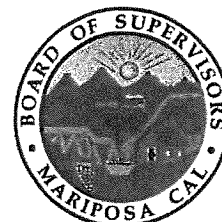


MARIPOSA COUNTY

Sheriff's Office • (209) 966-3615



RESOLUTION - ACTION REQUESTED 2019-366

MEETING: June 25, 2019
TO: The Board of Supervisors
FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator
RE: 2019 - 2020 FY Agreement for Forensic Pathology Services

RECOMMENDATION AND JUSTIFICATION:

Approve a one year agreement with Stanislaus County Sheriff's Office's Coroner Division for Forensic Pathology Services in the Not-To-Exceed amount of \$70,000; and authorize the Board of Supervisors Chair to sign the agreement.

The Mariposa County Sheriff's Office Coroner Division has contracted with the Stanislaus County Sheriff's Office Coroner Division for Forensic Pathology Services since 2007. The Stanislaus County Sheriff's Office Coroner Division has specially trained, experienced and competent staff to perform forensic pathology services with respect to post mortem examinations and autopsies of deceased persons.

The proposed budget for 2019-2020 fiscal year has been submitted with funding requested to support this agreement. The terms for the new contract remain the same as the previous contract.

The Mariposa County Sheriff's Office has been satisfied with the services received by the Stanislaus County Sheriff's Office and we appreciate the professional relationship we share.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors has approved the past agreement that will expire on June 30, 2019 with the Stanislaus County Sheriff's Office Coroner's Division.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Sheriff's Department will have to seek an alternative source for these services that may incur a higher cost.

FINANCIAL IMPACT:

Funds for services have been requested in 2019-2020 proposed budget

ATTACHMENTS:

19-20 Forensic Pathology Agreement (PDF)

Resolution - Action Requested 2019-366

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

AGREEMENT FOR FORENSIC PATHOLOGY SERVICES

This agreement is made and entered into this 25th of June, 2019, by and between Stanislaus County for the benefit of its Sheriffs Department, Coroner's Division ("Contractor"), and the Mariposa County Sheriff-Coroner, ("County").

INTRODUCTION

WHEREAS, County requires forensic pathology services with respect to post mortem examinations and autopsies of deceased persons, and Contractor has agreed to provide those services;

WHEREAS, Contractor is specially trained, experienced, and competent to perform such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK:

- 1.1 The Contractor shall furnish to the County, those services and work set forth in Exhibit A, attached hereto and by reference incorporated herein.
- 1.2 Services and work provided by Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions.

2. COMPENSATION:

- 2.1 As sole consideration for the services rendered by Contractor, County shall pay Contractor pursuant to the provisions set forth in Exhibit A.
- 2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement.
- 2.3 County will not withhold any Federal or State income taxes, Social Security tax, Medi-Care tax or any other payroll tax or assessment from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

3. TERM:

- 3.1 The term of this Agreement shall be for the period beginning July 1, 20~~18~~¹⁹ ending June 30, 20~~19~~²⁰, unless sooner terminated as provided below or unless some other method of time or termination is agreed upon by the parties.
- 3.2 In the event that either party to this Agreement shall fail to perform its obligations under this Agreement, any exhibits hereto, or any amendment, then this Agreement may be terminated at the end of ninety (90) day period which shall commence upon the date that written notice of failure to perform is mailed to the other party; provided, however that the Agreement can be reinstated if failure or performance is remedied to the satisfaction of both parties within said ninety (90) day period of time.
- 3.3 It is understood and agreed that the services of the board-certified forensic pathologist, approved by the Contractor will be utilized in the performance of services under this Agreement. If the Contractor is unable to provide such a board certified forensic pathologist, said event shall constitute a failure of performance of this Agreement requiring implementation of the provisions of Section 3.2 of this Agreement and the County shall be free to Contract for such services as it deems necessary in its sole discretion and shall reduce compensation to Contractor in an amount equal to the actual cost of obtaining such service.
- 3.4 It is mutually agreed that if County, during any fiscal year covered by this Agreement, fails to appropriate sufficient funds to continue this Agreement, this Agreement shall be of no further force and effect. California State Constitution Article XVI, Section 18.

4. WORK SCHEDULE:

Contractor's obligation is to perform in a timely manner the services and work identified in Exhibit "A." It is understood by Contractor that the performance of Services and work will require a varied schedule with hours and times for completion of said services to be set by Contractor.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS:

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the terms of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include but are not limited to

driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.:

Contractor will provide facilities for the performance of forensic pathology services in a manner commensurate with general standards established by pathologists in practice throughout the United States of America. Contractor will also provide dictation equipment and services compatible with transcription equipment of Contractor. County will provide, at its own expense, personnel adequate to assist Contractor in acquiring cause of death and transferring decedents to Contractor's location.

7. WORKER'S COMPENSATION:

Contractor shall provide Worker's Compensation insurance coverage in the legally required amount for all of Contractor's employees utilized in providing work and services pursuant to this Agreement. By executing a copy of this Agreement, Contractor acknowledges its obligations and responsibilities to its employees under the California Labor Code and warrants that Contractor has complied and will comply during the term of this agreement with all applicable provisions of the California Labor Code with regard to its employees.

8. STATUS OF CONTRACTOR:

8.1 All acts of Contractor, its agents, officers, employees, and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the County is to be considered an employee of the Contractor. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or joint venture.

8.2 Contractor, its agents, officers, and employees are, and at all times during the term of this agreement shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor pursuant to this Agreement. Contractor shall be responsible to the County only for the

requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. During the term of this Agreement, Contractor is permitted to provide the same services to others as Contractor provides to County hereunder. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

- 8.4 If in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.
- 8.5 It is understood and agreed that as an independent Contractor, neither the Contractor nor Contractor's assigned personnel shall have any entitlement as a County employee, right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.
- 8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all Contractor's assigned personnel under the terms and conditions of this Agreement.
- 8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based on upon any contention by any third party that an employee-employer relationship exists by reason of this Agreement.

9. LIABILITY AND INDEMNIFICATION:

- 9.1 Contractor's Obligation Contractor, its officers and employees, by this Agreement, shall not assume any liability for the direct payment of any salary or wages to any County officer or employee performing services hereunder for County, nor for the direct payment of compensation or indemnity to any County officer or employee for any injury to or illness of such officer or employee arising out of their employment by County, and Contractor, its officers and employees, by this Agreement, shall not assume any liability for the negligent or wrongful acts or omissions of County, nor of any officer or employee thereof, or property of County, and Contractor shall hold harmless, defend and indemnify County, its officers

and employees, against any and all costs, expenses, claims, suits and liability for bodily and personal injury to or death of any person and for injury to or loss of any property resulting therefrom or arising out of or in any way connected with any negligent or wrongful acts or omissions of Contractor, its officers and employees, in performing or authorizing the performance of or in failing to perform or authorize the performance of any work, services or functions provided for, referred to in or in any way connected with any work, services or functions to be performed under this Agreement.

- 9.2 County's Obligation. County, its officers and employees, by this Agreement, shall not assume any liability for the negligent or wrongful acts or omissions of Contractor, nor of any officer or employee thereof, or property of Contractor, and County shall hold harmless, defend and indemnify Contractor, its officers and employees, against any and all costs, expenses, claims, suits and liability for bodily and personal injury to or death of any person and for injury to or loss of any property resulting therefrom or arising out of or in any way connected with any negligent or wrongful acts or omissions of County, its officers and employees, in performing or authorizing the performance of or in failing to perform or authorize the performance of any work, services or functions provided for, referred to in or in any way connected with any work, services or functions to be performed under this Agreement.

10. RECORD AUDIT:

- 10.1. Contractor shall prepare and maintain all writings, documents, and records prepared or compiled in connect with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes the handwriting, typewriting, printing, photostatic, photographing, any every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof
- 10.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making an audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

11. NONDISCRIMINATION:

- 11.1. During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal,

state, or local law, rule, or regulation against any employee, applicant for employment, or person receiving services under this agreement because of face, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation, or sex. Contractor and its agents, officers, any employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. Contractor further agrees to abide by the County's nondiscrimination policy.

12. ASSIGNMENT:

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. WAIVER OF DEFAULT:

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. NOTICE:

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first-class mail to the respective parties as follows:

For County:

Lt Steve Hatzigeorgiou
Chief Deputy Coroner
Stanislaus County Sheriff's Department
Coroner Division
921 Oakdale Road
Modesto, CA 95355
(209) 567-4480

For Contractor:

Jeremy Briese
Undersheriff
Mariposa County Sheriff's Department
5099 Old Highway N
Mariposa, CA 95338
(209) 966-3615

15. CONFLICTS:

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. SEVERABILITY:

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. AMENDMENT

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. NON-APPROPRIATIONS AND DEBT LIMITATION CLAUSE:

In the event County is unable to obtain funding for any year during the term of this Agreement, County shall have the right to terminate this Agreement at the conclusion of the current year and shall not be obligated to provide any additional performance under the Agreement. To the extent that any remedy provided for in the Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to a county, Contractor waives any and all right to such remedy.

19. ENTIRE AGREEMENT:

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral 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 agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. ADVICE OF ATTORNEY:

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

21. CONSTRUCTION:

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.


22. GOVERNING LAW AND VENUE:

This Agreement shall be deemed to be made under and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

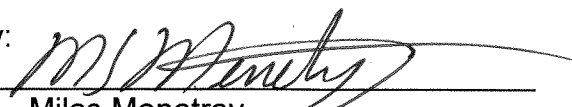
IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

APPROVED AS TO CONTENT:
Sheriff's Department

COUNTY OF MARIPOSA

By: 

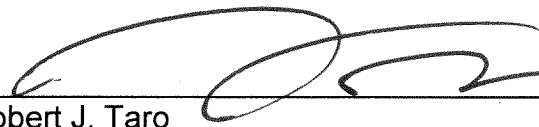
Jeff Dirkse
Sheriff-Coroner

By: 

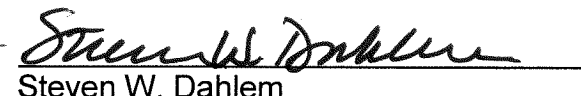
Miles Menetrey
Chairman, Board of Supervisors

APPROVED AS TO FORM:
Thomas E. Boze, County Counsel

APPROVED AS TO FORM:

By: 

Robert J. Taro
Assistant County Counsel

By: 

Steven W. Dahlem
County Counsel

EXHIBIT A

A. SCOPE OF WORK:

1. Contractor shall provide postmortem examinations and autopsies of decedents in cases of death which County's Coroner is required by law to conduct an inquiry into the cause and manner of death.
2. Contractor shall provide one (1) on-call Deputy Sheriff-Coroner to provide access to the Coroner's Facility outside of normal business hours. For purposes of this agreement, "normal business hours" shall be Monday through Friday from 8:00 a.m. to 5:00 p.m.
3. Contractor will provide all expert witness appearances required by Mariposa County on cases arising out of the performance of the aforementioned professional services.
4. Contractor shall provide additional services as requested by County, which may include inspection of medical records, discussion with decedent's physician and/or family, and other services as may be required by the Coroner to determine the cause and manner of death.
5. Cause of death may be determined by medical examination and blood analysis without dissection when Contractor determines that such examination and analysis is sufficient to determine the cause of death for the County's purposes.
6. Upon the concurrence of both Contractor and Mariposa County, if it is determined that a medical examination will satisfy the obligation of the County to conduct an inquiry into the cause and manner of death, then a medical examination may be substituted for an autopsy.
7. Contractor shall perform an autopsy of a deceased person when an autopsy is required in the opinion of Contractor upon consultation with the Coroner. Said autopsies may include gross dissection, microscopic examination, and toxicological examination as determined necessary by Contractor and shall also include all additional protocols required by law.
8. Contractor shall provide written reports, for autopsies and medical examinations, to the County, in a timely manner. It is understood and agreed that Contractor will provide transcription services as necessary for the preparation of said reports at Contractor's expense. Contractor will incur responsibility for any and all costs incurred in connection with toxicology and laboratory tests and will contract independently for such services. (Outside services should be billed directly to the County).

9. Autopsies shall be conducted at such times as agreed upon by Contractor and Mariposa Coroner, but in every case as soon as practicable. Post mortem examinations, autopsies of decedents and reports pertaining to them shall be consistent with the facilities available to Contractor and the general standards established by pathologists in practice throughout the State of California.
10. County shall furnish, at his own expense, transportation to the place where a post mortem examination or autopsy is to be conducted.
11. Contractor may employ at his own expense and with the concurrence of the Sheriff-Coroner, physicians qualified by training and licensure to perform pathology services as deemed necessary to meet the needs of the County. Contractor agrees to allow the Sheriff-Coroner to perform pathology service on behalf of the County.

B. COMPENSATION:

County agrees to pay Contractor and Contractor agrees to accept compensation for the services provided to this agreement as follows:

1. \$1,500 per autopsy for the first one hundred (100) autopsies per contract year; and \$1,800 for each autopsy in excess of one hundred (100) autopsies per contract year.
2. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$70,000 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.
3. \$238.00 for each instance Contractor is requested to unlock the Coroner's facility during non-business hours, representing a 3-hour minimum charge to compensate the time of the on-call Deputy Sheriff-Coroner. Each additional hour in excess of three (3) shall be billed at a rate of \$68 per hour.
4. \$50.00 a day storage fee for all cases brought in for storage only, with a maximum fee of \$175 per case.
5. Contractor shall be paid at the rate of \$300 per hour for the time expended by Contractor in making court appearances when the District Attorney requires testimony from a physician assigned to a home base outside of the County of Stanislaus. When testimony is required, from a physician assigned to the County of Stanislaus, travel time will be compensated at the rate of \$300 per hour.
6. Contractor shall be compensated at a rate of \$800 per inspection or medical record review.

7. Said compensation shall be paid in monthly installments. Contractor shall submit a statement for reimbursement of professional services on a monthly basis to the Sheriff of Mariposa County. County will make payment to Contractor upon approval of said statement not later than thirty (30) days from the date of receipt of the statement of services provided by Contractor.