

**AGREEMENT TO PROVIDE PATHOLOGY SERVICES
TO SAN MATEO COUNTY CORONER (FORENSIC PATHOLOGY)**

THIS AGREEMENT entered into this 1st of November, 2004, by and between the COUNTY OF SAN MATEO, hereinafter referred to as "County" and Peter A. Benson, MD., a Forensic Pathologist duly licensed to practice pathology in California, hereinafter referred to as "Pathologist."

WITNESSETH

WHEREAS, pursuant to Government Code 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that the Contractor be retained for the purpose of performing Forensic Pathology services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO, as follows:

1. **SERVICES OF PATHOLOGIST:**

Pathologist will perform forensic pathology services (autopsies and clinical inspections) for the Coroner as ordered by Coroner and in accordance with the following provisions:

- a. All personnel involved in or assisting with Coroner's autopsies will be provided by Coroner.
- b. The Coroner or the Chief Deputy Coroner in consultation with the Pathologist will make the final decision as to whether a Coroner's case will be autopsied.

- c. Pathologist shall submit the form "Autopsy Report to Coroner's Office" at the conclusion of each autopsy. If data is necessary to complete the report which is not immediately available to Pathologist, the form submitted may indicate "deferred." In such cases the final report will be submitted upon receipt by Pathologist of necessary data. Within twenty (20) days thereafter, Pathologist shall submit a completed face sheet. Complete, dictated protocols shall be furnished to the Coroner on all cases. Protocol shall include a report on the microscopic analysis. Should Pathologist fail to submit required documentation for a given case according to the time limits set forth in the paragraph, payment for pathology services may be withheld until such time as the required documentation is received by the Coroner. Reports shall be furnished on a daily basis.
- d. X-ray or flouroscope examination prior to or during the autopsy will be at the discretation of Coroner, his appointed Chief Deputy Coroner or the Pathologist. Such x-ray services shall be paid for by County.
- e. In determining cause of death, Pathologist shall provide all necessary histology services and microscopic analysis at County's expense. The need for such services shall be at the discretion of the Coroner in consultation with the Pathologist.
- f. Pathologist shall provide medical consultation without additional charge in non-traumatic or apparent natural deaths.

- g. Pathologist will take PAP smears in appropriate cases, which are to be processed at County expense. The need for such services shall be at the discretion of the Coroner in consultation with the Pathologist.
- h. When toxicology tests are requested by Coroner or his representative, Pathologist shall submit the necessary body fluids and/or tissue to the toxicology laboratory designated by Coroner for analysis. County will pay for such tests, and the results will be submitted to Pathologist.
- i. Outside consultation by Pathologist that is necessary to determine a cause of death will be at the discretion of Coroner and once approved, paid for by County.
- j. In the event that there is a challenge to a determination of cause of death and disinterment and re-examination is in order, said disinterment will be paid for by County or by the person(s) challenging the original determination of cause of death.
- k. Pathologist may not use Resident in Pathology in any autopsy or examination ordered by the Coroner.
- l. Pathologist shall provide medico-legal testimony when requested for Coroner's inquests at the rate of FIFTY DOLLARS (\$50.00) per inquest; such amount is payable by County.

2. PAYMENT BY COUNTY;

- a. Payment by the County to Pathologist for the services described herein shall be \$13,211.00, (THIRTEEN THOUSAND TWO HUNDRED ELEVEN DOLLARS) per month for the period beginning

November 1, 2004, to and including October 31, 2005. Should the number of autopsies performed during said 12-month period exceed four hundred (400), County will pay \$376.00 for each additional autopsy performed during the period. Total payment for this period shall not exceed \$158,532.00 (ONE HUNDRED FIFTY EIGHT THOUSAND FIVE HUNDRED THIRTY-TWO DOLLARS).

- b. Payment by the County to Pathologist for the services described herein shall be \$13,607.00 (THIRTEEN THOUSAND SIX HUNDRED SEVEN DOLLARS) per month for the period beginning November 01, 2005, to and including October 31, 2006. Should the number of autopsies performed during said 12-month period exceed four hundred (400), County will pay \$383.00 for each additional autopsy performed during the period. Total payment for this period shall not exceed \$163,284.00 (ONE HUNDRED SIXTY THREE THOUSAND TWO HUNDRED EIGHTY FOUR DOLLARS).
- c. Payment by the County to Pathologist for the services described herein shall be \$13,879.00 (THIRTEEN THOUSAND EIGHT HUNDRED SEVENTY NINE DOLLARS) per month for the period beginning November 01, 2006, to and including October 31, 2007. Should the number of autopsies performed during said 12-month period exceed four hundred (400), County will pay \$391.00 for each additional autopsy performed during the period. Total payment for this

period shall not exceed \$166,548 (ONE HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED FORTY EIGHT DOLLARS).

- d. Payment by the County to Pathologist for the services described herein shall be \$14,156.00 (FOURTEEN THOUSAND ONE HUNDRED FIFTY SIX DOLLARS) per month for the period beginning November 01, 2007, to and including October 31, 2008. Should the number of autopsies performed during said 12-month period exceed four hundred (400), County will pay \$399.00 for each additional autopsy performed during the period. Total payment for this period shall not exceed \$169,872.00 (ONE HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED SEVENTY TWO DOLLARS).
- e. Payment by the County to Pathologist for the services described herein shall be \$14,439.00 (FOURTEEN THOUSAND FOUR HUNDRED THIRTY NINE DOLLARS) per month for the period beginning November 01, 2008, to and including October 31, 2009. Should the number of autopsies performed during said 12-month period exceed four hundred (400), County will pay \$407.00 for each additional autopsy performed during the period Total payment for this period shall not exceed \$173,268.00 (ONE HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED SIXTY EIGHT DOLLARS).
- f. The percentage of increase in the payment by the County to Pathologist shall be reviewed for the third, forth and fifth years of the contract at the conclusion of the second year of this contract.

- g. No later than the 10th of each month Pathologist shall submit to Coroner a list of cases in which autopsies were performed during the preceding month. Such list shall include the cause of death as determined in each case. Payment by County shall be made no later than the 25th day of the month following the month in which the autopsies were performed.
- h. Should the Pathologist find himself unable to perform the services described herein for a period extending past fourteen (14) days for any reason, the payment for the period during which services are provided shall be prorated for that period.
- i. The financial obligation County has to Pathologist by this agreement shall not exceed \$831,504.00 (EIGHT HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED FOUR DOLLARS).

3. BILLING OF PERSONS LIABLE FOR PAYMENT FOR PATHOLOGY SERVICES:

County shall be solely responsible for billing persons liable for payment for the pathology services provided for herein.

4. TERM AND TERMINATION OF AGREEMENT

Subject to compliance with all terms and conditions, the term of this Agreement shall be for a period of five years, from the 1st day of November, 2004, to and including the 31st day of October, 2009. This Agreement may be terminated by Pathologist, Coroner Robert J. Foucrault or his designee at

anytime without a requirement of a good cause at least thirty (30) days written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Pathologist under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Pathologist may make and retain a copy of such materials.

Subject to availability of funding, Pathologist shall be entitled to receive payment for work/services provided prior to termination of the Agreement.

Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. AVAILABILITY OF FUNDS:

The county may terminate this Agreement on a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State or County funds, by providing written notice to Pathologist as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. INSURANCE:

Pathologist agrees to carry malpractice insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Said policy shall provide that County receives no less than THIRTY (30) DAYS NOTICE prior to any cancellation of said insurance. Evidence of the aforementioned insurance coverage shall

be provided by Pathologist to County before work is commenced under this Agreement.

7. RELATIONSHIP OF PARTIES:

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

8. HOLD HARMLESS:

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from any and all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Pathologist, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any sanctions, penalties, or claims of damages resulting from Pathologist's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Pathologist or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. ASSIGNMENT:

Pathologist shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by pathologist under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

10. COMPLIANCE WITH LAWS; PAYMENT OF PERMITS/LICENSES:

All services to be performed by Pathologist pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations,

including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. NON-DISCRIMINATION:

A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

C. *Equal employment opportunity.* Pathologist shall ensure equal employment opportunity based on objective standards of recruitment,

classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement.

Pathologist's equal employment policies shall be made available to County of San Mateo upon request.

D. Violation of Non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Pathologist to penalties, to be determined by the County Manager, including but not limited to

- i) termination of this Agreement;
- ii) disqualification of the Pathologist from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Pathologist's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Pathologist under the Contract or any other Contract between Pathologist and County.

Pathologist shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the

investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Pathologist that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Pathologist shall provide County with a copy of their response to the Complaint when filed.

E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5 (a), which is incorporated herein as if fully, set forth.

12. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT:

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

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(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY'S authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

13. MERGER CLAUSE

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. CONTROLLING LAW

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

15. NOTICES.

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the

United States mail, postage prepaid, or when deposited with a public
telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to:
San Mateo County Coroner
50 Tower Road
San Mateo, CA 94402

In the case of Contractor, to:
Peter A. Benson, M.D.
324 Chapin Lane
Burlingame, CA 94010

IN WITNESS WHEREOF, the parties hereto, by their duly authorized
representatives, have affixed their hands.


COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County
Date: _____

ATTEST:

By: _____
Clerk of Said Board

PATHOLOGIST



Peter A. Benson, MD

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Peter A. Benson, M.D.
Contact Person: _____
Address: 324 Chapin Lane
Burlingame, CA 94010
Phone Number: 650/342-8868
Fax Number: _____

II Employees

Does the Contractor have any employees? ☐ Yes ☒ No

Does the Contractor provide benefits to spouses of employees? ☐ Yes ☒ No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- ☐ Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
☐ Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
☐ No, the Contractor does not comply.
☐ The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Peter A. Benson, M.D.
Signature

PETER A. BENSON, M.D.
Name (Please Print)

PATHOLOGIST
Title

October 7, 2004
Date

CERTIFICATE OF INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below.

Certificate Holder Coroners Office 617 Veterans Blvd Redwood City, CA 90403		Name and Address of Insured Peter A Benson, MD 324 Chapin Lane Burlingame, CA 94010-5104	
Current Medical Specialty: Pathology		The above Insured is: <input checked="" type="checkbox"/> Named Insured <input type="checkbox"/> Additional Insured <input type="checkbox"/> Locum Tenens	
Policy Number 000318	Insured's Effective Date 01/01/2004	Insured's Expiration Date 01/01/2005	Insured's Retroactive Date 11/01/1975
Coverage and Limits of Liability			
\$1,000,000 Each Claim		Deductible \$Nil Each Claim	
\$3,000,000 Aggregate Limit per Policy Period		\$Nil Aggregate	
<input type="checkbox"/> Shared Limits of Liability		<input checked="" type="checkbox"/> Separate Limits of Liability	
<input checked="" type="checkbox"/> COVERAGE A – Professional Liability Insurance – Claims Made			
<input checked="" type="checkbox"/> COVERAGE B – Limited Professional Office Premises Liability Insurance – Claims Made (Limits of liability applicable to this coverage are shared with the Named Insured)			

This is to certify that the policy of insurance listed above has been issued to the insured named above for the period indicated as the insured's effective date to the insured's expiration date subject to payment of all billed premiums by the due date specified. The insurance afforded by the policy described above is subject to all the terms, exclusions and conditions of such policy. It is the responsibility of the insured to inform recipients of Certificates of Insurance of any changes in coverage, declination of issuance, or cancellation before the expiration date. Failure by the insured to provide such notice shall impose no obligation or liability of any kind upon NORCAL, its agents, or representatives.

By: NORCAL Mutual Insurance Company

Issue Date: October 24, 2003

James Sunseri
James Sunseri
President

David R. Holley M.D.
David R. Holley, M.D.
Secretary