

CONTRACT FOR PATHOLOGY SERVICES

This Agreement is made and entered into this 19th day of December, 2017, by and between the County of Lake, hereinafter called the "COUNTY," and Bennet Omalu Pathology, hereinafter called "CONTRACTOR."

RECITALS

WHEREAS, the Sheriff-Coroner is required by Government Code Section 27491 to inquire into the cause of all deaths that are sudden, unexplained, violent, or otherwise as described in that statute; and

WHEREAS, County requires the services of a licensed physician to provide pathology services, including performing autopsies, and recommending or ordering toxicological, microscopic, and/or other clinical examinations as may be necessary, and to advise and to assist the Sheriff-Coroner in determining the cause of death pursuant to Government Code Section 27401; and

WHEREAS, pursuant to Government Code Section 31000 the County may retain independent contractors to perform special services to or for County or any department thereof; and

WHEREAS, Contractor is willing and able to perform the duties and render the services as more specifically outlined elsewhere in this Agreement; and

WHEREAS, County desires to retain Contractor to perform such services.

NOW THEREFORE, the parties hereto agree as follows:

1. CONTRACTOR'S RESPONSIBILITIES

- A. Perform or cause to be performed autopsies as requested by the Sheriff/Coroner of the Sheriff/Coroner's designated deputy in those cases in which the circumstances set forth in the relevant provisions of the California Penal Code, Government Code, and Health and Safety Code are determined by the Sheriff/Coroner to be necessary and appropriate.
- B. The extent of the examination shall be determined by the pathologist, and when necessary, may include CNS examinations and microscopic/histological examinations, etc. Pathologist will also perform external examinations and be available for consultation when needed.
- C. The examinations will be conducted within 24-72 hours of the request, Monday through Friday, 8:00 am to 5:00 pm as agreed to by mortuaries and the County's personnel work schedule, absent weekends, holidays, vacations, or unforeseen delays making next day examinations impossible.
- D. The pathologist agrees that he will at all times perform his duties to the best of his ability and in accordance with the highest scientific, professional, and ethical

standards of his profession, and at all times will act within the policies, rules, and regulations of the County, the State of California, and state and local statutes and administrative regulations relating to pathology.

- E. The pathologist shall be available by telephone and have the capacity to be physically present within a reasonable period of time at the request of the Sheriff-Coroner.
- F. The pathologist will not provide toxicological or other laboratory examinations, but will at the expense of the County recommend and order toxicological or other clinical examinations when pathologist believes appropriate or upon the request of the Sheriff/Coroner or his designated deputy.
- G. At the request of the Sheriff/Coroner or his designated deputy, the pathologist will examine medical records, medical history, and/or view a body to ascertain the probable cause of death or advise the Sheriff/Coroner or his designated deputy concerning the necessity for an autopsy and otherwise shall be available for consultation as needed. Upon the request of the Sheriff/Coroner, the pathologist shall consult with private medical doctors to assist in determining whether specific cases require a Coroner inquiry pursuant to GC27491.
- H. The Pathologist will attend and testify at court proceeding and in other legal proceedings as may be required by law when requested or subpoenaed in connection with any civil or criminal case arising out of a death in which the pathologist has conducted an examination. Any individual or entity other than the County of Lake or a Lake County employee who subpoenas the pathologist shall be responsible for pathologist's fee, which shall be negotiated between the pathologist and the proponent of the subpoena.
- I. The pathologist shall perform Sudden Infant Death Syndrome (SIDS) procedures necessary to comply with GC27491.41 and other laws and regulations as may apply to post-mortem examination in such cases.
- J. From time to time Sheriff/Coroner may request the pathologist to view the body or bodies at the scene of death and/or perform other investigative services.
- K. The pathologist shall prepare and deliver to the Sheriff-Coroner at pathologist's expense a final autopsy report within 90 days after each autopsy examination. Such typewritten reports shall conform to the customary standard for such reports, and shall include:
 - 1) Name of deceased, including all identifying information and applicable coroner's case number so far as each may be known to pathologist.
 - 2) Date and time of autopsy.
 - 3) External examination of the decedent and findings.
 - 4) Internal examination of the decedent, noting condition of specific organs and all internal body systems.
 - 5) Description of the results of the autopsy and determination of the probable cause of death.

- 6) Signature of pathologist licensed by the State of California who may have performed any duty of pathologist at pathologist's request under any provision of this contract.
- L. Shall the pathologist be unable to provide a final report within 90 days because of circumstances beyond his control, pathologist shall submit a final report within five working days after the receipt of the lab results or other information, the unavailability of which has been the cause of the delay.
- M. County will furnish to the pathologist the necessary facilities to perform the examinations. The pathologist will supply his own surgical instruments. Supplies will be provided by Contractor at County's expense as agreed upon by both parties. Contractor will provide his own transportation to and from the facilities provided by the County and to designated scenes of death unless request to ride with law enforcement personnel. Contractor is not responsible for providing personal protective equipment to County staff.
- N. Upon the request of the Sheriff/Coroner and with his authorization, the pathologist will, during an autopsy, explain procedures and respond to questions of Sheriff's personnel or other parties authorized by the Sheriff to be involved in the investigation of a case. Should the Sheriff authorize non-law enforcement personnel to view any such autopsy, the pathologist will explain the procedures and respond to questions as appropriate.
- O. The pathologist shall obtain, schedule and pay for the services of a pathologist as may be necessary from time to time to provide coverage for the pathologist when the pathologist is absent for vacations or in case of illness. A curriculum vitae of the pathologist's substitute shall be provided to the County upon the County's request.

2. COUNTY'S RESPONSIBILITY

- A. County will furnish to County the necessary facilities to perform the services contemplated by this Agreement. Contractor will provide the storage space for all clinical and pathological specimens which result from each autopsy. Supplies will be provided by Contractor at County's expense as agreed upon by both parties.

Contractor will supply his own surgical instruments, and his own transportation to and from the facilities provided by County and to designated scenes of death, unless requested to ride with law enforcement personnel. Contractor is not responsible for providing personal protective equipment to County staff.

- B. Except as otherwise specifically provided in this Agreement, for services rendered under this Agreement, other than testimony in court, Contractor shall be paid as follows:

3. PRICING

Fees Associated with Autopsy and Pathology Services

A. External Autopsy: \$ 800.00

B. Partial or Targeted Autopsy \$1100.00

Partial or targeted autopsies are autopsies whereby the cavities of the body are opened to examine specific organs to document a specific autopsy evidence in question. For example, a 75-year old man with a very well-documented medical history of advanced Coronary Atherosclerotic Disease, but is found dead at home on the floor at the bottom of the stairs, with abrasions and contusions of the forehead. An external examination is performed, but in addition, the scalp and cranial cavity are opened to examine the brain and rule out any subdural hemorrhage or other traumatic brain injury that may have caused or contributed to his sudden death, Histologic sections may or may not be taken depending on the prevailing autopsy scenario.

C. Full Autopsy: \$ 1500.00

A flat fee will be charged for all full autopsies regardless of the type of autopsy. Contractor will not distinguish a homicide autopsy or an autopsy on a child or infant from other types of autopsies. This will be a cost saving measure for the County.

D. Microscopic Examination: \$ 200.00 plus cost of slide preparation

E. Medical Records Review: \$ 325.00

F. Forensic Neuropathology Exam \$2000.00 plus cost of slide preparation

The College of American Pathologists, National Association of Medical Examiners and American Association of Neuropathologists currently require the whole brain to be fixed in formalin for at least two weeks and comprehensively examined with specified protocols. Brain tissue is processed differently from other tissues in the human body, and only specialized tissue laboratories perform such analysis. In addition to specialized histochemical stains, Contractor will also perform specialized immunohistochemical stains that will provide answers to medico-legal questions in homicide cases, child abuse cases and elder abuse cases. The standards of practice as set by these governing agencies and associations state that the brain shall be examined in cases involving Seizure Disorder, Sudden Death in Epilepsy, Excited Delirium, Child Abuse, Elder Abuse, Physical Homicidal Assaults, Sudden Death in an Infant or Child, Intra-Operative Deaths etc. This rate is a highly discounted rate. Contractor charges a fee of \$5000 to \$6000 for forensic neuropathology examination of cases sent from coroners and medical examiners from across the United States. Contractor is reducing this rate by about 60% for County of Lake because of this contractual relationship.

- G. Review of Prior or Archival Cases \$ 250.00 per hour
(maximum of \$2500.00 per case)
- H. Attendings at Meetings \$ 100.00 per hour
(maximum of \$500.00 per day)
- I. Death Scene Visit and Investigation \$ 500.00 per scene visit
- J. Specimen Handling Fee \$ 25.00 per case
- K. Body Fluid and Tissue Analysis (Toxicology, Histology, Microbiology, Biochemical, Mutational)

The laboratories performing these body fluid and tissue analyses will be the Contractor; the Contractor will pay these bills and in turn bill County of Lake exactly the same amounts billed for these analyses without any other added cost. Contractor serves several counties and has a sufficient volume of cases across these counties to negotiate lower rates with these laboratories than one County would.

- L. Training and Continuing Medical Education No Charges

This is a goodwill offer and gesture by Contractor to reaffirm that we are partners in service.

- M. Autopsy Technician and Autopsy Assistance \$ 120.00 per autopsy

According to the standards and guidelines set by the College of American Pathologists and National Association of Medical Assistants, a forensic pathologist shall be assisted by an autopsy technician during every autopsy. The autopsy technician also cleans up the body and the autopsy room after every autopsy and handles and processes all samples collected from the body including storage, retrieval and disposal. Contractor shall provide an autopsy technician for every autopsy, which would save the County money because the technician will only be paid per autopsy without other benefits or remunerations. The same autopsy technicians assist Contractors forensic pathologists in other counties that they serve.

4. FEES ASSOCIATED WITH COURT TESTIMONY

- A. Testimony (preliminary hearing And trial) \$ 500.00 per hour
(½ hour minimum; billed in ½ increments)
- B. Pre-trial Office or Telephone Conference \$ 250.00 per hour
(½ hour minimum; billed in ½ increments)

- C. Trial Preparation and Research
\$ 250.00 per hour
(½ hour minimum; billed in ½ increments)
- D. Waiting Time
\$ 250.00 per hour
(billed in ½ increments)
- E. Travel Time
\$ 90.00 per ½ hour
(billed in ½ increments)

5. SUBMISSION OF INVOICES

Invoices will be submitted by Contractor to designate personnel at the Sheriff/Coroner's Office or District Attorney's Office, by priority mail or by e-mail, on bi-weekly basis, by the 15th of every month, and by the 30th of every month (by the 28th for the month of February) for autopsies that have been performed and other services that have been provided.

6. TERM

- A. This Agreement shall be effective on the date hereinabove entered into and shall continue in full force and effect until and unless terminated by either COUNTY, by and through the Sheriff/Coroner, or by CONTRACTOR, upon ninety (90) days written notice to the other party.

7. DUE PERFORMANCE-DEFAULT

- A. Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within 10 days of the date of that notice (ie: the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of the Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

8. TERMINATION

This Agreement may be terminated as follows:

- A. By mutual consent of the parties; or

B. By either party upon ninety (90) days written notice to the other.

9. INSURANCE

Contractor shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to County, and said insurance has been approved by County. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least twenty (20) days prior written notice has been given to County.

Contractor shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of Contractor to maintain the insurance required by this paragraph, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with County within ten (10) days after the date of execution of this Agreement by Contractor and prior to commencement of work hereunder.

A. Compensation Insurance

Contractor shall procure and maintain, at Contractor's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, Contractor shall require subcontractor similarly to provide Employer's Liability Insurance and Worker's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by Contractor's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

B. Commercial General Liability

Contractor shall procure and maintain, at Contractor's own expense during the term hereof, upon him/herself and his/her employees at all times during the course of this agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and independent contractor's liability.

C. Automobile Liability Insurance

Contractor shall procure and maintain, at Contractor's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, or leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than Three Hundred Thousand dollars (\$300,000.00) combined single limit coverage per occurrence.

D. Professional Liability Insurance

Contractor shall procure and maintain, at Contractor's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions or other acts for which Contractor, its employees, subcontractors, and agents are liable. Said Insurance shall be written with limits of not less than One Million dollars (\$1,000,000.00). If said insurance is written on an Aclaims made® form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this agreement.

F. Subcontractors

Contractor shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the County for each subcontractor which shall be subject to review and approval by County. All insurance coverage for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of Contractor described with particularity hereinbelow.

G. Other Insurance Provisions

For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either Contractor shall reduce or eliminate such deductibles or self-insurance retentions or Contractor shall provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A:VII.

Insurance coverage, in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any

other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a AClaims Made®, rather than Accurrence® form, Contractor agrees to maintain required coverage for a period of three years after the expiration of this agreement (hereinafter, APost Agreement Coverage®) and any extensions thereof. Contractor may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This sub-provision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

Contractor agrees to waive all rights of subrogation against County, its officers, officials, employees, agents, and volunteers for losses arising from work performed by Contractor under this Agreement.

10. STANDARD OF CARE

- A. Contractor represents that he is duly licensed to practice medicine as a physician and surgeon by the State of California and as such is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted medical practices.

11. INDEMNIFICATION – HOLD HARMLESS

- A. Contractor shall indemnify and defend County and its officers, employees and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's operations hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County.

12. ASSIGNMENT

- A. Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County, except that claims for money due to Contractor from County under this Agreement may be assigned by Contractor to a bank, trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement

except for those specifically consented to by both parties or as stated above shall be void.

13. INDEPENDENT CONTRACTOR

- A. It is specifically understood and agreed that in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent, or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein. Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees or contributions required with respect to Contractor and Contractor's officers, employees and agents who are engaged in the performance of the Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

14. MODIFICATION

- A. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of Contractor and County executed by the Sheriff.

15. NON-DISCRIMINATION IN EMPLOYMENT

- A. In the performance of the work authorized under this Agreement, Contractor shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age (over 40). Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

16. ADHERENCE TO APPLICABLE DISABILITY LAW

- A. Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disability Act, (42 U.S.C. Section 12101, et seq.), California Government Code Sections 12920 et seq., and all related state and local laws.

17. HIPAA COMPLIANCE

- A. Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

18. SAFETY RESPONSIBILITIES

- A. Contractor will adhere to all applicable Cal OSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

19. ATTORNEY'S FEES AND COSTS

- A. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

20. INTEREST OF CONTRACTOR

- A. Contractor hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. Contractor further covenants that in the performance of this work, no person having any such interest shall be employed.

21. OWNERSHIP OF DOCUMENTS

- A. All non-proprietary reports, drawings, renderings, information, and/or other documents or materials prepared and and/or submitted to Contractor hereunder shall become the property of County. In the event of the termination of this Agreement for any reason whatsoever, Contractor shall promptly turn over all said reports, drawings, renderings, information, and/or other documents or materials to County without exception or reservation.

22. RECORDS – AUDIT

- A. Contractor shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids (if applicable), all income, and expenditures. These documents and records shall be retained by Contractor for at least five (5) years from the completion of this Agreement. Contractor will permit County to audit all books, accounts and/or records relating to this Agreement and/or all accounts or records of any business entities controlled by Contractor who participated in this Agreement. An audit may be conducted on Contractor's premises, or at County's option. Contractor shall provide all books and records within a maximum of fifteen (15) days of Contractor's receipt of written notice to do so from the County. Contractor shall refund any moneys erroneously charged.

23. JURISDICTION AND VENUE

- A. This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding

regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.

24. RESIDENCY

- A. All independent contractors providing services to County for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

25. NO THIRD-PARTY BENEFICIARIES

- A. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

26. SEVERABILITY

- A. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

27. NON-APPROPRIATION

- A. In the event County is unable to obtain funding at the end of each fiscal year for pathology services required during the next fiscal year. County shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to County, Contractor hereby expressly and irrevocably waives its right to such remedy.

28. NOTICES

- A. All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party:

COUNTY OF LAKE
255 North Forbes Street
Lakeport, California 95453

BENNET OMALU PATHOLOGY
3031 West March Lane, Suite 323
Stockton, California 95219

29. ADDITIONAL PROVISIONS

- A. This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

Executed at Lakeport, California, on the day and year first written above.

COUNTY OF LAKE

CONTRACTOR

Jeff Smith, Chairman
Board of Supervisors

Bennet Omalu, President
Bennet Omalu Pathology

ATTEST: Carol J. Huchingson
Clerk to the Board of Supervisors

BY: _____

APPROVED AS TO FORM:

Anita Grant
County Counsel

BY: _____

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Executed at Lakeport, California, on the day and year first written above.

COUNTY OF LAKE


CONTRACTOR



Jeff Smith, Chairman
Board of Supervisors

See attached signature page
Bennet Omalu, President
Bennet Omalu Pathology

ATTEST: Carol J. Huchingson
Clerk to the Board of Supervisors

BY: 



APPROVED AS TO FORM:

Anita Grant
County Counsel

BY: 



The within instrument is a correct
copy of the document on file in
my office.
ATTEST: 12/19/17
CAROL J. HUCHINGSON
Clerk of the Board of Supervisors of
the County of Lake, California and for the
County of Lake

