

COUNTY OF DEL NORTE
Office of the Sheriff - Coroner

650 5th Street
Crescent City, California 95531



ERIK APPERSON
Sheriff - Coroner

Main Office
464-4191

Fax
465-5742

Admin
464-9521

Civil
464-9518

Jail
464-8718

GRANT HENDERSON
Operations Commander

BILL STEVEN
Corrections Commander

FOR THE MEETING OF August 9, 2016

TO: Del Norte County Board of Supervisors

FROM: Erik Apperson, Sheriff-Coroner

DATE: July 29, 2016

SUBJECT: Agreement with Dr. Neil Kushner

RECOMMENDATION:

That the Board:

Authorize the Chair to sign the Agreement between the Del Norte County Sheriff's Office and Dr. Neil Kushner for post mortem services.

DISCUSSION:

Dr. Kushner has been providing Post Mortem Examination Services for the County for several years. Services are performed at the Humboldt County Coroner's office and when needed Dr. Kushner travels to Del Norte. Dr. Kushner provides the equipment and pathology when needed as well as assist the Assistant Coroner on request. This agreement covers the upcoming 2016/17 fiscal year.

ALTERNATIVES:

Not provide Coroner services.

FINANCING:

Coroners Budget 101-254-20231

County Counsel

Review/Sign Off

CAO

Review/Sign Off

Auditor

Review/Sign Off

**AGREEMENT FOR
SERVICES FOR DEL NORTE COUNTY CORONER
DNCO AGMT. NO _____**

This Agreement for Post Mortem Examination Services ("Agreement") is made as of the Agreement Date set forth below by and between the Del Norte County Sheriff's Office and Dr. Neil David Kushner ("CONTRACTOR").

In consideration of the Services to be rendered and the sums to be paid therefore, and each and every covenant and condition contained herein, the parties agree as follows:

1. **IDENTIFICATION OF CONTRACTOR.** The name, address, and phone number of contractor are **Dr. Neil David Kushner, 1938 D St., Eureka, CA 95501 (559) 978-2859**. Contractor's federal identification number is on file with the County Auditor.
2. **SERVICES.** Contractor shall provide Post Mortem services as requested by the Del Norte County Sheriff/Coroner's office.
3. **TERM.** The term of this contract shall be July 1, 2016 through June 30, 2017.
4. **PAYMENT.** Contractor shall submit to the County by the 10th of each month, a statement of services and charges for the preceding month, at \$800 per autopsy. County shall pay Contractor a contract fee not to exceed \$35,000.00 per year. Monthly statements shall be submitted to the County at the following address:

Del Norte County Sheriff's Office
650 5th Street
Crescent City, CA 95531

County shall not pay Contractor for meals, lodging or other travel costs not included in this Agreement unless such costs are approved in advance by the County representative who executed this Agreement, or his/her designee. If the County pays Contractor for meals, lodging or other travel costs, County shall pay County per diem rates in effect on the dates such costs were incurred by Contractor. Services performed by Contractor and not authorized in this Agreement shall not be paid for by County. Payment for additional services shall be made to Contractor by County if, and only if, this Agreement is amended by both parties in advance of performance of any additional services.

5. **FACILITIES.** Contractor shall at his/her sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

6. **REUSABLE, RECYCLED AND ENVIRONMENTALLY PREFERRED PRODUCTS.** It is the policy of the Board of Supervisors of Del Norte County to provide for the procurement of environmentally preferable products, including reusable, reused, recycled, and composted products. The Del Norte County Board of Supervisors, its departments, staff, and contractors shall specify and utilize these products whenever practical.

7. DESIGNATED REPRESENTATIVES. Erik Apperson, Sheriff-Coroner of the County will administer this Agreement for the County. Dr. Neil Kushner is the authorized representative for the Contractor.

8. INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Contractor shall be responsible for Contractor's own operating costs and expenses, property and income taxes, worker's compensation insurance, and any other costs and expenses in connection with the performance of services under this Agreement. Contractor agrees that he or she shall not be an employee of the County. County shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement.

9. LICENSES, PERMITS, ETC. Contractor represents and warrants to County that he has all licenses, permits, qualifications and approvals legally required for Contractor to practice his profession. If at any time Contractor ceases to have the licenses, permits, qualifications or approvals required for Contractor to practice his profession, Contractor will immediately notify County and this Agreement may be terminated at County's sole discretion.

10. INSURANCE

(a) Requirement. Contractor shall procure and maintain during the period of performance of this contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the County so that any other coverage held by the County shall not contribute to any loss under Contractor's insurance.

General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

Professional liability: (errors and omissions) for damage alleged to be as a result of errors, omissions or negligent acts of Contractor coverage in an amount not less than \$1,000,000 per claim and aggregate.

Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California.

A deductible or retention may be utilized, subject to approval by the County.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the County (including its directors, officers, employees, and agents) shall be named as additional insured.

County may request and Contractor shall furnish certificates of insurance and endorsements affecting coverage.

11. STANDARD OF PERFORMANCE. Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by competent practitioners of the profession in which Contractor is engaged.

12. INDEMNITY. Contractor shall defend, indemnify and hold harmless County and its elected and appointed officials, agents and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, which may arise solely from the intentional or negligent acts or omissions of Contractor in the performance of services rendered under this Agreement.

13. TERMINATION.

12.1 If in the opinion of COUNTY, CONTRACTOR fails to perform the services required under this Agreement within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation, or other law which applies to its performance herein, COUNTY may terminate this Agreement immediately, upon notice. In such event, COUNTY shall pay to CONTRACTOR only for the services performed in accordance with this agreement up to and including the date of termination, less the amount of any damages sustained by COUNTY as a result of CONTRACTOR'S breach of this Agreement.

12.2 At any time for any reason, upon thirty days written notice to CONTRACTOR, County may terminate this Agreement and pay only for those services and material rendered as of the date when termination is effective, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

12.3 CONTRACTOR may terminate its duties under this Agreement upon thirty (30) days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY.

12.4 These terms are effective until terminated by either party. The COUNTY reserves the right, in its sole discretion, to terminate CONTRACTOR'S access to any or all of the confidential information and the related services or any portion thereof at any time, without notice.

14. ASSIGNMENT PROHIBITED. CONTRACTOR may not assign or subcontract any duty, right or obligation pursuant to this Agreement without the prior written approval of

COUNTY. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void, and shall be cause for immediate termination of this Agreement.

15. PERSONNEL. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

16. NON-DISCRIMINATION. Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

17. REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this Agreement above, CONTRACTOR agrees to also comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

18. ATTORNEY'S FEES. If any lawsuit or arbitration at law or in equity (excepting an action for declaratory relief) is brought to enforce provisions of this Agreement by reason of the alleged failure of the other to perform or keep any provision or this Agreement to be performed or kept, the party who is deemed to have won such action or proceeding (including appeal) shall be entitled to recover court costs and reasonable attorney's fees (including reasonable value of services rendered by attorney's employed by COUNTY) which may be set by the Court or arbitrator, costs and expenses including staff time in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled. As used herein, the "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

19. COUNTERPARTS. This Agreement may be executed in more than one counterpart with original signatures, but all of the originals are the same instrument and the agreement is binding when at least one has been signed by all of the parties.

20. WHERE LAWSUIT FILED. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law. Any action at law or in equity arising out of or relating to these terms shall be litigated in the State of California and venue shall lie in the only in Del Norte County, California or the U.S.

District Court, California Northern District, and CONTRACTOR hereby consents and submits to the personal jurisdiction of such courts for the purposes of litigating any such action.

21. CONFIDENTIAL INFORMATION. All documents, writings or other communications, reports, information, work sheets, reports, related data and work product developed under this Agreement shall be the property of COUNTY, and CONTRACTOR shall deliver such documents to COUNTY without exception or reservation on completion of the services hereunder or termination. All information gained in performance of this Agreement shall be considered confidential and shall not be released by either party without the other's prior written authorization excepting that information which is a public record and subject to disclosure pursuant to the California Public Records Act, Government Code §6250, et. seq. Neither the CONTRACTOR or COUNTY, its officers, employees, agents, or subcontractors, shall without written authorization given by the COUNTY'S CAO or unless requested by the County Counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property. Response to a subpoena or court order shall not be considered "voluntary" provided COUNTY or CONTRACTOR gives notice to the other party of such court order or subpoena.

If CONTRACTOR or its officer, employees, or subcontractors does voluntarily provide information in violation of this Agreement, COUNTY has the right to reimbursement and indemnity from the party releasing such information for any damages caused by CONTRACTOR, including COUNTY'S attorney's fees.

CONTRACTOR and COUNTY shall promptly notify the other party should COUNTY or CONTRACTOR, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for discovery versus Doctors request for treatment, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement. CONTRACTOR and COUNTY each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. County and CONTRACTOR agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by County or CONTRACTOR. However, CONTRACTOR and

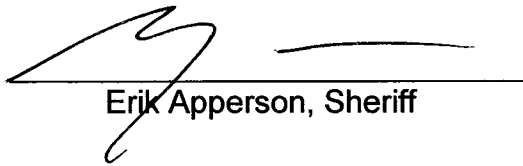
COUNTY'S right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

CONTRACTOR shall comply with all laws regarding confidentiality and shall advise and require all subcontractors to comply with the laws of confidentiality. All press releases and informational material shall receive approval from COUNTY prior to being released to the media.

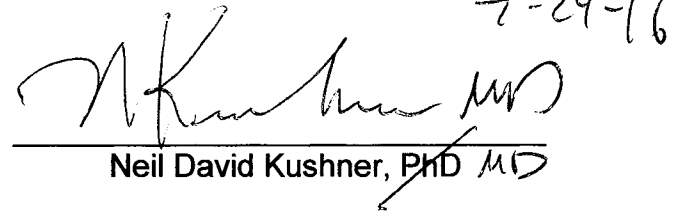
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on July 12, 2016.

"COUNTY"

COUNTY OF DEL NORTE


Erik Apperson, Sheriff

"CONTRACTOR"

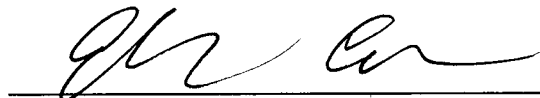
7-29-16

Neil David Kushner, PhD MD

Gerry Hemmingsen, Chair
Del Norte County, Board of Supervisors

ATTEST: I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

Kylie Heriford
Clerk of the Board

APPROVED AS TO FORM:


Elizabeth Cable
County Counsel