required to finalize a probate of the Estate of ROMA JEAN MASON.

3. LEGAL SERVICES SPECIFICALLY EXCLUDED. Legal services that are excluded under this agreement specifically include, but are not limited to, the following: Arrangements for preparation and filing of any required federal and state fiduciary income tax returns; representation of Client as an individual, rather than as Administrator, with respect to any litigation pertaining to the estate; and provision for transfer of any non-probate assets such as property held in joint tenancy or payable-on-death form. If Client wishes that Law Firm provide any legal services excluded under this agreement, a separate written agreement between Law Firm and Client will be required. Because of the conflict it would create, however, Law Firm could not represent Client both as Administrator and as an individual with respect to any litigation pertaining to the estate.

4. RESPONSIBILITIES OF LAW FIRM AND CLIENT. Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client’s inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client’s address, telephone numbers, and whereabout; and timely make any payments required by this agreement. Client will assist Law Firm in providing necessary information and documents and will appear when necessary at legal proceedings.

5. ATTORNEY FEES. Law Firm’s fees will be set by the Court at or near the end of administration of the estate under the rules for attorney compensation set out in California Probate Code section 10810 (copy attached). If the accountable estate is determined to be less than $100,000, the fee shall be $4,000. Law Firm’s fees for ordinary services will be based on the amount of estate accounted for. “The amount of estate accounted for” means the total amount of the inventory plus gains over appraisal value on sales, plus receipts, less losses on sales, without reference to encumbrances or other obligations on property in the estate, if any. In addition, the Court may authorize payment of additional fees for “extraordinary services” if they are rendered to the estate. Extraordinary services include, but are not limited to, sales of real property and estate litigation. Any fees for extraordinary services require a petition by Law Firm and approval by the Court. All attorney fees are payable out of the estate and not by Client.
individually.

6. COSTS. It is understood by both parties that Sheriff Douglas A. Binnewies is executing this document on behalf of the Public Administrator’s office to facilitate the settling of the Roma Jean Mason’s Estate. Any obligation to Starchman & Bryant is through the estate and it is understood by both parties that County of Mariposa accepts no responsibility or liability regarding any payments to Starchman & Bryant. However, County of Mariposa will pay in advance all “costs” in connection with Law Firm’s representation of Client under this agreement including, but not limited to Superior Court filing fees, publication fees, and probate referee appraisal fees, and such costs will be reimbursed to County of Mariposa by Roma Jean Mason’s Estate, if such funds are available.

7. DISCHARGE OF LAW FIRM. Client may discharge Law Firm at any time by written notice effective when received by Law Firm. Unless specifically agreed by Law Firm and Client, Law Firm will provide no further services and advance no further costs on Client’s behalf after receipt of the notice. If Law Firm is Client’s attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Law Firm. Notwithstanding the discharge, all unpaid charges will become due and payable upon close of probate and upon court approval. After services conclude, Law Firm will, upon Client’s request in writing, deliver Client’s file, and property in Law Firm’s possession, whether or not Client have paid for all services.

8. WITHDRAWAL OF ATTORNEY. Law Firm may withdraw with Client’s consent or for good cause. Good cause includes Client’s breach of this agreement, refusal to cooperate or to follow Law Firm’s advice on a material matter or any fact or circumstance that would render Law Firm’s continuing representation unlawful or unethical. When Law Firm’s services conclude, all unpaid charges will become due and payable upon close of probate and upon court approval. After services conclude, Law Firm will, upon Client’s request in writing, deliver Client’s file, and property in Law Firm’s possession, whether or not Client have paid for all services.

9. RELEASE, RETENTION, AND DISPOSITION OF CLIENT’S PAPERS AND PROPERTY. At the termination of services under this agreement, Law Firm will release promptly to Client, upon Client’s request in writing, all of Client’s papers and property. After five years have passed since the termination of services under this agreement, Law Firm may dispose of Client’s papers and property. If Client desires to have Law Firm retain Client’s papers and property beyond five years after the termination of services, Client must make separate written arrangements with Law Firm. “Client’s papers and property” include correspondence, deposition transcripts, exhibits, experts’ reports, legal documents, physical evidence, and other items reasonably necessary to Client’s representation, whether Client has paid for them or not.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this agreement and nothing in Law Firm’s statements to Client will be construed as a promise or guarantee about the
outcome of the matter. Law Firm makes no such promises or guarantees. Law Firm’s comments about the outcome of the matter are expressions of opinion only.

11. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties. This agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

12. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

13. MODIFICATION BY SUBSEQUENT AGREEMENT. This agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

14. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date when it is executed by the last of the parties to do so.

The foregoing is agreed to by:

Date: 12/2/2014

[Signature]

Client: MARIPOSA CO. PUBLIC ADMINISTRATOR
By: Douglas A. Binnewies
Address: PO Box 276
Mariposa, CA 95338
Telephone: (209) 966-3615

Date: 12/3/2014

[Signature]

LAW OFFICES OF
STARCHMAN & BRYANT
ATTORNEYS AT LAW
By: Anita Starchman Bryant

APPROVED AS TO FORM:

[Signature]

STEVEN W. DAHLEM
COUNTY COUNSEL

ATTACHMENT (1)
1718.1 Expenses and Commissions of Personal Representative

A. Reimbursement of Expenses. The personal representative is allowed all necessary expenses in the care, management, and settlement of the estate, in addition to compensation. If the decedent's Will provides for an amount of compensation to be allowed, the personal representative must either accept the sum fixed by the Will or renounce any claim to such fixed compensation and apply for statutory commissions. (Prob. Code, § 10802.) In some instances, the personal representative (particularly if the person is also a beneficiary under the Will or an heir of the decedent) may waive compensation or accept an amount less than that provided by statute. The compensation paid to the personal representative is reportable for income tax purposes, and if he/she is the sole or primary heir or residuary beneficiary under the Will, there may be a tax advantage in waiving compensation if the income tax liability is greater than the portion of estate tax attributable to the waiver of such compensation. To avoid possible gift and/or income tax problems, the waiver should be reduced to writing and filed in the proceeding within 6 months after the issuance of Letters.

B. Statutory Commission. The statutory commission of the personal representative (Prob. Code, § 10800) is based on the total amount of the inventory (or inventories), plus gains over appraisal value on sales, plus receipts, less losses on sales, without reference to encumbrances or other obligations on property in the estate, and is computed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Rate</th>
<th>Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>The first</td>
<td>$100,000</td>
<td>4%</td>
<td>$4,000</td>
</tr>
<tr>
<td>The next</td>
<td>$100,000</td>
<td>3%</td>
<td>$3,000</td>
</tr>
<tr>
<td>The next</td>
<td>$800,000</td>
<td>2%</td>
<td>$16,000</td>
</tr>
<tr>
<td>The next</td>
<td>$9,000,000</td>
<td>1%</td>
<td>$90,000</td>
</tr>
<tr>
<td>The next</td>
<td>$15,000,000</td>
<td>1/2%</td>
<td>$75,000</td>
</tr>
<tr>
<td>All over</td>
<td>$25,000,000</td>
<td></td>
<td>a reasonable amount to be fixed by court.</td>
</tr>
</tbody>
</table>

If there are two or more personal representatives, the above compensation shall be apportioned among them by the court according to the services actually rendered by each. (Prob. Code, § 10805.) The petition for allowance of compensation in such instances should set forth a proposed apportionment among the parties and a statement of the reasons for the proposal based on individual services performed, to assist the court in making its determination.

C. Agreement for Higher Compensation. All contracts between a personal representative and an heir or devisee for a higher compensation than that allowed by statute are void. (Prob. Code, § 10803.)

1718.2 Attorney Fees

Attorneys for personal representatives shall be allowed out of the estate, as fees for conducting the ordinary probate proceedings, the same amounts as are allowed above as commissions to personal representatives (Prob. Code, § 10810) and such further amount as the court may deem just and reasonable.