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ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 2, 2020

His Excellency Governor, Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301-6397

Your Excellency and Members of the Council:

REQUESTED ACTION

Authorize the Department of Justice to enter into a **sole source** contract with Dr. Derek S. Bumgarner M.D., Phoenix, Arizona, as a substitute medical examiner, for a total not to exceed $4,000, to aid the Office of the Chief Medical Examiner (OCME) for the period of November 21, 2020 and November 22, 2020, effective upon the date of Governor and Executive Council approval through February 28, 2021. 100% General Funds.

Funding is available as follows:

02-20-20-202010-1033	FY 2021
Office of Chief Medical Examiner	
234-500783, Autopsy Expense	$4,000

EXPLANATION

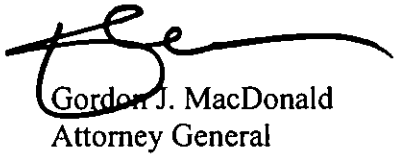
This is a **sole source** contract because medical examiners represent a small community and it is very difficult to find a pathologist who is available to serve as an Associate Medical Examiner on a substitute basis. Dr. Jennie Duval, the Chief Medical Examiner (CME), was able to obtain Dr. Bumgarner's services for November 21, 2020 and November 22, 2020.

The Attorney General is authorized, pursuant to RSA 611-B:4 to employ such persons as are reasonably necessary to assist the CME in the performance of her duties. Pursuant to RSA 611-B, the CME is required to perform autopsies in cases of death occurring under certain statutorily defined circumstances, including suspicious deaths. The investigative exigencies in such cases require prompt availability of qualified medical examiners to perform the autopsies.

There are three forensic pathologist positions in the OCME. As of October 1, 2020, the position of Associate Medical Examiner is vacant. Dr. Duval and Dr. Mitchell Weinberg, Deputy Chief Medical Examiner, are the only medical examiners in the OCME. The Department is actively engaged in recruiting for the vacant position. Until that position is filled, the OCME will need substitute medical examiners to aid with the workload.

Please let me know if you have any questions. Thank you for your consideration of this request.

Respectfully submitted,



Gordon J. MacDonald
Attorney General

#2931647

FORM NUMBER P-37 (version 12/11/2019)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name State of New Hampshire, Department of Justice	1.2 State Agency Address 33 Capitol Street Concord NH 03301
1.3 Contractor Name Dr. Derek S. Burngarner, M.D.	1.4 Contractor Address 2722 East Cheryl Drive Phoenix, Arizona 85028
1.5 Contractor Phone Number 1-630-723-7543 1.6 Account Number 02-20-20-202010-1033-500783	1.7 Completion Date February 28, 2021 1.8 Price Limitation $4,000
1.9 Contracting Officer for State Agency Kathleen Carr	1.10 State Agency Telephone Number 603-271-1234
1.11 Contractor Signature Date: 10/22/2020	1.12 Name and Title of Contractor Signatory Derek S. Burngarner, M.D.
1.13 State Agency Signature Kathleen Carr Date: 10/23/2020	1.14 Name and Title of State Agency Signatory Kathleen Carr, Director of Administration
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: Lorna M. Rhodes Director, On: October 28, 2020	
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: Takhmina Rakhmatova On: 11/2/2020	
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: G&C Meeting Date:	

Contractor Initials:
Date: 10/22/2020

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including, without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials

Date 10/12/2020

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or,

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or,

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3 No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials

Date 10/22/2000

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $1,000,000 per occurrence and $2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

Contractor Initials: [illegible]

Date: 10/27/2020

EXHIBIT A

SPECIAL PROVISIONS

1. Pursuant to RSA 611-B:4, the Contractor will be designated by the Chief Medical Examiner to perform duties representative of the Chief or Deputy Chief Medical Examiner.

1a. While performing those duties, pursuant to RSA 611-B:4, the Contractor shall be a licensed physician and certified by the American Board of Pathology as a qualified pathologist with training and experience in forensic medicine.

1b. While performing those duties, pursuant to RSA 611-B:6, the Contractor will be subject to RSA 99-D for claims arising out of the scope of the official duties including, but not limited to, the practice of forensic pathology and the practice of clinical forensic medicine.

2. Provisions of form P-37 paragraph 11, Contractor further agrees that, to the extent that any injuries are incurred by Contractor in the course of performing duties as acting Chief Medical Examiner, the Contractor's sole remedy against the State of New Hampshire shall be Worker's Compensation.

3. Provisions of form P-37 paragraph 13, 14 and 15 do not apply to this contract.

4. There are no other special provisions of this contract.

Contractor Initials: [illegible]

Date: 10/22/2020

EXHIBIT B

SCOPE OF SERVICES

1. Dr. Derek S. Bumgarner, M.D., as "Contractor", will perform autopsies and related medical examiner functions as directed by the New Hampshire Chief Medical Examiner, including without limitation:

   1a. Being on-call at designated times as requested by the Chief Medical Examiner and the Deputy Chief Medical Examiner.

   1b. Communicating with Assistant Deputy Medical Examiners by phone or e-mail as needed.

   1c. Performing autopsies and related duties, including, without limitation, gross and microscopic examination, dictated reports and interpretation of toxicology studies.

   1d. Preparing essential documentation pertaining to the autopsies performed.

   i. Autopsy reports shall be completed within 60 days from the date of autopsy or as soon as possible after all ancillary test results and consultant reports are received.

   1e. Preparing death certificates.

   1f. Communicating with next of kin.

2. All Contractor correspondence and submittals shall be directed to:

State of New Hampshire
Department of Justice
Office of Chief Medical Examiner
250 Pleasant Street, CME 2nd Floor, Suite 218
Concord, NH 03301
603-271-1235

Contractor Initials: [illegible]

Date: 10/12/2010

EXHIBIT C

CONTRACT PRICE, METHOD OF PAYMENT AND TERMS OF PAYMENT

1. The Contractor shall receive payments not to exceed $2,000 per day from the period of Saturday, November 21, 2020 to Sunday, November 22, 2020 in return for services as described in "EXHIBIT B".

2. Travel shall not be included as part of this contract and will be submitted to the DOJ on a separate, detailed invoice for reimbursement.
   2a. Travel includes overnight accommodations, meals, modes of transportation and mileage.

3. The State's obligation to compensate and reimburse the Contractor under this Agreement shall not exceed the price limitation set forth in form P-37 section 1.8.

4. Final Payment for services will be made within thirty (30) days following receipt of all required reports to the Office of Chief Medical Examiner. Said payment shall be made out to the Contractor's accounts receivables address per the Financial System for the State of New Hampshire.

Contractor Initials: [illegible]

Date: 10/22/2020