

AGREEMENT FOR MEDICAL EXAMINER AND FORENSIC LABORATORY SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between **PINELLAS COUNTY**, a political subdivision of the State of Florida, hereinafter called the "COUNTY" and **JON R. THOGMARTIN, M.D., P.A.**, a Florida corporation, hereinafter called "DR. THOGMARTIN."

WITNESSETH:

WHEREAS, the provision of forensic laboratory services in Pinellas County is an integral part of the criminal justice system; and

WHEREAS, the provision of medical examiner services detailed in Section 406.11, Florida Statutes, is an integral part of the criminal justice system; and

WHEREAS, DR. THOGMARTIN has the specialized training, experience and expertise to provide the necessary forensic laboratory and medical examiner services; and

WHEREAS, DR. THOGMARTIN was appointed by the Governor to serve as the District Six Medical Examiner; and

WHEREAS, the Pinellas County Board of County Commissioners is responsible for the payment of the Medical Examiner's fees, salaries, and expenses pursuant to Section 406.06(3) and 406.08(1), Florida Statutes; and

WHEREAS, forensic laboratory services, under the name of the Pinellas County Forensic Laboratory, are now incorporated within this Agreement for Medical Examiner Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

1. DEFINITIONS.

Unless the context otherwise requires, capitalized terms used herein shall have the following meanings ascribed to them:

“ACT” means Chapter 406, Florida Statutes, and Chapter 11G, Florida Administrative Code and the statutory requirements of Chapter 943, Florida Statutes, which apply to the Pinellas County Forensic Laboratory.

“ANAB” means the ANSI-ASQ National Accreditation Board

“ASCLD/LAB” means the American Society of Crime Laboratory Directors, Laboratory Accreditation Board.

“ASSOCIATE MEDICAL EXAMINER” means an anatomic board certified or board eligible pathologist hired by and serving at the pleasure of the MEDICAL EXAMINER pursuant to his authority under Section 406.06, Florida Statutes.

“CODIS” (Combined DNA Index System) is the FBI-funded computer system that solves crimes by searching DNA profiles developed by federal, state, and local crime laboratories.

“CODIS OPERATOR” means an employee of the COUNTY that is eligible for the Florida Retirement System, functions as a DNA Analyst and has secured access to the CODIS database.

“COUNTY” means Pinellas County, Florida, a political subdivision created by the State of Florida.

“CREMATION APPROVAL” means any cremation, burial-at-sea, or disposition by anatomic dissection approval produced pursuant to Chapter 406, Florida Statutes.

“DEA LICENSE” means the annually renewed license to possess controlled substances issued to the Pinellas County Forensic Laboratory by the Federal Drug Enforcement Administration.

“DEPARTMENT” means the Pinellas County Justice Coordination.

“DISTRICT” means Medical Examiner District Six that includes Pinellas County and Pasco County.

“MEDICAL EXAMINER PROPERTY” means all equipment purchased and owned by DR. THOGMARTIN which would remain in the possession of DR. THOGMARTIN in the event of termination of this Contract.

“FORENSIC LABORATORY DIRECTOR” means a qualified forensic scientist hired by and serving at the pleasure of DR. THOGMARTIN.

“FUNCTION-RELATED EQUIPMENT” means major equipment purchased by the COUNTY that is integral to the service provided by the MEDICAL EXAMINER or Forensic Laboratory. It includes all COUNTY owned and COUNTY purchased computers, software, video equipment, cameras, office machines, office furniture, medical instruments, X-ray machines, and laboratory instruments.

“MEDICAL EXAMINER LABORATORY SERVICES” means toxicology laboratory testing for drugs or alcohol in deceased persons on items submitted by the Medical Examiner directly related to deceased persons in ongoing Medical Examiner death investigations analyzed by the Pinellas County Forensic Laboratory.

“NAME” means the National Association of Medical Examiners.

“NON-MEDICAL EXAMINER LABORATORY SERVICES” means laboratory testing for DNA, controlled substances, alcohol, ignitable liquids, and related substances on items submitted by outside agencies such as law enforcement not directly related to deceased persons in ongoing Medical Examiner death investigations and analyzed by the Pinellas County Forensic Laboratory.

“PINELLAS COUNTY FORENSIC LABORATORY” means the local crime laboratory defined by Florida Statute 943.32 as a member of the Statewide Criminal Analysis laboratory system which is managed by the MEDICAL EXAMINER.

“PROFESSIONAL MEMBERSHIP” means the holding of any executive or committee position by PROFESSIONAL STAFF in a forensic science related organization including, but not limited to the American Academy of Forensic Sciences and the American Society of Crime Laboratory Directors.

“PROFESSIONAL STAFF” means the Director of Investigations, all Associate Medical Examiners, the Forensic Laboratory Director, and all Forensic Chemists/Toxicologists/DNA Analysts performing the services under this Contract.

“REQUEST FOR PROFESSIONAL ASSISTANCE” means any request for medical examiner services or for forensic laboratory services made by a jurisdiction or agency outside the District/County.

2. PURPOSE.

DR. THOGMARTIN agrees to furnish all services, personnel, labor and necessary equipment not otherwise provided for herein, to serve as the District Six Medical Examiner which includes Pinellas County.

DR. THOGMARTIN agrees to furnish all services, personnel, labor and necessary equipment not otherwise provided for herein to provide forensic laboratory analysis of evidence submitted by law enforcement agencies in the COUNTY pursuant to their authority under Florida Law.

3. SCOPE OF SERVICES

A. DR. THOGMARTIN shall conduct or cause to be performed all necessary laboratory tests for the analysis of evidence seized by law enforcement agencies in Pinellas County pursuant to their authority under Florida law and within their accredited scope of services and shall conduct Medical Examiner related laboratory testing and non-Medical Examiner laboratory testing. DR. THOGMARTIN shall employ the necessary personnel to conduct said tests. Said employment shall comply with all federal, state and local statutes and regulations. Said employees shall safeguard and maintain proper chain of custody of all evidence submitted to them in accordance with the Standards of Practice and Performance required to maintain ANAB (formerly ASCLD/LAB International) and NAME Accreditation. Said employees shall further be available to testify in all criminal and civil litigation stemming from their duties. In addition, necessary laboratory reports shall be prepared and distributed according to general law.

B. DR. THOGMARTIN shall advise the DEPARTMENT of any appointment to a statewide or national commission, council, committee or special investigation panel. Likewise, Professional Membership activities of PROFESSIONAL STAFF shall be reported to the DEPARTMENT.

C. The COUNTY shall assume all responsibility for billing and collecting CREMATION APPROVAL fees, if any, and assumes any liability and responsibility for the billing and collection of CREMATION APPROVAL fees. The COUNTY shall set the fee amount. DR. THOGMARTIN shall provide timely public information related to CREMATION APPROVAL REPORTS sufficient for the COUNTY to bill for CREMATION APPROVALS. If the COUNTY chooses to bill for CREMATION APPROVALS, DR. THOGMARTIN, as part of his official duties under the ACT, shall not be expected or required to withhold CREMATION APPROVAL numbers from Funeral Directors for lack of payment to COUNTY.

D. DR. THOGMARTIN shall be responsible for maintaining all public records created by his office and responding to all public records requests made to his office.

E. DR. THOGMARTIN is responsible for all duties and responsibilities outlined in the ACT. DR. THOGMARTIN agrees to supply janitorial services to the facility including all labor and supplies.

4. TERM.

The term of this Agreement is for the fiscal year period from October 1, 2018, through and including September 30, 2019.

5. COMPENSATION.

A. The annual amount of compensation under this Agreement shall not exceed an annual maximum amount of Five Million Eight Hundred Five Thousand Eight Hundred Thirty (\$5,805,830.00) Dollars. The COUNTY agrees to compensate DR. THOGMARTIN for services at a

rate of Two Hundred Twenty Three Thousand Three Hundred One Dollars and 15/100 (\$223,301.15) Dollars paid bi-weekly for twenty-six (26) billing periods during the term of this Agreement.

B. The COUNTY agrees to provide the first three payments in the amount of Six Hundred Sixty Nine Thousand Nine Hundred Three and 45/100 (\$669,903.45) Dollars as the first payment for the term of the Agreement. All subsequent payments shall be as provided for in Paragraph A of this section. The annual maximum amount shall remain Five Million Eight Hundred Five Thousand Eight Hundred Thirty (\$5,805,830.00) Dollars.

C. The COUNTY agrees that the terms of this Agreement contemplate the anticipated normal activities and workload of DR. THOGMARTIN based upon past statistics and reasonable projections. The COUNTY agrees that in the event of a natural or man-made disaster or occurrence, it shall reimburse DR. THOGMARTIN for all extraordinary expenses (this includes expenses for exhumation when indicated by investigation and disaster related body removals at One Hundred Fifty Dollars (\$150) per decedent and Fifty Dollars (\$50) per body pouch for bodies transported) as are submitted to the Department and approved by the COUNTY.

D. In the event that the Pinellas County Attorney's Office is prohibited from representing DR. THOGMARTIN based on a conflict of interest or other ethical proscription, any expenses related to providing legal counsel and services to DR. THOGMARTIN for legal actions arising solely out of DR. THOGMARTIN's statutory duties (exclusive of professional or business liability claims) including legal services required to represent DR. THOGMARTIN as counsel of record regarding requests for public records under Chapter 119, Florida Statutes, and Florida Rule of Criminal Procedure 3.852 (records requests from the Office of Capital Collateral Representative) shall be paid by the COUNTY upon presentation by DR. THOGMARTIN at a rate not to exceed Two Hundred (\$200.00) Dollars per hour plus costs, up to an amount not to exceed Twenty Thousand (\$20,000.00) Dollars.

Prior to obtaining private counsel, DR. THOGMARTIN must receive approval from the Pinellas County Attorney's Office, which shall state the basis for the conflict.

E. DR. THOGMARTIN stipulates, agrees and understands that under the terms of this Agreement he must maintain an adequate number of PROFESSIONAL STAFF and support staff to perform all duties in accordance with this Agreement. Should any PROFESSIONAL STAFF position remain vacant for more than 180 days, DR. THOGMARTIN shall explain the vacancy in writing to the DEPARTMENT.

6. METHOD OF PAYMENT.

A. The COUNTY shall pay the above amounts by direct deposit into the specified account(s) of the MEDICAL EXAMINER. No bi-weekly billing or other invoices shall be required by the COUNTY other than this AGREEMENT and the terms of Section 5.

B. In the event that sufficient budgeted funds are not available for a new fiscal period, the COUNTY shall notify DR. THOGMARTIN of such occurrence and the contract shall terminate on the last day of the current fiscal period without penalty or expense to COUNTY.

7. WORK FOR OUTSIDE AGENCIES.

A. This section of this Agreement shall apply to any services rendered to Pasco County, to persons, agencies, organizations or other Medical Examiner Districts as part of a Request for Professional Assistance. References to Pasco County are not necessarily exclusive.

B. Services provided by any PROFESSIONAL STAFF as an expert witness or private consultant on non-medical examiner cases originating inside or outside of the District or on medical examiner cases originating outside of the District, are outside the Scope of Services of this Contract. Services by any PROFESSIONAL STAFF as an expert witness or private consultant on non-Pinellas County Forensic Laboratory cases originating inside or outside of the COUNTY are outside of the Scope of Services of this Agreement. Services provided by any PROFESSIONAL STAFF as an expert witness or private consultant on medical examiner cases originating inside the District, if provided

within the COUNTY facility, shall be reported to the COUNTY and fees for use of the COUNTY facility shall be Fifteen and 0/100 (\$15.00) per billable hour payable to the COUNTY.

C. For any services performed for Pasco County or Pinellas County law enforcement agencies for DUI testing, DR. THOGMARTIN shall itemize such services (as specified in REPORTS below) and, as compensation for the use of the COUNTY facility, DR. THOGMARTIN shall pay to the COUNTY, on a monthly basis, twenty (20%) percent of all fees received from any request for such services rendered the previous month and performed at the facility.

D. For any services performed for any other municipality or entity as part of a Request for Professional Assistance that does not pertain to 2015 DNA Capacity Enhancement and Backlog Reduction Grant, DR. THOGMARTIN shall pay the county (20%) of all fees received for such services performed at the facility. DR. THOGMARTIN may request authorization to waive such fees by submitting a written request to the DEPARTMENT for consideration and approval by the COUNTY. For any services performed for any municipality or entity as a Request for Professional Services that pertain to the 2016, 2017, 2018, or 2019 DNA Capacity Enhancement and Backlog Reduction Grants, DR. THOGMARTIN shall appropriately credit and document all fees to the project account in accordance with as the requirements of the grant agreement between the COUNTY and National Institute of Justice (NIJ) in the award document.

E. DR. THOGMARTIN shall pay usage fees to the COUNTY for services rendered within the County Facility to Pasco County or to Pinellas County law enforcement agencies for traffic related alcohol and drug testing (DUI cases) in accordance with the attached fee schedule.

F. DR. THOGMARTIN shall notify the DEPARTMENT when entering into a contract, in his individual capacity, to provide medical examiner services for other cities, counties, or municipalities.

8. REPORTS.

A. Budget.

In addition to the standard annual budget submission showing COUNTY operating expenses and capital outlays, DR. THOGMARTIN agrees to provide an FY 19-20 professional services budget proposal for all services including outside income showing the previous fiscal year actual, current fiscal year estimated and subsequent fiscal year proposed revenues, expenses, and net impact associated with the operations of MEDICAL EXAMINER AND LABORATORY functions. DR. THOGMARTIN also agrees to advise the DEPARTMENT in writing prior to seeking any grants or financial assistance that could alter the amount of funding from the COUNTY or alter the Scope of Services.

B. Grants.

The COUNTY formally designates the Forensic Laboratory Director as the designated point of contact and financial point of contact for Forensic Science related federal, state, and local grants for the purpose of submitting applications, generating progress reports and submitting payment requests on behalf of Pinellas County. All applications are subject to approval of the DEPARTMENT in accordance with COUNTY grant management policies and all reports shall be provided to the DEPARTMENT. The DEPARTMENT shall be responsible for ensuring all appropriate audits are conducted and maintained.

C. Monthly Reports.

DR. THOGMARTIN agrees to provide the DEPARTMENT with a monthly report which shall include at a minimum, the following:

1. A report showing monthly and year-to-date totals for each function performed by the office to include the number of autopsies and cremation approvals (by Funeral Home/Crematory). Current monthly and year-to-date totals shall be compared with the prior year's monthly and year-to-date totals.

2. An itemization of services provided to Pasco County or any other County to include the number of:
 - a. autopsies performed,
 - b. days for which body storage was provided including the initial 24 hour period.
3. Other statistical data and reports shall be available to the COUNTY upon reasonable request.

9. FACILITY AND EQUIPMENT.

A. The COUNTY agrees to provide, maintain, and support at no cost to DR. THOGMARTIN, a facility and all Function-Related Equipment reasonably required to perform the duties listed under the Scope of Services. Prior to purchasing Function-Related Equipment in excess of One Thousand (\$1000.00) Dollars, DR. THOGMARTIN agrees to notify the DEPARTMENT and to explore all other options including use of surplus equipment. DR. THOGMARTIN agrees to purchase Function-Related Equipment through the COUNTY in accordance with the Purchasing Ordinance. DR. THOGMARTIN may purchase additional MEDICAL EXAMINER PROPERTY from his budget line item, Professional Services. A separate listing of MEDICAL EXAMINER PROPERTY that is housed within the COUNTY facility shall be supplied to the DEPARTMENT. DR. THOGMARTIN shall be responsible for all said property and equipment and the COUNTY assumes no liability and shall be held harmless for any damage, injury caused or loss of MEDICAL EXAMINER PROPERTY.

B. The COUNTY shall meet *ISO/IEC 17025:2005 General Requirements for the Competence of Testing and Calibration Laboratories*, Section 5.4.7 Control of Data. The COUNTY will maintain and update as needed the memorandum of understanding with Pinellas Business Technology Services to continue to meet these requirements.

C. The COUNTY shall maintain the facility in a manner consistent with that of comparable Medical Examiner facilities in the state. In the event that DR. THOGMARTIN determines

that the facility being provided DR. THOGMARTIN under this Agreement is not being maintained in a manner consistent with comparable Medical Examiner facilities, DR. THOGMARTIN shall notify the COUNTY, through the DEPARTMENT. This notice shall be in writing and shall explain the specific basis for the claim that the facility is not being maintained in a manner consistent with the mandates of this Agreement.

10. CODIS OPERATORS.

The COUNTY agrees to provide to DR. THOGMARTIN, two CODIS OPERATORS, qualified per standards set by DR. THOGMARTIN to work at the Pinellas County Forensic Laboratory, who shall be employees of the COUNTY, but work under the direct supervision and control of DR. THOGMARTIN. The Forensic Laboratory Director shall be responsible for the approval of timesheets, leave requests, performance salary reviews, as relates to CODIS OPERATORS, and shall forward all related records to the DEPARTMENT for processing and retention. The Forensic Laboratory Director shall report any incidents that may result in liability on behalf of the COUNTY immediately to the DEPARTMENT's Director and DR. THOGMARTIN agrees to cooperate with the COUNTY in addressing these matters. The DEPARTMENT shall be responsible for all personnel and payroll transactions. The DEPARTMENT'S Director shall also be responsible for signing off on all reviews. All specialized training or travel expenses related to the two CODIS OPERATORS shall be incurred by DR. THOGMARTIN. DR. THOGMARTIN shall approve selected CODIS OPERATOR candidates prior to their employment with the COUNTY in compliance with all federal, state and local statutes and regulations. Access to the facility shall be at the pleasure of DR. THOGMARTIN, however, access may not be denied without cause. If, at any time, DR. THOGMARTIN determines that selected CODIS OPERATORS are unacceptable, DR. THOGMARTIN shall inform the COUNTY of his decision and the COUNTY shall begin initiating recruitment proceedings for replacement of the CODIS OPERATOR(s).

11. UTILITIES.

The COUNTY shall assume the reasonable cost of any water, gas, heat, power, paging service, cable media service, local phone service, waste removal, and grounds maintenance which is furnished to the facility. DR. THOGMARTIN shall assume the cost of all long-distance telephone charges billed by the COUNTY, janitorial services, and all other services supplied to said facility which the COUNTY has not herein specifically agreed to furnish. The COUNTY reserves the right to provide other services as are deemed in the best interest of the COUNTY in extraordinary circumstances.

12. TRANSPORTATION AND STORAGE OF BODIES.

The COUNTY agrees to assume any costs incurred in transporting and storing bodies examined by DR. THOGMARTIN if the death occurred in Pinellas County and the costs of body transport is reflected in COMPENSATION (Section 5).

13. AMENDMENT.

This Contract may be amended at any time provided such amendment is in writing and signed by both parties.

14. TERMINATION.

A. This Contract shall be terminable at will at the option of either party upon their furnishing of a ninety (90) days written notice to the other party.

B. This Agreement is contingent upon DR. THOGMARTIN serving as the District Six Medical Examiner.

15. INDEPENDENT CONTRACTOR.

It is mutually agreed that DR. THOGMARTIN is and shall remain an independent contractor and is not an employee or agent of the COUNTY.

16. MINIMUM INSURANCE REQUIREMENTS.

A. DR. THOGMARTIN shall obtain professional liability insurance with limits specified in Schedule C which shall provide coverage for all services provided under the terms of this Contract.

The COUNTY agrees to pay the cost of such insurance coverage for DR. THOGMARTIN. The annual premium for such insurance coverage shall be included in the approved line item budget. DR. THOGMARTIN's policy coverage shall be reviewed annually by the DEPARTMENT.

B. Should DR. THOGMARTIN's professional liability insurance fail to, or during the terms of this Contract, cease to cover the Scope of Services required, DR. THOGMARTIN shall, within twenty-four (24) hours of his knowledge of same, notify the DEPARTMENT and procure new or endorsed coverage for the services provided under this Contract. Failure to comply with this notice provision shall make this Contract subject to termination upon ten (10) days written notice to DR. THOGMARTIN by the COUNTY.

C. DR. THOGMARTIN must provide verification of adequate liability insurance coverage and must hold this coverage at all times during the existence of this Agreement as specified in Schedule C.

17. NON-DISCRIMINATION.

DR. THOGMARTIN shall not discriminate against any applicant for employment or employee with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, disability, sexual orientation, or gender identity. DR. THOGMARTIN shall, during the performance of this Contract, comply with all applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.

18. INDEMNIFICATION.

DR. THOGMARTIN shall indemnify, pay the cost of defense, including attorney's fees, and hold harmless the COUNTY from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property by or from DR. THOGMARTIN; or by, or in consequence of any neglect in safeguarding the work; or on account of any act or omission, neglect or misconduct of DR. THOGMARTIN; or by, or on account of, any claim

or amounts recovered under the “Workers’ Compensation Law” or of any other laws, by laws, ordinance, order or decree, except only such injury or damage as shall have been occasioned by the sole negligence of the COUNTY. DR. THOGMARTIN shall not indemnify the COUNTY for any claims arising as a result of termination of the contract as described under section 4 of this Agreement. The COUNTY shall be responsible for all claims due to the actions or negligence of the COUNTY and/or its employees to include failures of the COUNTY owned facility.

19. NON-ASSIGNABILITY.

This Contract is not intended, nor shall it be construed, to inure to the benefit of any third party hereto, and no right, duty or obligation of DR. THOGMARTIN under this agreement shall be assigned to any person, private association or corporation, not-for-profit corporation, or public body without the prior written consent of the COUNTY.

20. SEVERABILITY.

The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term or condition held to be illegal or void renders the balance of the agreement to be impossible to perform.

21. DOCUMENTS COMPRISING AGREEMENT.

This Contract for MEDICAL EXAMINER services shall consist of this Agreement and the following documents which are incorporated herein by reference:

Schedule A. List of Fees for Services for 2019 Fiscal Year

Schedule B. DR. THOGMARTIN’s professional liability insurance declarations page

Schedule C. Insurance Requirements

22. AUDITS.

DR. THOGMARTIN shall retain all records relating to this Agreement for three (3) years after final payment is made. All records shall be subject to audit by the COUNTY pursuant to Pinellas County Ordinance 94-51. The DEPARTMENT, on behalf of the COUNTY, shall have access to financial records relating to this Agreement for the purpose of audits.

23. GOVERNING LAW.

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

24. AGREEMENT MANAGEMENT.

The COUNTY designates the following person as the Contract Manager:

Deborah Berry
Pinellas County Justice Coordination
440 Court Street, Second Floor
Clearwater, FL 33756
Phone: (727) 464-6485

DR. THOGMARTIN designates the following person as the Contract Manager:

Jon R. Thogmartin, M.D.
District Medical Examiner
Executive Director
Forensic Science Center
10900 Ulmerton Road
Largo, FL 33778
(727) 582-6800

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

KEN BURKE
Clerk of the Circuit Court

PINELLAS COUNTY, FLORIDA, by
and through its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Kenneth T. Welch, Chairman

Date: _____

Date: _____

ATTEST:

JON R. THOGMARTIN, M.D., P.A.

By: Kaile Pryoratare

By: [Signature]

Date: 8/17/18

Title: D-6 Medical Examiner

Date: 8/17/18

APPROVED AS TO FORM

By: [Signature]
Office of the County Attorney