

MEDICAL EXAMINER SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of January 2017, by and between the **COUNTY OF MUSKEGON**, a municipal corporation and political subdivision of the State of Michigan, located at 990 Terrace Street, Muskegon, Michigan 49442 (hereinafter referred to as the "County") and **WESTERN MICHIGAN UNIVERSITY HOMER STRYKER M.D. SCHOOL OF MEDICINE**, located at 1000 Oakland Drive, Kalamazoo, Michigan 49008-8052 (hereinafter referred to as the "Contractor"), referred to individually as "Party" and collectively, from time-to-time as "Parties".

RECITALS:

WHEREAS, the Muskegon County Board of Commissioners has appointed Dr. Joyce deJong, (Contractor's employee) as Medical Examiner pursuant to Section I of Act No. 181 of Public Acts of 1953, as amended (MCL 52.201 et seq), subject to the terms and conditions of this Agreement; and

WHEREAS, the Contractor has accepted such appointment on behalf of Dr. Joyce deJong subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED, by and between the parties as follows:

1. **General Scope of Services.** The Contractor, as the County's Medical Examiner, shall provide the County with the following services:
 - A. All services required of the County Medical Examiner as described in and required by the laws of the State of Michigan, including, but not limited to, the investigation and certifications of all persons whose deaths are within the jurisdiction of the County's Medical Examiner.
 - B. The provision of all necessary forensic pathology and forensic anthropology as needed to investigate deaths reported using standards established by the National Association of Medical Examiners. (Forensic toxicology and other forensic consultants may be subcontracted to other agencies or individuals whose qualifications meet the requirements of NAME Accreditation.)
 - C. Provide necessary communications and be available to respond to the inquiries of prosecuting attorneys, criminal defense attorneys, law enforcement agencies, funeral directors, health care institutions and their professional staffs, and involved citizens and families regarding particular death investigations and general procedures.

- D. Make recommendations for appointment as needed, validate the qualifications, assure the special and continuing education, and direct the official activities of all persons (deputy medical examiners, forensic pathologists, medical examiner investigators, etc.) providing professional services to the County's Medical Examiner's Office.
- E. Conduct investigations of all reported deaths pursuant to the requirements of the laws of the State of Michigan for county medical examiners and according to professionally accepted criteria.
- F. Be available for and provide testimony in criminal prosecutions to the Prosecuting Attorney of Muskegon County for postmortem examinations conducted under their jurisdiction, at no additional expense for time worked to the local governmental unit of the prosecuting attorney requesting such testimony. The Office of the Prosecuting Attorney will reimburse the Contractor for mileage at standard and accepted rates as published by the Internal Revenue Service; (current rate is 54 cents/mile) for travel to and from court when required to appear by the Prosecuting Attorney. The services of the Medical Examiner do not include expert testimony and consultation by the forensic toxicologists of the accredited toxicology laboratory.

2. **Appointment of Medical Examiners**

The County and the Contractor hereby appoint Joyce deJong, DO as the County's Medical Examiner; Joseph Prahlow, MD, Rudolph Castellani, MD, Elizabeth Douglas MD, Amanda Fisher-Hubbard MD, and Brandy Shattuck MD, as the County's Deputy Medical Examiners, subject to the approval of the County's Board of Commissioners.

- A. The Medical Examiner is licensed to practice medicine in the State of Michigan, board certified by the American Board of Pathology in Forensic Pathology, and has at least two years of forensic pathology work experience beyond forensic pathology residency/fellowship training.
- B. The Deputy Medical Examiners responsible for postmortem examinations and autopsies are licensed to practice medicine in the State of Michigan and board certified by the American Board of Pathology in Forensic Pathology, (or, in the event a new DME is hired, will achieve board certification within 24 months of appointment as a DME)
- C. At least one DME with qualifications similar to those of the Medical Examiner is available when the Medical Examiner is not available.

3. **Postmortem Examinations and Death Certifications**

- A. The DME or ME will complete all postmortem examinations and death certifications.
- B. A physician with the qualifications of a DME who is awaiting appointment as a DME by the Muskegon County Board of Commissioners, following a formal request for such

appointment by the ME to the Muskegon County Health Officer, may perform postmortem examinations under the supervision of the ME or DME.

- C. The ME or DME will conduct postmortem examinations of all bodies pursuant to the requirements of the State of Michigan and according to professional standards established by the National Association of Medical Examiners.

4. **Medical Examiner Investigators**

The contractor shall ensure that:

- A. A sufficient number of Medical Examiner Investigators (MEIs), are available to respond to death scenes in a timely manner (within 1 hour of being contacted by Central Dispatch for at least 90% of the deaths reported).
- B. The MEIs will conduct their investigations based on national guidelines as published by the Department of Justice.

5. **Autopsy Reports**

The contractor shall ensure that:

- A. Ninety percent (90%) of autopsies and external examinations performed within 48 hours from the time the decedent is released from the death scene with the possible exception of Sundays and holidays.¹ (Holidays include Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and New Year's Day.)
- B. Ninety percent (90%) of the final postmortem examination reports will be available within 60 calendar days from the time of autopsy.²

6. **Reporting Requirements**

- A. The Contractor will create a report to be delivered to the Muskegon County Health Officer no later than July 1 of each year, beginning in 2017. The report will include a summary of the number of deaths reported, the number of deaths investigated, the manner of deaths investigated, the number of postmortem examinations performed. The Contractor also shall prepare and submit such other reports as may be required by the laws of the State of Michigan and/or rules and regulations promulgated pursuant thereto.
- B. The ME/DMEs will provide necessary communications and be available to respond to the inquiries of attorneys, law enforcement agencies, funeral directors, health care

¹ Based upon NAME Accreditation standard 6.o.

² Based upon NAME Accreditation standard 4.i.

institutions, and involved citizens and families regarding particular death investigations and general procedures.

7. **Case Records**

The Contractor shall ensure that Medical Examiner case records originating during the term of this agreement shall be maintained in its offices in professional acceptable content and format. The County shall have the sole and exclusive right to all records pertaining to the services rendered by the Contractor pursuant to this Agreement. The Contractor shall have use of appropriate records when such access is required for the performance of the services to be provided under this Agreement and for any of its quality, compliance or any other reviews Contractor deems necessary. Upon the completion or termination of this Agreement, all records pertaining to services provided hereunder in the Contractor's possession shall be turned over to the County; provided, however that Contractor shall have access to the records upon its written reasonable request.

8. **Compensation**

The County shall compensate the Contractor for services performed under this Agreement as follows:

A. Compensation.

- i. Except as otherwise provided in this Agreement, the County shall compensate the Contractor for services performed with a flat monthly rate of \$38,517 for each month in 2017, \$39,480 for each month in 2018, \$40,467 for each month in 2019, and \$41,479 for each month in 2020.
- ii. For a single incident resulting in five or more deaths, the county shall compensate the contractor an additional \$2134 for each death beyond five (example, in an incident where there are eight deaths, the county would compensate the contractor \$2134 for deaths six, seven and eight for a total of \$6402).
- iii. For unclaimed body investigations, in excess of three (3) per year, where the body is unclaimed for more than 48 hours, the County shall compensate the Contractor an additional \$150/unclaimed body management. Any expenses related to cremation or burial of the unclaimed body, after application to the State of Michigan for reimbursement, are the responsibility of the County.

- B. The Contractor shall invoice the County for the services on a monthly basis. The invoices shall be sent to: **Administration (Accounts Payable) Public Health- Muskegon County, 209 E. Apple Avenue Muskegon, MI 49442**. Payments shall be made by County to Contractor within 30 days from date of invoice, and should be sent to the following address:

Western Michigan University Homer Stryker M.D. School of Medicine
Attn: Accounting Department

P.O. Box 50391
Kalamazoo, MI 49005-0391

- C. All transports from Muskegon County to Western Michigan University School of Medicine will be provided by a transportation service of the contractor's choice. Such transport(s) will be directly billed to the Contractor by the service provider. The transporter will meet all transport standards as defined by the National Association of Medical Examiners.
- D. Use of County Facilities:
The County will allow at no charge:
 - i. Use of the office space at Public Health- Muskegon County, as needed, for meetings with family and next-of-kin to address questions about the results of a death investigation.
 - ii. Use of space at Public Health - Muskegon County (or other Muskegon facility) for storage of body bags, tags, and personal protection equipment.
 - iii. Use of a County meeting room for Child and/or Elder Death Review Team meetings.

9. Independent Contractor

It is expressly understood and agreed that the Contractor is an independent contractor. The Contractor shall in no way be deemed as employees of the County. The Medical Examiner, Deputy Medical Examiners and Medical Examiner Investigators, as agents of the County, are entitled to protection and privileges provided by law, including without limitation governmental immunity. The Contractor's employees and agents and those of any subcontractors shall not be entitled to any fringe benefits which the County affords its employees, such as, but not limited to, health and accident insurance, life insurance, paid vacation or sick leave or longevity. The Contractor shall be responsible for withholding and payment of all applicable taxes, including, but not limited to, income and Social Security taxes to the proper Federal, State and local governments, in connection with services rendered pursuant to this Agreement.

10. Required Insurance by Contractor

The Contractor shall procure and maintain during the life of this Agreement, the following insurance coverage, and shall provide Muskegon County with evidence that such coverage is in force:

- A. Workers' Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. General Liability Insurance on an "Claims Made" basis" with limits of liability not less than \$ 1,000,000 per occurrence and aggregate for Personal Injury, Bodily Injury, and Property Damage.
- C. Motor Vehicle Liability, including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Professional Liability Insurance with minimum limits of liability of \$1,000,000 per occurrence, \$3,000,000.00 aggregate for the professional activities being carried out pursuant to the terms of this agreement.
- E. Performance and Payment Bonds - not applicable

11. Required Insurance by County.

During the term of this Agreement, the County shall maintain the following insurance either through a commercial insurance policy or an adequately-funded self-insurance program; (a) commercial general liability on a "claims made basis" with a per occurrence limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and (b) professional liability and malpractice insurance with a per occurrence limit of not less than \$1,000,000. Contractor shall be named as an additional insured or co-insured. A certificate(s) evidencing the insurance described by this paragraph shall be delivered to Contractor prior to its performance of any services under this Agreement. The policy(ies) required by this paragraph shall not be terminated, canceled, or materially altered for any reason without at least ten (10) days prior written notice to Contractor.

12. Indemnification

As between the parties, the County assumes liability for all actions, lawsuits, claims, damages, judgments, costs, charges and expenses that may result from any alleged or actual action, omission or default by the County or its employees. This provision does not affect the County's or its employees' entitlement to governmental immunity. The County agrees to defend, indemnify and hold harmless Contractor, its Board members, Deans, officers, employees, agents, successors and assigns from any and all claims, suits, actions, liabilities, expenses (including actual attorneys' fees) or losses whatsoever, including claims for property damage, personal injury and death, or any other damage or loss (hereinafter collectively referred to as "Claims"), which relate in any manner whatsoever, directly or indirectly, to Contractor's performance of services or provision of products and supplies pursuant to this Agreement unless the Claims arose as a result of or were caused by Contractor's gross negligence or willful misconduct

13. Compliance with Laws

The Contractor will comply with all federal, state and local laws, including, but not limited to, all applicable OSHA/MIOSHA requirements, copyright and patent laws, and the Americans with Disabilities Act. The Contractor agrees to protect, defend and indemnify the County against liability for loss, cost or damage resulting from actual or alleged violations of law by the Contractor if that loss, cost or damage occurred as a result of Contractor's gross negligence or willful misconduct.

14. **Confidentiality**

The Contractor acknowledges that during the performance of services under this Agreement, it or its personnel may become aware of or receive confidential information relating to or kept by the County, and therefore the Contractor agrees that all such information will be kept confidential and will not be disclosed without the written authorization of the County.

15. **License Requirements**

The Contractor shall meet all Federal, State and local license and/or authorization requirements to practice medicine. Failure to obtain and/or maintain any license and authorization requirements to practice medicine and/or loss of the same shall result in the immediate automatic termination of this Agreement.

16. **Nondiscrimination**

The Contractor will adhere to all applicable federal, state and local laws, ordinances, rules and regulations prohibiting discrimination. The Contractor, as required by law, will not discriminate against a person to be served or any employee or applicant for employment because of race, color, religion, national origin, age, sex, disability, height, weight, marital status, or any other factor legally prohibited by applicable law.

17. **Waivers**

No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other party, whether express or implied, will not constitute consent to, waiver of, or excuse for any different or subsequent breach.

18. **Amendment of the Agreement**

No provision of this Agreement may be modified except by a written document signed by a duly authorized representative of the both parties.

19. **Subcontracting or Assignments**

The Contractor will provide all services covered by this Agreement and will not subcontract, assign or delegate any of the services without written authorization from the County with the following exceptions:

- A. Forensic toxicology services may be subcontracted to a forensic toxicology laboratory that meets all requirements established by the National Association of Medical Examiners for accreditation.
- B. Body transport services may be subcontracted to transportation service that meets all requirements for transport established by the National Association of Medical Examiners for accreditation.
- C. Consultation for specialized examinations such as cardiovascular pathology to a board-certified anatomic pathologist with specialization in cardiovascular pathology, providing the pathologist meets all practice requirements established by the National Association of Medical Examiners.
- D. Testing of blood samples for DNA for the purposes of identification of human remains to Michigan State University Forensic Biology Laboratory, provided the laboratory meets all requirements established by the National Association of Medical Examiners for accreditation.

20. **Disregarding Titles**

These titles of the sections set forth in this Agreement are inserted for the convenience of reference only and will be disregarded when construing or interpreting any of the provisions of this Agreement.

21. **Complete Agreement**

This Agreement and the attached Attachment A contain all the terms and conditions agreed upon by the County and Contractor, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind either the County or the Contractor.

22. **Arbitration**

Any dispute or disagreement between the parties hereto regarding any provision of this Agreement or the performance of obligations hereunder shall be finally settled by binding arbitration. The arbitration shall be conducted under the Rules of the American Arbitration Association. In the event of any conflict between the Rules and this clause, the provision of this clause shall govern. The site of arbitration, unless the parties agree otherwise in

writing, shall be Muskegon County, Michigan. The award rendered by the arbitrators shall apportion the cost of arbitration, as the arbitrators deem appropriate. Judgment thereon may be entered in a court having jurisdiction thereof or having jurisdiction over any court from the decision of the arbitrators. In addition, no party shall have any right to commence or maintain any suit or legal proceeding concerning a dispute hereunder until the dispute has been determined in accordance with the arbitration provisions of this section and then only for enforcement of the award rendered in such arbitration.

Each party shall enter into an agreement with the arbitrators which shall (a) prohibit any ex parte contacts with the arbitrators without the prior written consent of the other party, unless such contacts are initiated by an arbitrator, and (b) require the arbitrators to treat any information conveyed to him or her as confidential and prohibit disclosure of any confidential or trade information.

23. Agreement Period and Termination

This Agreement shall become effective and performance thereon shall commence on the 1st day of January, 2017, and shall continue through the 31st day of December 2020. Notwithstanding any other provision in this Agreement to the contrary, this Agreement may be terminated by the Contractor upon ninety (90) days prior written notice to the County. The County may terminate this Agreement effective immediately after the Muskegon Board of Commissioners' removal of Joyce deJong, DO as Compiled Laws (MCL 52.201f) after notice to Dr. deJong and a hearing providing her with an opportunity to be heard, for failure to discharge properly the duties of Muskegon County Medical Examiner.

24. Attorney Fees

In the event of any arbitration or litigation arising out of or related to this Agreement, each party is responsible for their own attorney fees and expenses, including fees and expenses related to an appeal.

25. Taxes

County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by State, Federal, or local taxing agencies, Contractor agrees to reimburse County promptly for full value of such paid taxes plus interest and penalty, if any. These taxes shall include, without limitation the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and worker's compensation insurance.

26. Successors and Assigns

All representations, covenants, and warranties set forth in the Agreement by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. **No Third-Party Beneficiary**

No person dealing with the County or Contractor shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement. This Agreement is not intended to, nor shall it be interpreted to create a special relationship between the County or the Contractor and any staff: visitors, residents, or other individuals who may have business through the County.

28. **Applicable Law**

The laws of the State of Michigan shall govern this Agreement.

29. **Invalid/Unenforceable Provisions**

If any section, clause, or provision of this agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling of any tribunal of competent jurisdiction, that section, clause, or provision shall be null and void and shall be considered to be deleted and the remainder of the agreement shall not be affected thereby. Where the deletion of the invalid or unenforceable section, clause, or provision would result in the illegality and/or unenforceability of this agreement, this agreement shall be considered to have terminated as of the date in which the provision was rendered invalid.

30. **Certification of Authority to Sign Agreement**

The persons signing this Agreement on behalf of the parties hereto certify by their signatures that they are duly authorized to sign on behalf of said parties and that said parties have authorized this Agreement.

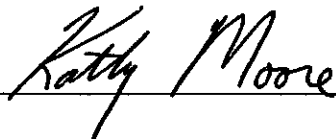
This Agreement contains all the terms and conditions agreed upon by the parties, and no other negotiations, representations, understandings or agreements, written, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind the parties in any way.

MUSKEGON COUNTY



Date: 12-13-16


By: Terry J. Sabo
Its: Chair, Muskegon County Board of Commissioners



Date: 12-27-16

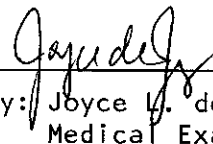
By: Kathy Herman-Moore
Its: County Health Officer

WESTERN MICHIGAN UNIVERSITY SCHOOL OF MEDICINE



Date: 1/11/17

By: Thomas E. Zavitz
Its: Associate Dean for Administration and Finance



Date: 1/9/17

By: Joyce L. deJong, D.O.
Medical Examiner