

PROFESSIONAL SERVICES AGREEMENT

This Agreement dated as of _____, is made by and between Kittitas County Prosecuting Attorney/Coroner Gregory L. Zempel (hereinafter "the Coroner") and Carl Wigren MD (hereinafter "Contractor"). The Coroner and Contractor agree as follows:

General Conditions; Exhibit A (Scope of Work); Exhibit B (Compensation); Exhibit C (Proof of Insurance).

copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on the January 1, 2012 and continue until December 31, 2012. Any party may terminate this Agreement by giving thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

Contractor acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs 7 (Independent Contractor), 9 (Taxes), 15 (Defense and Indemnity Agreement), and 23 (Confidentiality), are totally and fully part of this Agreement and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day
of _____, 20____.

APPROVED:

PROSECUTING ATTORNEY/CORONER
KITITAS COUNTY, WASHINGTON

Signature of Signatory
(Date _____)

Gregory L. Zempel

Print Name of Signatory

Approved:

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON

Alan A. Crankovich, Chairman

Obie O'Brien, Vice-Chairman

Paul Jewell, Commissioner

Attest:

Clerk of the Board

Contractor Address:

County's Address:

Kittitas County
205 West 5th Avenue, Suite 108
Ellensburg, WA 98926

GENERAL CONDITIONS

1. Scope of Contractor's Services:

Contractor agrees to provide to the Coroner services and any materials set forth in the project narrative identified in Exhibit "A" during the Agreement period. No material or labor will be furnished by the Coroner, unless otherwise provided for in the Agreement.

2. Performance of Work:

Contractor shall perform work in accordance with, and shall comply with, all of the provisions of this Agreement. All work shall comply with applicable codes and ordinances.

3. Schedule of Performance:

Unless directed otherwise by the Coroner, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

4. Definitions:

- 4.1 "Additional Insured's" means the Coroner, its successors and assigns, and the respective directors, officers, employees, agents and representatives of the Coroner and its successors and assigns.
- 4.2 "Support" means the following: Contractor's directors, officers, employees, agents and representatives; and sub-Contractors of any tier; the respective directors, officers, employees, agents and representatives of these sub-Contractors of any tier; and any other person or entity acting under the direction or control of, or on behalf of, Contractor or any Contractor's sub-Contractors of any tier in connection with or incident to the performance of the Work or this Agreement.
- 4.3 The "Work" means all of the duties listed in Exhibit A and the performance of all other obligations, under this Agreement by Contractor or its Support.

5. Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B". Where Exhibit "B" requires payments by the Coroner, payment shall be based upon billings, supported unless otherwise provided in Exhibit "B", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the Kittitas County Prosecuting Attorney/Coroner, the Coroner will not reimburse the Contractor for any costs or expenses incurred by the Contractor in performance of this Agreement.

Where required, the Coroner shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the Coroner voucher system, for the Contractor's service pursuant to the fee schedule set forth in Exhibit "B".

6. Assignment and Subcontracting:

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Coroner.

7. Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any Coroner benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

Contractor will defend, indemnify and hold harmless the Coroner, its Additional Insured's, officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

8. No Guarantee of Employment:

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any sub-Contractor or any employee of any sub-Contractor by the Coroner at the present time or in the future.

9. Taxes:

The Contractor understands and acknowledges that the Coroner will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the Coroner to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the Coroner against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The Coroner will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the Coroner does not hold title. The Coroner is exempt from Federal Excise Tax.

10. Regulations and Requirement:

This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth herein or in the attached exhibits.

11. Right to Review:

This contract is subject to review by any Federal or State auditor. The Coroner or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Coroner. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by Coroner agents or employees, inspection of all records or other materials which the Coroner deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

12. Modifications:

- 12.1 Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
- 12.2 The Coroner may, at any time, by written notice thereof to Contractor ("Change Notice") makes changes in the Work within the general scope of this Agreement, including, but not limited to: (a) changes in, revisions to, substitutions for, additions to or deletions of any Work; (b) changes in schedule; and (c) acceleration, deceleration or suspension of performance of any Work.
- 12.3 If any change in the Work causes an increase or decrease on Contractor's cost of, or the time required for, performance of the Work, an equitable adjustment in the compensation to Contractor and in the schedule for the performance of the Work shall be made to reflect such an increase or decrease.
- 12.4 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment, Contractor shall proceed in accordance with all Change Notices. Contractor must, within thirty (30) days after receipt of any

Change Notice that does not set forth any acceptable adjustment, submit to the Coroner a written statement setting forth any adjustment claimed.

- 12.5 If any change results in a decrease in the Work performed, Contractor shall be entitled to compensation associated with changing the Work, such as revising design already completed, revising calculations already performed, and revising documents.

13. Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the Coroner may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the Coroner's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the Coroner resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the Coroner in completing the work, and all damage sustained, or which may be sustained by the Coroner by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

14. Termination for Public Convenience:

The Coroner may terminate the Agreement in whole or in part whenever the Coroner determines, in its sole discretion that such termination is in the best interests of the Coroner. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. In the event of such termination, an equitable adjustment shall be made in the compensation payable to Contractor.

An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the Coroner at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the Coroner.

The Kittitas County Board of County Commissioners may terminate this contract for public convenience, to wit: if the county's budget circumstances are such that the count is unable to meet its financial obligation.

15. Defense & Indemnity Agreement:

The Contractor agrees to and shall defend, indemnify and hold harmless the Coroner, its Additional Insured's, appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the Coroner, its Additional Insured's, its elected or appointed officials, agents, or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its sub-Contractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the Coroner, its Additional Insured's, appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the Coroner by reason of entering into this contract, except as expressly provided herein.

16. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the Coroner, its Additional Insured's, officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. **This waiver is mutually negotiated by the parties to this Agreement.**

17. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by the law of the State of Washington.

18. Withholding Payment:

In the event the Contractor has failed to perform any obligation to be performed by the Contractor under this Agreement within the time set forth in this Agreement, then the Coroner may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

19. Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the Coroner will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the Coroner in the event this provision applies.

20. Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the Coroner. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

21. Disputes:

21.1 General

Differences between the Contractor and the Coroner, arising under and by virtue of the Agreement Documents shall be brought to the attention of the Coroner at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Kittitas County Prosecuting Attorney/Coroner shall be final and conclusive.

21.2 Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Coroner, or (2) the happening of any event or occurrence, unless the Contractor has given the Coroner a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the Coroner. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

21.3. Detailed Claim

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the completion of the portion of the work from which the claim arose, and before final payment by the Coroner, the Contractor has given the Coroner a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or extension of time claimed to be due.

22. Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or sub-Contractors, in connection with performance of this Agreement shall be the sole and absolute property of the Coroner.

23. Confidentiality:

The Contractor, its employees, sub-Contractors, and their employees shall maintain the confidentiality of all information provided by the Coroner or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Kittitas County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the Coroner. Contractor shall immediately give to the Coroner notice of any judicial proceedings seeking disclosure of such information. Contractor shall indemnify and hold harmless the Coroner, its Additional Insured's, officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

24. Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Kittitas County Prosecuting Attorney/Coroner, 205 W 5th Ave, Suite 213, Ellensburg, WA 98926. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

25. Severability:

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

26. Miscellaneous:

- 26.1 The Coroner's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.
- 26.2 This Agreement embodies the entire Agreement between the Coroner and Contractor, and supersedes any and all prior agreements, regarding the Work. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

- 26.3 The rights and remedies of the Coroner set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights of remedies afforded to the Coroner by any other provisions of this Agreement, by any of Contractor's Support or by law.
- 26.4 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

27. Waiver:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

28. Survival:

The provisions of paragraphs 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 27, and 29, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

29. Nondiscrimination:

29.1 The Coroner is an equal opportunity employer.

29.2 Nondiscrimination in Employment

In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

29.3 Nondiscrimination in Services

The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

29.4 If any assignment and/or subcontracting has been authorized by the Coroner, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

30. Criminal conduct:

Contractor agrees that they will immediately notify the Coroner if contractor is convicted of a crime.

EXHIBIT "A"

SCOPE OF WORK

Upon request of the County Coroner, the Contractor shall provide the following services as directed by the Coroner. The Contractor shall perform a complete and thorough external examination of the body. The Contractor shall perform a complete and thorough internal forensic autopsy, which includes pertinent biopsies as well as identification and examination of areas of trauma. The Contractor shall withdraw bodily fluids for the purpose of the Coroner to submit for Toxicology. Occasionally, the Contractor may be required to obtain fluids for other (viral, bacterial, vitreous panel, etc.) laboratory testing. The external examination of the body and autopsy results shall be provided to the Coroner's Office in typed written form. The Contractor will provide the Coroner's Office with an opinion as to the cause and manner of the death.

The Contractor may on occasion be required to provide testimony regarding his work at legal proceedings as deemed necessary by the County Coroner.

The County Coroner may on occasion consult with the Contractor on a case and/or toxicology results to extract an opinion in relation to other facts of an investigation which the Contractor was not involved in any other capacity.

The County Coroner may on occasion purchase operating supplies from the Contractor when purchasing such items will/could result in a savings to the Coroner's budget.

The Coroner's Office shall provide the Contractor with the following to insure accurate results: a thorough on-scene investigation, Coroner's Report, photographs, documentation of medical and or law enforcement nature.

EXHIBIT "B"

COMPENSATION

The Coroner will pay the Contractor \$18,000 for the duration of this contract January 1, 2012 to December 31, 2012, for the performance of autopsies in Kittitas County. Payments to Contractor will be made in quarterly installments of \$4,500 in the following manner:

- Payment for January – March will be made by the April 10, 2012.
- Payment for April – June will be made by July 10, 2012.
- Payment for July – September will be made by October 10, 2012.
- Payment for October – December will be made by January 10, 2013.

There will be no additional fees paid for external examination only or case and/or toxicology consults.

Fees for ancillary laboratory tests will be arranged separately from this contract and only with the preapproval of the Coroner, and will not exceed \$500.00 for the year without written authorization by the Coroner.

Witness fees related to preparing for and testifying in legal proceedings will be arranged separately from this contract and only with the preapproval of the Coroner, and will be at the rate of \$250.00 per hour.

EXHIBIT "C"

PROOF OF INSURANCE

The Contractor shall secure and maintain in effect at all times during performance of the Work such insurance as will protect Contractor, its Support and the Additional Insured's from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the work or this Agreement, whether such performance is by Contractor or any of its Support. All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by the Coroner. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

All coverage provided by the Contractor shall be primary and non-contributory. The Contractor shall provide proof of insurance for Commercial (comprehensive) General Liability insurance with coverage limits not less than \$1,000,000 combined single limit per occurrence. Proof of a policy of Automobile Liability Insurance, including coverage for owned, non-owned, leased, or hired vehicles written on an insurance industry standard form or equivalent. Worker's Compensation shall be in the amount required by law. The Contractor shall furnish the Coroner a certificate of insurance (with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. The type of insurance required by this Agreement is marked below.

- ☐ 1) Commercial General Liability Insurance
Thirty (30) days written notice to the Coroner of cancellation of the insurance policy.
- ☐ 2) Workers' Compensation.
Workers' Compensation in amounts required by law.
- ☐ 3) Automobile Liability Insurance.
Thirty (30) days written notice to the Coroner of cancellation of the insurance policy.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance, properly completed and in the amount required, is attached hereto.