

**COMMISSION ON POST MORTEM EXAMINATIONS
SECOND AMENDMENT TO AGREEMENT BETWEEN THE COMMISSION ON
POST MORTEM EXAMINATIONS/OFFICE OF POST MORTEM
EXAMINATIONS AND THE *LOCUM TENENS* MEDICAL EXAMINER**

This **Agreement**, made on behalf of the Office of Post Mortem Examinations (otherwise known and hereinafter referred to as the Office of the Chief Medical Examiner), is made between the Commission on Post Mortem Examinations, Government of Guam, hereinafter referred to as “**Commission**” and Dr. Martin Ishikawa, Dr. Rachel Lange and Dr. Theodore Brown (hereinafter referred to as “**Contractor**”). The **Commission** and **Contractor** shall be collectively referred to as the “**Parties.**”

WHEREAS, there is a need for this Agreement due to the challenges the Government of Guam faces in recruiting a chief medical examiner;

WHEREAS, there is a shortage of forensic pathologists in the United States and worldwide;

WHEREAS, “[t]he Chief Medical Examiner shall be named by the Commission to serve for such term and at such salary as the Commission may fix,” as provided by 10 G.C.A. § 81103(a);

WHEREAS, the *Locum Tenens* Exemption states, “The Office of the Chief Medical Examiner is exempt from the government of Guam Procurement Law in contracting for the professional services of a qualified medical examiner to be provided when the Chief Medical Examiner is absent from work,” as provided by 10 G.C.A. § 81103(b);

WHEREAS, in addition to post-mortem examinations, there is a need for the performance of other services necessary to ensure best practices during forensic post-mortem examinations and afterwards, such as in anticipation of and during trial;

WHEREAS, consultation and case review are necessary in anticipation of trial;

WHEREAS, Contractor may be required to engage in depositions and provide expert witness testimony, both in-person and otherwise;

WHEREAS, forensic toxicology, also known as postmortem-toxicology, is necessary to conduct forensic post-mortem examinations in certain death investigations;

WHEREAS, Contractor may collect specimens for purposes of forensic toxicology analysis and send to a certified forensic laboratory, as such toxicology results may be subject to use in a court of law; and

WHEREAS, this Agreement supersedes any prior agreements, thus, rendering all prior agreements null and void.

NOW, THEREFORE, in consideration of the promises and mutual covenants provided

herein, the Commission and Contractor agree as follows:

1. Scope of Services and Term

- 1.1 Contractor will perform medical examiner duties, such as post-mortem examinations in the case of homicides and any other case referred to by the OCME, for the benefit of the Office of the Chief Medical Examiner (hereinafter referred to as the “OCME”) and under the supervision of the Commission.
- 1.2 Contractor will conduct external case review, which strictly involves a medical examiners’ review – in anticipation of trial – of case materials, reports, records, photographs, and other pertinent materials prepared by Chief Medical Examiner Aurelio Espinola.
- 1.3 Contractor will provide consultation, expert testimony and deposition services.
- 1.4 The services provided by Contractor under this Agreement will be performed on an *as needed basis* at the request of the Commission.

2. Compensation

2.1 The Contractor will be compensated as follows for post-mortem examinations:

2.1.1 The Contractor will receive *five thousand dollars (\$5,000.00)* per post-examination performed.

2.1.2 The Contractor, whose point of origin is Hawaii, will receive *two thousand two hundred dollars (\$2,200.00)* or *actual cost*, whichever is less, for round-trip airfare from Honolulu, Hawaii to Guam. The Contractor whose point of origin is anywhere other than Hawaii, will receive *two thousand four hundred dollars (\$2,400.00)* or *actual cost*, whichever is less, for roundtrip airfare. Contractor shall bear the cost of the difference for any upgrades or class greater than economy.

2.1.3 The Contractor will receive a travel allotment of *one thousand five hundred dollars (\$1,500.00)* per trip to cover lodging and incidentals, such as meals and transportation.

2.1.4 Upon request by the Contractor, the Commission may approve the reimbursement of additional medical supplies as required by the Contractor in order to perform services under this Agreement. Reimbursement for approved medical supplies shall be at cost.

2.2 The Contractor will be compensated as follows for external case review, consultation, deposition and testimony and in addition to travel, lodging and incidentals as provided in *Section 2.1* of this Agreement:

2.2.1 As stated in *Section 1.2* of this Agreement, an external case review fee will be charged at a flat fee of *three thousand dollars (\$3,000.00)* An external

case review in excess of 10 hours will be charged at an hourly rate of \$300, but only with pre-approval by the OCME.

2.2.2 Remote video conferencing is the preferred manner of consultation, deposition and testimony, and any of the former, will be charged at a rate of *three hundred dollars (\$300.00)* per hour.

2.2.3 The Contractor will be compensated as follows for on-island in-person consultation, deposition, and testimony.

2.2.3.1 Daily landing fee of *one thousand dollars (\$1000.00)* (flat fee/per day) to be provided during in-person consultation, deposition and testimony, and in anticipation of all of the former, should they be unexpectedly rescheduled, continued, or canceled.

2.2.3.2 Daily in-person consultation, deposition and testimony fees will be charged at *one thousand four hundred dollars (\$1,400.00)* (flat fee/per day).

2.2.3.3 A combined total of both categories of fees in *Sections 2.2.3.1. and 2.2.3.2.* shall not exceed *two thousand four hundred dollars (\$2,400.00)* per day.

2.2.3.4 The landing fee for in-person testimony and deposition in *Section 2.2.3.1* may be duplicative or charged on top of the base rate for in-person consultation, deposition and testimony fees in *Section 2.2.3.2.*

Example 1. Available for in-person testimony, but the trial to include Contractor's testimony is continued to the following day. Total fee = \$1,000

Example 2. Available for in-person testimony with testimony occurring between 1:00-3:00 PM. Total Fee = \$2,400 (\$1,000 landing fee for in-person testimony plus \$1,400 in-person testimony fee)

2.2.4 Lodging and incidental expenses will be compensated at a flat rate of *five hundred dollars (\$500.00)* per day on top of the fee in *Section 2.1.3* when in-person consultation, deposition and testimony are unexpectedly rescheduled, continued, or canceled and upon the OCME's approval.

2.3 The Contractor may request toxicology and laboratory services as part of this Agreement contingent on the OCME's approval. The toxicology laboratory services shall be billed at cost to the OCME as part of the invoice. The OCME will be responsible for extracting, gathering and shipping specimens to a certified forensic toxicology laboratory.

3. Invoicing by Contractor

- 3.1. The Contractor will submit a request for reimbursement supported by original receipts, within *thirty (30) days* from the date services are rendered or on a monthly basis.
 - 3.2 Compensation will be paid only after the submission of itemized documentation/invoices/billings, which must be in an acceptable form to the Commission. Documentation/invoices/billings must contain, at a minimum, a detailed description of work performed, the date of the performance, and the time spent performing the work (to reported in tenths of an hour). Prior to authorizing payment, the Commission may require that Contractor submit additional information as it deems necessary. All requests for payment shall be remitted to the Office of the Attorney General, 590 S. Marine Corps Dr., Ste. 901, Tamuning, GU 96913.
4. Additional Terms:
- 4.1. The Commission or the Contractor may terminate this Agreement at any time either for convenience or for cause by giving the other reasonable notice in writing prior to termination.
 - 4.2. The Commission, OCME, and Government of Guam shall not be liable or responsible for the injury or death of Contractor arising from transportation.
 - 4.3. All data, reports, evidence and any other work which is undertaken pursuant to this Agreement shall at all times be the property of the Commission, and that immediately prior to termination of this Agreement for any reason, all such data, reports, evidence and any other work which may have been completed or which is in the process of being completed by the Contractor pursuant to this Agreement shall be delivered to the Commission.
 - 4.4. This Agreement is subject to modification at any time but no such modification may be binding upon either party unless in writing and signed by all Parties to this Agreement.
 - 4.5. The Commission will provide facilities and personnel necessary to conduct services under this Agreement, and to provide at no cost to the Contractor, ancillary services, such as x-ray, toxicology and histology.
 - 4.6. The Contractor shall not be eligible for any Government of Guam employment benefits as provided to full time employees.
 - 4.7. Contractor shall testify as needed or as requested by the Office of the Attorney General (“OAG”). The OAG will request that testimony will be conducted via video conferencing. If video conferencing is not available, the Contractor agrees to provide testimony based on a schedule agreeable to the Parties.
 - 4.8. Venue of any action brought under this Agreement shall lie in Guam

exclusively. This Agreement shall be governed by and construed in accordance with the laws, regulations, and court decisions of Guam.

4.9. This Agreement shall become *effective only upon signature of the Parties and Governor of Guam*

IN WITNESS WHEREOF, the **Parties** have executed this **Agreement** on the dates indicated below:

CONTRACTOR

COMMISSION ON POST MORTEM EXAMINATIONS/OFFICE OF POST MORTEM EXAMINATIONS

Dr. Martin Ishikawa
Contractor

Hon. Leevin Taitano Camacho
Chairperson

Dated: _____

Dated: _____

Dr. Rachel Lange
Contractor

Dr. Theodore Brown
Contractor

Dated: _____

Dated: _____

CERTIFIED FUNDS AVAILABLE:

BUREAU OF BUDGET AND MANAGEMENT RESEARCH

Ms. Johanna Bamba
Office of the Chief Medical Examiner
Certifying Officer

Mr. Lester Carlson
Director

Dated: _____

Dated: _____

Account Numbers:
Contract Amount:

APPROVED AS TO LEGALITY AND FORM:

ATTORNEY GENERAL OF GUAM

GOVERNOR OF GUAM

Hon. Leevin Taitano Camacho

Hon. Lourdes A. Leon Guerrero

Dated: _____

Dated: _____

DRAFT