

**Agenda**  
**Tuscola County Board of Commissioners**  
**Committee of the Whole Monday, June 10, 2019 – 8:00 A.M.**  
**HH Purdy Building - 125 W. Lincoln, Caro, MI**

**Finance/Technology**  
Committee Leaders-Commissioners Young and Jensen

**Primary Finance/Technology**

1. Fairground Building Fund Raising
2. Contractual Medical Examiner System (See A)
3. Medical Examiner Annual Report (See B)
4. Sheriff Drone Purchase Request (See C)
5. Recycling Soil Removal Payment (See D)
6. Contract with Air Advantage (See E)
7. Funding KC Consultants – City of Caro Contribution, Other Funding Sources
8. State Funding for Flooding Damages (See F)

**On-Going and Other Finance**

**Finance**

1. Update Regarding Caro Psychiatric Hospital
2. MREC Wind Turbine Invoices (Juniata and Fairgrove Townships)
3. Update Regarding Assessing/Taxation Disputes with Wind Turbine Companies – SB 46
4. Water Rates Paid for County Facilities Along M24 and Deckerville Roads
5. Opioid Lawsuit
6. Preparation of Updated Multi-Year Financial Plan
7. Continue Review of Road Commission Legacy Costs
8. 2018 Comprehensive Annual Report Development
9. Convert to New State Chart of Accounts
10. 2020 Budget Development
11. Second Year MIDC Plan and Budget
12. Determine if any Drain Bonds can be Retired Early or Refinanced

**Technology**

1. Animal Control Camera and Other Security
2. New Server and Network Storage Capacity
3. Jail Live Scan Scanner
4. GIS Update
5. Increasing On-Line Services
6. Updating County Web Page
7. Implementation of New Computer Aided Dispatch System
8. CLEMIS Road Patrol Software – Impacts on Local Police Departments
9. New Kronos Time Attendance and BSA Finance/General Ledger Software

**Personnel**

Committee Leader-Commissioner Vaughan and Bardwell

**Primary Personnel**

1. Discussion of Closed Session Notes Retention
2. Controller/Administrator Contract
3. Animal Control Ordinance Update
4. Elmwood Township Barking Dogs Matter

## **5. LEAD Tuscola County Candidates (See G)**

### **On-Going and Other Personnel**

1. 4-H Presentation
2. Negotiation of Expiring Union Contracts – Setting Financial and Other Objectives
3. Strengthen and Streamline Year-End Open Enrollment
4. Evaluate Potential Training Programs
5. Start the Development of Pay Grade Schedule and Updated Job Descriptions
6. Scheduling a MAC 7<sup>th</sup> Meeting to Determine if Organization will Continue

### **Building and Grounds**

Committee Leaders-Commissioners Jensen and Grimshaw

### **Primary Building and Grounds**

1. County Jail Study Committee – Development of a Concept Plan
2. Vanderbilt Park Update
3. Request to Use Courthouse Lawn (See H)

### **On-Going and Other Building and Grounds**

1. County Land Bank
2. Recycling Relocation Update
3. Cass River Greenways
4. County Physical and Electronic Record Storage Needs – Potential Use of Recycling Pole Building
5. County Property Ownership Inventory
6. Review of Alternative Solutions Concerning the Caro Dam
7. Sidewalk Improvements and Parking Lot Sealing
8. Purdy Building Awning, Sign and Stucco Repairs
9. Jail Entrance Step and Ceiling Tile
10. State Police Post Water Tank Inspection, Sidewalk and Parking Lot Repairs
11. Potential Sale of Certain County Properties
12. New Septic System at Vanderbilt Park and Vegetation Clearing
13. Health Department Painting, Animal Control Ceiling and Court Windows
14. Recycling Soil Removal and Construction

### **Other Business as Necessary**

1. Methods of Providing Dental Care to Indigent
2. Elected Versus Appointed Road Commissioners
3. Work with DTE and Others to Solve Increasing Energy Demands in the County
4. Update County Policies

### **Public Comment Period**

mhoagland@tuscolacounty.org

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**From:** Eric M. Morris <erimor@BraunKendrick.com>  
**Sent:** Thursday, June 6, 2019 1:16 PM  
**To:** 'bushru@msu.edu'  
**Subject:** Proposed Contract  
**Attachments:** Tuscola County - Medical Examiner Independent Contractor Agreement (S1496073-3x7B01A).docx; Tuscola County - Medical Examiner Contract June 6 REDLINE (S1496553x7B01A).pdf

Dr. Bush,

Thank you for speaking to me earlier this week. As we discussed I have attached a draft revised contract for ME services. As we discussed, this agreement would be a flat fee of \$75,000 per year, and I have included that payments will be made to you quarterly. In addition I have made revisions I thought appropriate to clarify some points and adapt the agreement to the state of Michigan.

I included a "clean" copy that has my changes accepted and a redline which shows you specifically what edits I made to the document.

Please let me know if this meets your satisfaction. My understanding is that everyone is eager to move forward with the Agreement, so please do not hesitate to contact me directly if you have questions or concerns.

Finally, I think that the Health Department may consider entering into a separate agreement with your PC to outline the terms of your agreement to pay half the salary of the administrative employee at the health department.

Thanks again,

Eric



BRAUN KENDRICK

ERIC M. MORRIS

Attorney

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## AGREEMENT FOR COMPREHENSIVE MEDICAL EXAMINER OFFICE SERVICES

This agreement ("Agreement"), dated as of \_\_\_\_\_ ("Effective Date"), is by and between the County of Tuscola, a political subdivision of the State of Michigan (hereinafter "County"), and the Michigan Institute of Forensic Science & Medicine PC, (hereinafter "Contractor"), a professional corporation authorized to operate in the State of Michigan.

### RECITALS

WHEREAS, Tuscola County requires comprehensive medical examiner office, medical examiner, death investigation, and forensic autopsy services; and

WHEREAS, Contractor represents that it is a duly qualified and licensed provider of medical examiner and forensic pathology services and is experienced in autopsies and related services; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### AGREEMENT

#### I. Scope of Services.

1.1 Contractor's Specified Services. Upon request of the County or designee, Contractor shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), within the times or by the dates provided for in Exhibit A and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

1.2 Cooperation With County. Contractor shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of

concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- a. Contractor shall assign only competent personnel to perform work hereunder. County will discuss performance issues of any assigned personnel with Contractor so that Contractor may attempt to remedy the situation. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from County.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement (“Key Personnel”). Contractor shall not remove, replace, substitute, or otherwise change any Key Personnel without the prior written consent of County. Consent for new or alternate Contractor personnel shall not be unreasonably withheld. With respect to performance under this Agreement, Russell Bush, M.D., is considered Key Personnel.
- c. In the event that any of Contractor’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor’s control, Contractor and County shall be responsible for timely provision of adequately qualified replacements.

1.5 Confidentiality. The services to be performed by Contractor under this Agreement necessarily involve private matters of a personal nature for the citizens of Tuscola County. For this reason, neither Contractor nor any persons performing services under this Agreement on its behalf may disclose, disseminate, copy or publish any private information obtained during the course of performing services under this Agreement, unless such disclosure is required by law or necessary to effectuate the terms of this Agreement. Contractor agrees to comply with any provisions of the Health Insurance Portability and Accountability Act (“HIPAA”) applicable to Contractor by reason of Contractor’s provision of services under this Agreement.

2. Payment. For all services required hereunder and as outlined in Exhibit A, Contractor shall be paid seventy-five thousand Dollars (\$75,000) per Contract Year (as defined below), regardless of the number of hours or length of time necessary for Contractor to complete the services. Contractor shall not be entitled to any additional payment for any expenses incurred in completion of the services. Payments shall be made in equal quarterly installments to Contractor, subject to receipt of such bills and/or invoices as required by County to document services provided under this Agreement.

3. Term of Agreement. The term of this Agreement shall be from July 1, 2019 to June 30, 2022,

unless terminated earlier in accordance with the provisions of Article 4 below. Each twelve (12) month period from July 1 through June 30 during which this Agreement remains in effect shall be known as a Contract Year.

#### 4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, either party shall have the right to terminate this Agreement by giving written notice of such termination, stating the effective date and presenting such notice of termination at least sixty (90) days in advance of such effective date.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should County or Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County or Contractor may immediately terminate this Agreement by giving the other party written notice of such termination, stating the reason for termination. Contractor may terminate this Agreement for non-payment of invoices overdue by more than 30 days.

4.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to County all materials and work product subject to Section 9.11 (Ownership and Disclosure of Work Product) and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for any reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, Contractor shall be entitled to receive full payment for all services satisfactorily rendered up to the date of termination; provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Contractor.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnity provision survives the Agreement.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, contractors, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Representations of Contractor.

8.1 Standard of Care. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

8.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

8.3 No Suspension or Debarment. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Contractor becomes debarred, Contractor has the obligation to inform the County.

8.4 License to Practice Medicine and Board Certification. Contractor represents and warrants that Key Personnel is/are, and will remain during the pendency of this Agreement, licensed to practice medicine in the State of Michigan and either board certified or board eligible in Forensic Pathology.

8.5 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and

FICA taxes. Contractor agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of Michigan as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.

8.6 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Contractor's or such other person's financial interests.

8.7 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, any County policy regarding the same. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

8.8 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

8.9 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, Contractors, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Contractor may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.



8.10 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Contractor.

9. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

10. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

11. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery, by U.S. Mail or courier service, or by e-mail. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY: Tuscola County  
Office of County Controller  
125 W Lincoln Street,  
Suite 500  
Caro, Michigan 48723

TO: CONTRACTOR: Michigan Institute of Forensic Science & Medicine  
4707 East McLeod Dr  
Saginaw, MI 48604  
Tel: 989-341-5077  
russell.bush@mifsm.org

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5:00 PM (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

## 12. Miscellaneous Provisions.

12.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

12.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

12.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

12.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of Michigan, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in in the County of Tuscola or Saginaw.

12.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

12.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

12.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

12.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**MICHIGAN INSTITUTE OF  
FORENSIC SCIENCE &  
MEDICINE PC**

**COUNTY OF TUSCOLA**

By: \_\_\_\_\_  
Russel Bush

Its: Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### Scope of Work

1. Contractor's Responsibilities. During the term of this Agreement, Contractor shall provide the following services to County:
  - a. Case Evaluation: Contractor shall provide case evaluation services and shall consult with investigators, family members of decedents, and private medical doctors, at the request of an authorized representative of the Sheriff's Office, to assist in determining whether specific cases require Coroner inquiry, pursuant to MCL § 52.202.
  - b. External Exam: Contractor shall perform external examinations of decedents, when an autopsy examination is not necessary, to provide probable cause of death, according to the Michigan Death Registry. External examination may include viewing the body, examining medical records, medical history, and similar information. If such external examination reveals questions or issues that in the opinion of Contractor require an autopsy to be performed, Contractor shall perform an autopsy.
  - c. Case Consultation: Contractor may perform case consultation services on an as needed basis, including medical record and laboratory results review, investigative report review, and case analysis, which may or may not involve external examinations. Ad hoc, informal opinions provided by Contractor to Sheriff's Office personnel shall not incur fees. In the event that a formal, extensive records or case review is required to determine cause of death, County and Contractor shall mutually agree upon the scope and estimate of cost of work prior to commencement of the review.
  - d. Autopsy: Contractor shall perform autopsies when determined necessary by an authorized representative of the Sheriff's Office. Contractor shall advise Sheriff's Office on necessity of performing an autopsy versus an external examination in the context of industry best practices. Such autopsy services shall also include:
    - i. Triage: Contractor shall participate in case triage discussions.
    - ii. Viewing: Autopsies may be viewed by individuals or agency representatives (such as Public Health or other relevant individuals/agencies), who may not be involved in the investigation or prosecution of case. Such individuals or agency representatives must obtain authorization from the Sheriff's Office prior to viewing any autopsy.
    - iii. Explanation of Procedures: If authorized by the Sheriff's Office, Contractor shall explain autopsy procedures and respond to questions during the autopsy.

- iv. Education: Contractor may provide education to Sheriff's Office personnel during such autopsies, provided it does not interfere with performance of work required; however, any fee, if applicable, for such training services shall be addressed exclusively by Contractor and the party requesting such services.
- e. Laboratory Testing: Contractor shall order and pay for toxicological, bacteriological, serological, or similar testing studies from laboratories when reasonable or necessary to assist in determining cause of death.
- f. Histology: Contractor shall cover histology testing studies from laboratories when reasonable or necessary to assist in determining cause of death.
- g. Transcription: Contractor shall provide transcription services.
- h. On Scene Examination: Contractor shall view the bodies of decedents at the scene of death and/or perform other investigative services (such as interviewing/examining witnesses) during and after normal working business hours.
- i. Examination Report: Contractor shall provide a complete, typewritten, final report within sixty (60) calendar days after receipt of clinical test results and any consultation, investigative reports or information reports necessary to close the case. The report must contain the following information:
  - i. Name of individual tested, identifying information (such as age, sex, and other vital statistics), and applicable case number.
  - ii. Date external examination concluded or date and time of autopsy.
  - iii. Description of external examination of individual/records.
  - iv. When an autopsy was performed, a description of the internal examination, noting the weight and condition of specific organs and condition of internal body systems. As applicable, the report will include: significant positive findings, and relevant negative findings; list of gross diagnoses; description of any microscopic examination; summary of laboratory tests (with copies of test reports); intervals for mechanisms of death; diagrams of injuries (with photographs attached as appropriate); and any other information considered pertinent by Contractor.
  - v. Summary of relevant historical and scene information (when appropriate), results/findings from examinations performed, and determination of probable cause of death.

- vi. Any other information required by applicable state /federal laws or regulations.
- vii. Signature of forensic pathologist licensed to practice medicine in the State of Michigan. Board certified forensic pathologists will be made available for prosecutable cases.
- j. Transportation: Contractor shall perform and provide all transportation associated with cases associated with the death at their own expense all transportation costs. It is the intention of contractor to use their own medical transport vehicle.
- k. Sudden Unexpected Infant Death Cases (SUID): Contractor shall perform procedures necessary to comply with Government Code Section 27491.4) or any other laws or regulations applicable to post-mortem examination of sudden, unexpected infant death cases.
- l. County Committee Meetings: Contractor shall attend meetings associated with the Countywide Child Death Review and Domestic Violence Death Review committees and other related meetings that may be scheduled, unless unable to attend due to unforeseen illness, mandatory appearance requirements, or other emergency or urgent circumstances preventing attendance. County shall schedule no more than one such meeting per month through the Contractor's main office.
- m. Business Meetings: Contractor shall attend meetings that are related to the legal or public health functions of the Sheriff's Office when deemed necessary by an authorized representative of the Sheriff's Office. County shall schedule no more than one such meeting per month through the Contractor's main office.
- n. Expert Witness: Contractor shall testify as an expert witness when subpoenaed to do so at any legal proceeding, whether deposition or court testimony, arising in connection with cases in which Contractor has conducted an examination. The County will not be liable for any fees associated with testimony or deposition services.
- o. Anatomical Gifts: Contractor shall cooperate and support the authorized removal and disposition of human tissue from bodies of deceased persons as authorized by the Gift of Life; consult with physicians or transplant personnel when a request for donor tissue is made in a case falling under the jurisdiction of the Coroner; and advise the Sheriff's Office's representative whether such a procedure would adversely affect the subsequent documentation of injuries or determination of cause or manner of death.
- p. Staff Training: Contractor shall provide education and training services for Sheriff's Office personnel as may be mutually agreed upon by Contractor and the Sheriff's Office. Such services may include, but are not necessarily limited to, instructing personnel, particularly Sheriff's Department Detectives and/or investigators, regarding medical safety issues or information required by the pathologist for effective evaluation of Coroner cases.
- q. Advice/Retention: Contractor shall advise the Sheriff's Office concerning the necessity

of retaining specimens and tissue samples, and their recommended retention periods.

- r. Chain of Custody: Contractor shall maintain evidence chain of custody, as required by the Sheriff's Office, by obtaining and protecting evidence on or about decedents in such a way that follows the standards and best practices of the industry.
- s. Prior Case Review: Contractor shall perform a review, written report, and/or expert testimony of cases where a Pathologist not associated with Contractor performed the exam.
- t. Minimum Staffing: In order to adequately meet the County's forensic pathologist needs, Contractor shall assign one, full-time pathologist to the Sheriff's Office. Any additional part-time or temporary pathologists shall be assigned as deemed necessary by the County and Contractor. In the event that Contractor cannot provide said staffing.
- u. Availability: Contractor shall be available during normal business hours and off hours to consult with representatives of the Sheriff's Office regarding Coroner activities.
- v. Facility/Equipment: Contractor shall provide, equip, and maintain a facility in which autopsies and any other postmortem examinations are to be performed.
- w. Operational Supplies: Contractor shall provide supplies and equipment necessary for conducting required examinations. This includes, but is not necessarily limited to, a microscope, protective supplies, (e.g., gowns, gloves, aprons, face shields, boots, and shoe covers); containers for bodies and tissue samples; items used in performance of autopsies (e.g., syringes, scalpels, scissors, forceps, chisels, knives, saws, and photographic film); and cleaning supplies (e.g., soaps, detergents, and disinfectants).
- x. Office/Clerical Staff: Contractor shall provide 50% salary contribution for current administrative staff utilized for County Medical Examiner Office.
- y. Laboratory Services: Contractor shall provide direct payment to authorized laboratory contractor(s) for services ordered.
- z. Histology Services: Contractor shall provide direct payment to authorized laboratory contractor(s) for services ordered.
- aa. Forensics Contractors: Contractor shall obtain and pay for Contractors in forensic neuropathology, forensic anthropology, forensic odontology, and any other specialty as may be deemed necessary for a small number of unusual and extraordinary cases that cannot otherwise be adequately concluded.
- bb. Specimen/Tissue Storage: Contractor shall provide for the storage of specimens and tissue samples that Contractor considers necessary to retain as evidence or for further testing.

2. Responsibilities of County: County shall have the following responsibilities under the Agreement:

- a. Office/Clerical Staff: County shall provide a single office administrative staff person to be available for any/all applicable Contractor services for 20 hours per week. Administrative staff person may be asked to handle issues outside of Tuscola County as it directly relates to Contractor's provision of services under this Agreement.
- b. Additional Pathologists: County shall provide direct payment to additional pathologists that may be required to handle any disaster situation, involving ten or more deaths occurring during a single incident, if Contractor is unable to provide said services.



## **Exhibit B Insurance Requirements**

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

### **1. Workers Compensation and Employers Liability Insurance**

- a. Required if Contractor has employees as defined by the various Michigan labor and employment statutes.
- b. Workers Compensation insurance with statutory limits as required by Michigan law.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. *Required Evidence of Insurance*: Certificate of Insurance.

If Contractor currently has no employees as defined by various Michigan labor and employment statutes, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

### **2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$3,000,000 General Aggregate; \$3,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Contractor is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the County.
- d. The insurance provided to the additional insureds shall be primary to, and non-contributory

with, any insurance or self-insurance program maintained by them.

- e. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- f. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- g. *Required Evidence of Insurance:*
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. *Required Evidence of Insurance:* Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. *Required Evidence of Insurance:* Certificate of Insurance.

## 5. Documentation

- a. The Certificate of Insurance must include the following reference: Medical Examiner and Forensic Pathology Services.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: County of Tuscola, its Officers, Agents and Employees.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

## 6. Policy Obligations

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## 7. Material Breach

If Contractor fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

## AGREEMENT FOR COMPREHENSIVE MEDICAL EXAMINER OFFICE SERVICES

This agreement ("Agreement"), dated as of \_\_\_\_\_ ("Effective Date"), is by and between the County of Tuscola, a political subdivision of the State of Michigan (hereinafter "County"), and the Michigan Institute of Forensic Science & Medicine PC, (hereinafter "Contractor"), a professional corporation authorized to operate in the State of Michigan.

### RECITALS

WHEREAS, Tuscola County requires comprehensive medical examiner office, medical examiner, death investigation, and forensic autopsy services; and

WHEREAS, Contractor represents that it is a duly qualified and licensed provider of medical examiner and forensic pathology services and is experienced in autopsies and related services; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### AGREEMENT

#### I. Scope of Services.

1.1 Contractor's Specified Services. Upon request of the County or designee, Contractor shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), within the times or by the dates provided for in Exhibit A and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

1.2 Cooperation With County. Contractor shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of

concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4 Assigned Personnel.

- a. Contractor shall assign only competent personnel to perform work hereunder. County will discuss performance issues of any assigned personnel with Contractor so that Contractor may attempt to remedy the situation. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from County.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. ("Key Personnel"). Contractor shall not remove, replace, substitute, or otherwise change any ~~key personnel~~ Key Personnel without the prior written consent of County. Consent for new or alternate Contractor personnel shall not be unreasonably withheld. With respect to performance under this Agreement, Russell Bush, M.D., is considered ~~key personnel~~ Key Personnel.
- c. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor and County shall be responsible for timely provision of adequately qualified replacements.

1.5 Confidentiality. The services to be performed by Contractor under this Agreement necessarily involve private matters of a personal nature for the citizens of Tuscola County. For this reason, neither Contractor nor any persons performing services under this Agreement on its behalf may disclose, disseminate, copy or publish any private information obtained during the course of performing services under this Agreement, unless such disclosure is required by law or necessary to effectuate the terms of this Agreement. Contractor agrees to comply with any provisions of the Health Insurance Portability and Accountability Act ("HIPAA") applicable to Contractor by reason of Contractor's provision of services under this Agreement.

2. Payment. For all services required hereunder and as outlined in Exhibit A, Contractor shall be paid in accordance with ~~Exhibit B, attached hereto and incorporated herein by this reference,~~ seventy-five thousand Dollars (\$75,000) per Contract Year (as defined below), regardless of the number of hours or length of time necessary for Contractor to complete the services. ~~Total payments to Contractor shall not exceed seventy-five hundred thousand dollars (\$75,000), without the prior written approval of County.~~ Contractor shall not be entitled to any additional payment for any expenses incurred in completion of the services. ~~Upon completion of the work, Contractor shall invoice county quarterly for payment in a form approved by the County's Auditor. Unless otherwise noted in this agreement, payments shall be made within~~

~~thirty (30) days following County's receipt of an invoice in a form approved by the County for services performed. Payments shall be made in equal quarterly installments to Contractor, subject to receipt of such bills and/or invoices as required by County to document services provided under this Agreement.~~

3. Term of Agreement. The term of this Agreement shall be from July 1, 2019 to June 30, 2022, unless terminated earlier in accordance with the provisions of Article 4 below. Each twelve (12) month period from July 1 through June 30 during which this Agreement remains in effect shall be known as a Contract Year.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, either party shall have the right to terminate this Agreement by giving written notice of such termination, stating the effective date and presenting such notice of termination at least sixty (90) days in advance of such effective date.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should County or Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County or Contractor may immediately terminate this Agreement by giving the other party written notice of such termination, stating the reason for termination. Contractor may terminate this Agreement for non-payment of invoices overdue by more than 30 days.

4.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to County all materials and work product subject to Section 9.11 (Ownership and Disclosure of Work Product) and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for any reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, Contractor shall be entitled to receive full payment for all services satisfactorily rendered up to the date of termination; provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Contractor.

~~4.5 Authority to Terminate. The Board has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.~~

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal

counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnity provision survives the Agreement.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, contractors, and other agents to maintain, insurance as described in Exhibit EB, which is attached hereto and incorporated herein by this reference

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Representations of Contractor.

8.1 Standard of Care. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

8.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

8.3 No Suspension or Debarment. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Contractor becomes debarred, Contractor has the obligation to inform the County.

8.4 License to Practice Medicine and Board Certification. Contractor represents and warrants that Key Personnel is/are, and will remain during the pendency of this Agreement, licensed to practice medicine in the State of Michigan and either board certified or board



eligible in Forensic Pathology.

8-48.5 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of Michigan as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.

8-58.6 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Contractor's or such other person's financial interests.

8-68.7 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, any County policy regarding the County's Non-Discrimination Policies same. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

8-78.8 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

8-88.9 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, Contractors, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and

will remain the property of County without restriction or limitation. Contractor may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

8-98.10 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Contractor.

9. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

10. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

11. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery, by U.S. Mail or courier service, or by e-mail. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:            Tuscola County  
                              Office of County Controller  
                              125 W Lincoln Street,  
                              Suite 500  
                              Caro, Michigan 48723

TO: CONTRACTOR:    Michigan Institute of Forensic Science & Medicine  
                              4707 East McLeod Dr  
                              Saginaw, MI 48604  
                              Tel: 989-341-5077  
                              russell.bush@mifsm.org

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5:00 PM (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

## 12. Miscellaneous Provisions.

12.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

12.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

12.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

12.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of Michigan, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in in the County of Tuscola or Saginaw.

12.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

12.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

12.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

12.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MICHIGAN INSTITUTE OF  
FORENSIC SCIENCE &  
MEDICINE PC

COUNTY OF TUSCOLA

By: \_\_\_\_\_  
Russell Bush

By: \_\_\_\_\_  
Chairperson of Tuscola  
County \_\_\_\_\_

Its: Director

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### Scope of Work

1. Contractor's Responsibilities. During the term of this Agreement, Contractor shall provide the following services to County:
  - a. Case Evaluation: Contractor shall provide case evaluation services and shall consult with investigators, family members of decedents, and private medical doctors, at the request of an authorized representative of the Sheriff's Office, to assist in determining whether specific cases require Coroner inquiry, pursuant to ~~Government Code Section 2749~~ MCL § 52.202.
  - b. External Exam: Contractor shall perform external examinations of decedents, when an autopsy examination is not necessary, to provide probable cause of death, according to the Michigan Death Registry. External examination may include viewing the body, examining medical records, medical history, and similar information. If such external examination reveals questions or issues that in the opinion of Contractor require an autopsy to be performed, Contractor shall perform an autopsy.
  - c. Case Consultation: Contractor may perform case consultation services on an as needed basis, including medical record and laboratory results review, investigative report review, and case analysis, which may or may not involve external examinations. Ad hoc, informal opinions provided by Contractor to Sheriff's Office personnel shall not incur fees. In the event that a formal, extensive records or case review is required to determine cause of death, County and Contractor shall mutually agree upon the scope and estimate of cost of work prior to commencement of the review. ~~Extensive reviews shall be invoiced per the hourly consultation fee provided in Exhibit B.~~
  - d. Autopsy: Contractor shall perform autopsies when determined necessary by an authorized representative of the Sheriff's Office. Contractor shall advise Sheriff's Office on necessity of performing an autopsy versus ~~and~~ an external examination in the context of industry best practices. Such autopsy services shall also include:
    - i. Triage: Contractor shall participate in case triage discussions.
    - ii. Viewing: Autopsies may be viewed by individuals or agency representatives (such as Public Health or other relevant individuals/agencies), who may not be involved in the investigation or prosecution of case. Such individuals or agency representatives must obtain authorization from the Sheriff's Office prior to viewing any autopsy.
    - iii. Explanation of Procedures: If authorized by the Sheriff's Office, Contractor shall explain autopsy procedures and respond to questions during the autopsy.

- iv. Education: Contractor may provide education to Sheriff's Office personnel during such autopsies, provided it does not interfere with performance of work required; however, any fee, if applicable, for such training services shall be addressed exclusively by Contractor and the party requesting such services.
- e. Laboratory Testing: Contractor shall order and pay for toxicological, bacteriological, serological, or similar testing studies from laboratories when reasonable or necessary to assist in determining cause of death.
- f. Histology: Contractor shall cover histology testing studies from laboratories when reasonable or necessary to assist in determining cause of death.
- g. Transcription: Contractor shall provide transcription services.
- h. On Scene Examination: Contractor shall view the bodies of decedents at the scene of death and/or perform other investigative services (such as interviewing/examining witnesses) during and after normal working business hours.
- i. Examination Report: Contractor shall provide a complete, typewritten, final report within sixty (60) calendar days after receipt of clinical test results and any consultation, investigative reports or information reports necessary to close the case. The report must contain the following information:
  - i. Name of individual tested, identifying information (such as age, sex, and other vital statistics), and applicable case number.
  - ii. Date external examination concluded or date and time of autopsy.
  - iii. Description of external examination of individual/records.
  - iv. When an autopsy was performed, a description of the internal examination, noting the weight and condition of specific organs and condition of internal body systems. As applicable, the report will include: significant positive findings, and relevant negative findings; list of gross diagnoses; description of any microscopic examination; summary of laboratory tests (with copies of test reports); intervals for mechanisms of death; diagrams of injuries (with photographs attached as appropriate); and any other information considered pertinent by Contractor.
  - v. Summary of relevant historical and scene information (when appropriate), results/findings from examinations performed, and determination of probable cause of death.

- vi. Any other information required by applicable state /federal laws or regulations.
  - vii. Signature of forensic pathologist licensed to practice medicine in the State of Michigan. Board certified forensic pathologists will be made available for prosecutable cases.
- j. Transportation: Contractor shall perform and provide all transportation associated with cases associated with the death at their own expense all transportation costs. It is the intention of contractor to use their own medical transport vehicle.
- k. Sudden Unexpected Infant Death Cases (SUID): Contractor shall perform procedures necessary to comply with Government Code Section 27491.41 or any other laws or regulations applicable to post-mortem examination of sudden, unexpected infant death cases.
- l. County Committee Meetings: Contractor shall attend meetings associated with the Countywide Child Death Review and Domestic Violence Death Review committees and other related meetings that may be scheduled, unless unable to attend due to unforeseen illness, mandatory appearance requirements, or other emergency or urgent circumstances preventing attendance. County shall schedule no more than one such meeting per month through the Contractor's main office.
- m. Business Meetings: Contractor shall attend meetings that are related to the legal or public health functions of the Sheriff's Office when deemed necessary by an authorized representative of the Sheriff's Office. County shall schedule no more than one such meeting per month through the Contractor's main office.
- n. Expert Witness: Contractor shall testify as an expert witness when subpoenaed to do so at any legal proceeding, whether deposition or court testimony, arising in connection with cases in which Contractor has conducted an examination. The County will not be liable for any fees associated with testimony or deposition services.
- o. Anatomical Gifts: Contractor shall cooperate and support the authorized removal and disposition of human tissue from bodies of deceased persons as authorized by the Gift of Life; consult with physicians or transplant personnel when a request for donor tissue is made in a case falling under the jurisdiction of the Coroner; and advise the Sheriff's Office's Sheriff's Office's representative whether such a procedure would adversely affect the subsequent documentation of injuries or determination of cause or manner of death.
- p. Staff Training: Contractor shall provide education and training services for Sheriff's Office personnel as may be mutually agreed upon by Contractor and the Sheriff's Office. Such services may include, but are not necessarily limited to, instructing personnel, particularly ~~Investigations and Coroner Bureau~~ Sheriff's Department Detectives and/or investigators, regarding medical safety issues or information required by the pathologist for effective evaluation of Coroner cases.

- q. Advice/Retention: Contractor shall advise the Sheriff's Office concerning the necessity of retaining specimens and tissue samples, and their recommended retention periods.
- r. Chain of Custody: Contractor shall maintain evidence chain of custody, as required by the Sheriff's Office, by obtaining and protecting evidence on or about decedents in such a way that follows the standards and best practices of the industry.
- s. Prior Case Review: Contractor shall perform a review, written report, and/or expert testimony of cases where a Pathologist not associated with Contractor performed the exam.
- t. Minimum Staffing: In order to adequately meet the County's County's forensic pathologist needs, Contractor shall assign one, full-time pathologist to the Sheriff's Office. Any additional part-time or temporary pathologists shall be assigned as deemed necessary by the County and Contractor, in the event that Contractor cannot provide said staffing.
- u. Availability: Contractor shall be available during normal business hours and off hours to consult with representatives of the Sheriff's Office regarding Coroner activities.
- v. Facility/Equipment: Contractor shall provide, equip, and maintain a facility in which autopsies and any other postmortem examinations are to be performed.
- w. Operational Supplies: Contractor shall provide supplies and equipment necessary for conducting required examinations. This includes, but is not necessarily limited to, a microscope, protective supplies, (e.g., gowns, gloves, aprons, face shields, boots, and shoe covers); containers for bodies and tissue samples; items used in performance of autopsies (e.g., syringes, scalpels, scissors, forceps, chisels, knives, saws, and photographic film); and cleaning supplies (e.g., soaps, detergents, and disinfectants).
- x. Office/Clerical Staff: Contractor shall provide 50% salary contribution for current administrative staff utilized for County Medical Examiner Office.
- y. Laboratory Services: Contractor shall provide direct payment to authorized laboratory contractor(s) for services ordered.
- z. Histology Services: Contractor shall provide direct payment to authorized laboratory contractor(s) for services ordered.
- aa. Forensics Contractors: Contractor shall obtain and pay for Contractors in forensic neuropathology, forensic anthropology, forensic odontology, and any other specialty as may be deemed necessary for a small number of unusual and extraordinary cases that cannot otherwise be adequately concluded.
- bb. Specimen/Tissue Storage: Contractor shall provide for the storage of specimens and tissue samples that Contractor considers necessary to retain as evidence or for further



testing.

2. Responsibilities of County: County shall have the following responsibilities under the Agreement:

- a. Office/Clerical Staff: County shall provide a single office administrative staff person to be available for any/all applicable Contractor services for 20 hours per week. Administrative staff person may be asked to handle issues outside of Tuscola County as it directly relates to ~~contractor~~Contractor's provision of services under this Agreement.
- b. Additional Pathologists: County shall provide direct payment to additional pathologists that may be required to handle any disaster situation, involving ten or more deaths occurring during a single incident, if Contractor is unable to provide said services.

**Exhibit B Insurance  
Requirements**

~~Template #5~~

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

**1. Workers Compensation and Employers Liability Insurance**

- a. Required if Contractor has employees as defined by the ~~Labor Code of the State of various Michigan labor and employment statutes~~.
- b. Workers Compensation insurance with statutory limits as required by the ~~Labor Code of the State of Michigan law~~.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. *Required Evidence of Insurance*: Certificate of Insurance.

If Contractor currently has no employees as defined by the ~~Labor Code of the State of various Michigan labor and employment statutes~~, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

**2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$3,000,000 General Aggregate; \$3,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Contractor is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Contractor has a claim against

the insurance or is named as a party in any action involving the County.

- d. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- e. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "F" definition of insured contract in ISO form CG 00 01, or equivalent).
- f. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- g. *Required Evidence of Insurance:*
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

**3. Automobile Liability Insurance**

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. *Required Evidence of Insurance:* Certificate of Insurance.

**4. Professional Liability/Errors and Omissions Insurance**

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. *Required Evidence of Insurance:* Certificate of Insurance.

**5. Documentation**

- a. The Certificate of Insurance must include the following reference: Medical Examiner and Forensic Pathology Services.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: County of Tuscola, its Officers, Agents and Employees.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**6. Policy Obligations**

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**7. Material Breach**

If Contractor fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

# Tuscola County Office Of Medical Examiner



## Annual Report 2018

**Russell L. Bush, MD, MPH**  
Chief Medical Examiner

**Kanu Virani, MD**  
Deputy Medical Examiner  
Forensic Pathologist

# Staff & Investigators

## Secretary

**Kathy O'Dell**

Medical Examiner Secretary

**Lugene Peters**

Medical Examiner Secretary

(Back Up)

## Investigators

Elaine Fiorillo

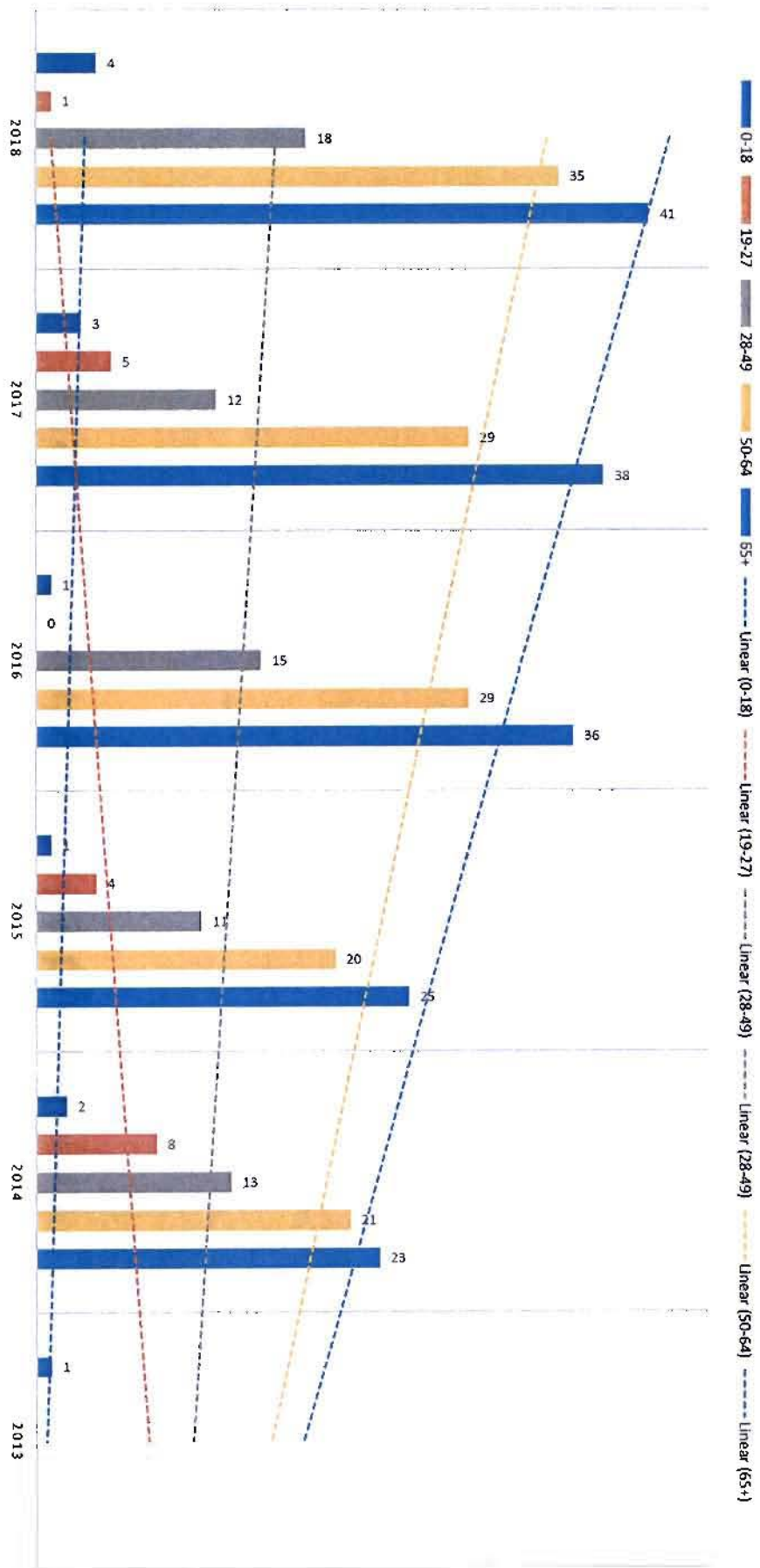
Robert Hiiter

Cristina Pazak

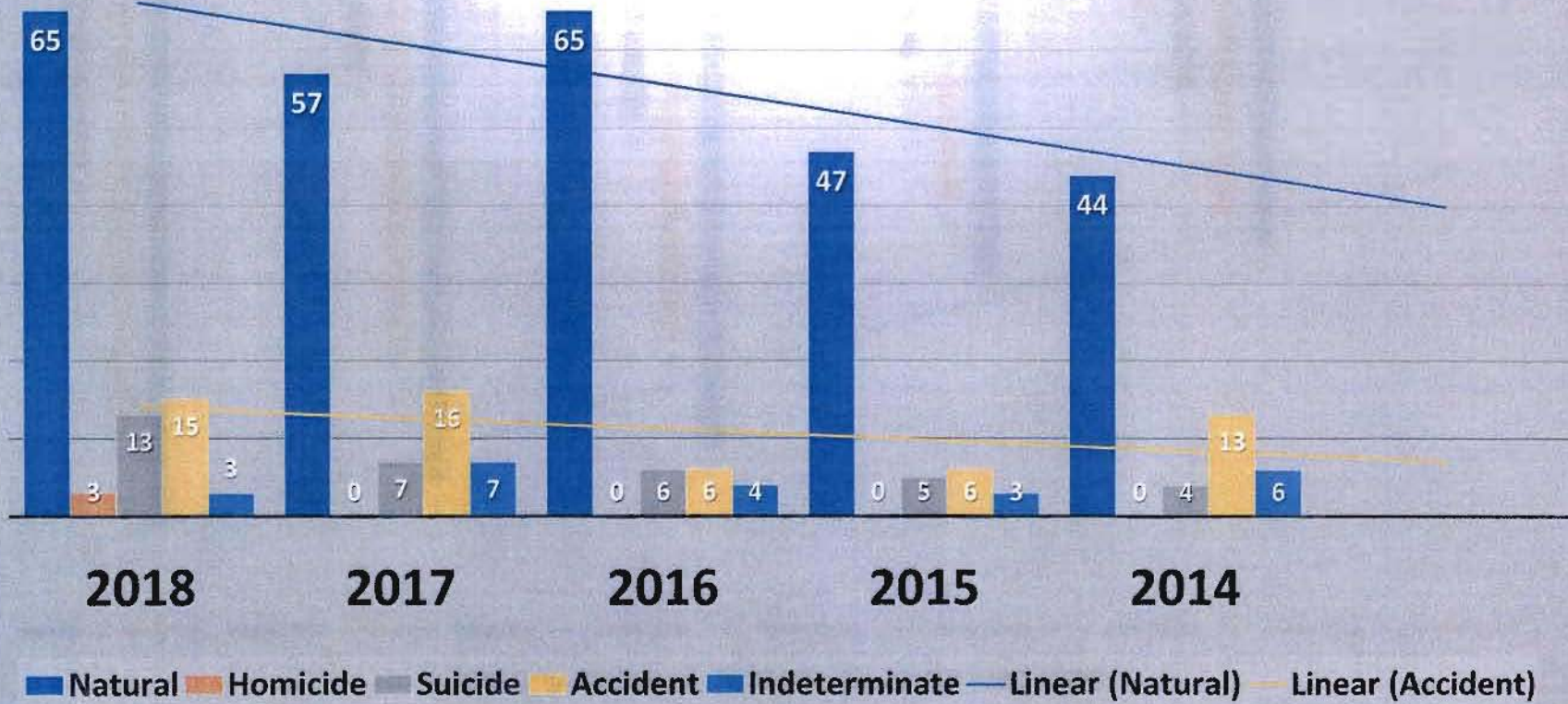
BriAnn Summersett

Ed Tucker

# TUSCOLA COUNTY DEATHS BY YEAR AND AGE

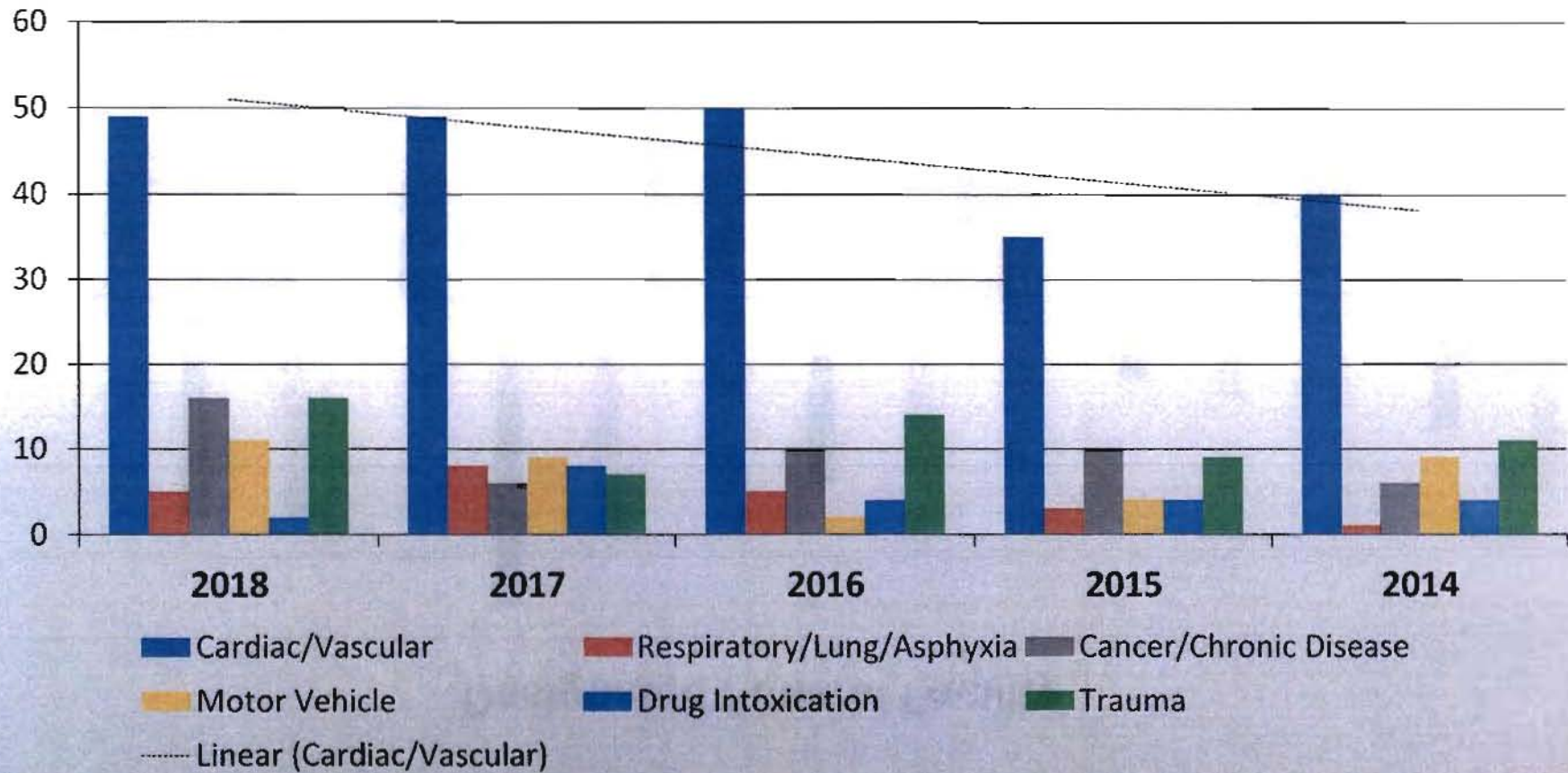


## Tuscola County Deaths by Manner

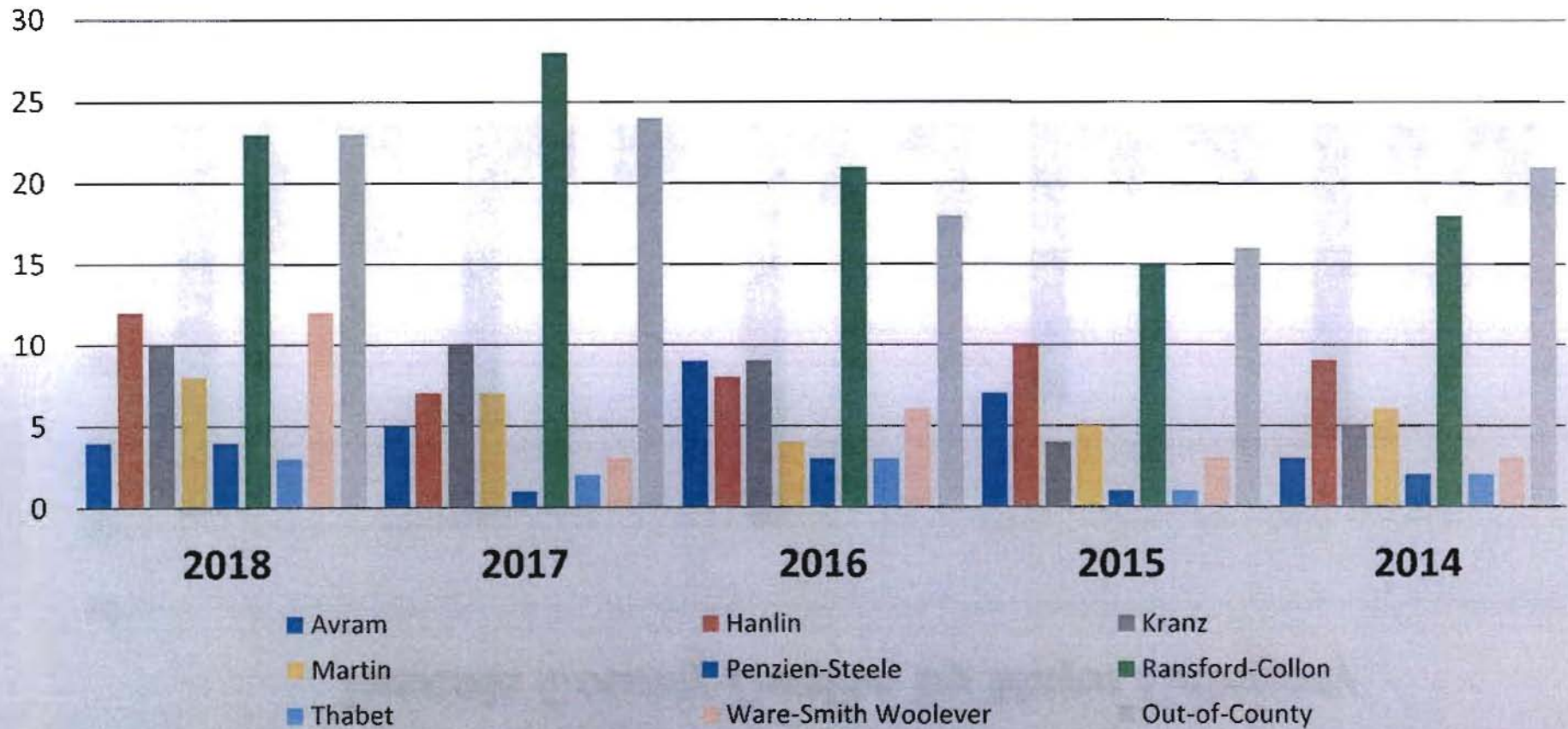




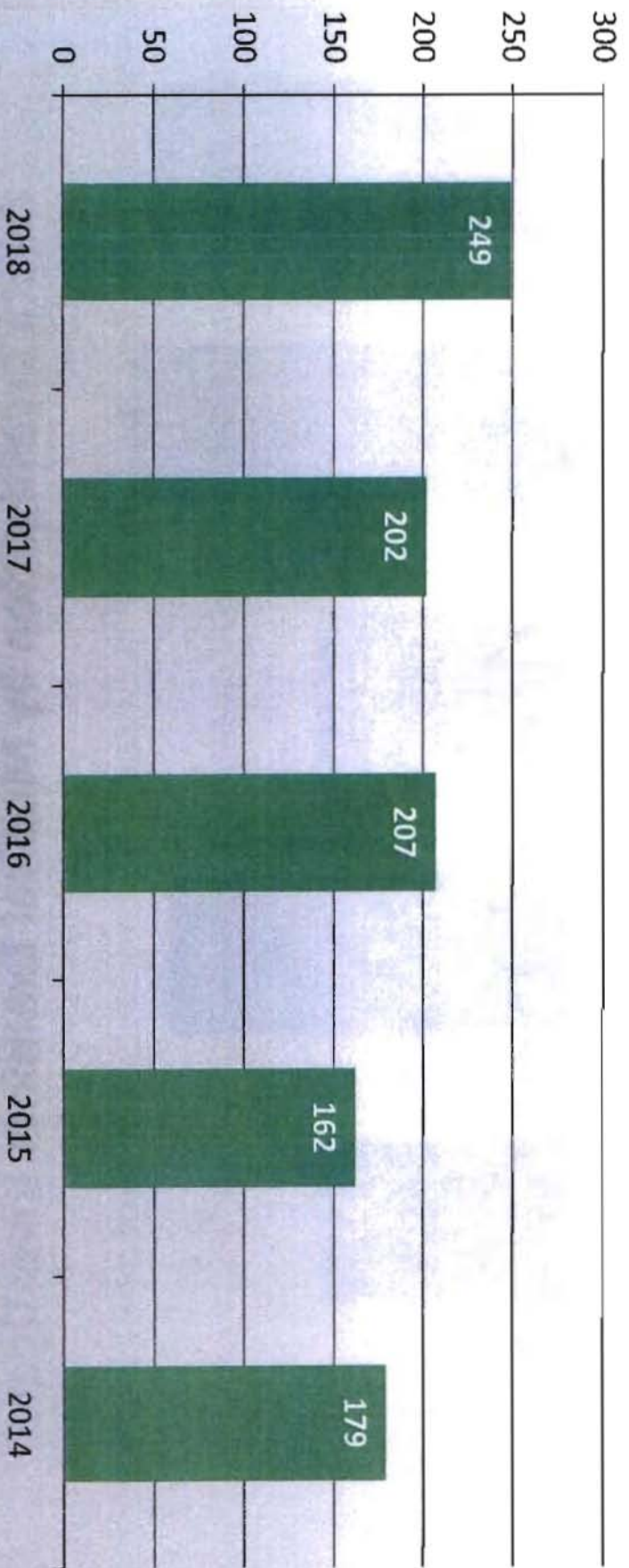
## Tuscola County Deaths by Major Category



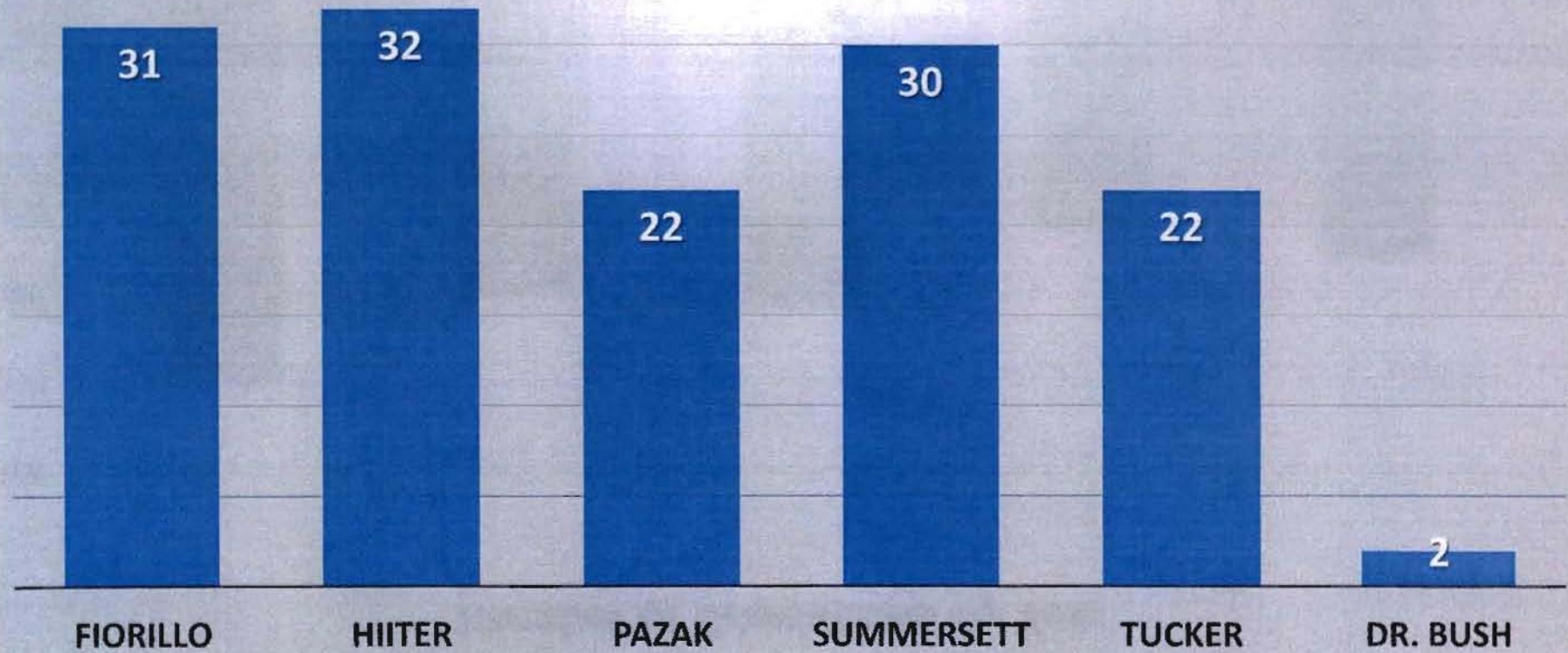
## Designated Funeral Facility



## Number of Cremations by Year



## Death Investigation by Medical Examiner Investigator



**From:** Robert Baxter <rbaxter@tuscolacounty.org>  
**Sent:** Monday, June 3, 2019 10:49 AM  
**To:** Mike Hoagland  
**Cc:** Glen Skrent  
**Subject:** USDA

Good Afternoon Mike,

The Sheriff's Office has completed a USDA application for an updated Drone. The drone will have FLIR capabilities, which will be used primarily for search and rescue operations. FLIR technology enables first responders to conduct search and rescue operations for persons in fog and in the dark. Sheriff Skrent feels that this will aid in finding vulnerable adults/missing children within Tuscola County.

Three quotes have been obtained:

- 1) NOAR Technologies-\$24,160
- 2) MACATAWA-\$47,828
- 3) NOAR Technologies-\$29,060 + additional batteries/power inverter

We feel that the 3rd option is the best suited for our agency.

If accepted USDA would pickup approximately 2/3's of the cost, the remainder would be paid from the Road Patrol fund balance.

USAD requires that the application/discussion/Board approval be posted in the minutes.

Undersheriff Robert E. Baxter  
**Tuscola County Sheriff Administration**  
420 Court St  
Caro, MI 48723  
989-673-8161 ext 2225  
Fax: 989-673-8164



**mhoagland@tuscolacounty.org**

---

**From:** Clayton J. Johnson <cjohnson@braunkendrick.com>  
**Sent:** Wednesday, May 15, 2019 2:01 PM  
**To:** 'MHoagland@TuscolaCounty.org'  
**Cc:** Timothy L. Curtiss  
**Subject:** Recycling Center Soil Removal

Mike,

In follow up to our prior discussions, this is to confirm Braun Kendrick's offer regarding assistance with a portion of the costs to remove potentially contaminated soils at the new recycling center site:

Following execution of a mutually acceptable release, we would:

1. Make reimbursement to the County in the amount of \$4,000 within 60 days, and
2. Also pursue the former property owner to reimburse the County in the amount of an additional \$4,000. If efforts to obtain this payment from the former owner prove unsuccessful within 60 days then we would instead extend a credit in the amount of \$4,000 to be applied to future invoices for legal services with our firm.

Please let me know if you would like any additional information in this regard.

Thank you,  
Clay

CLAYTON J. JOHNSON  
**Attorney**  
 Tel: 989.399.0606  
 Fax: 989.799.4666  
 Email: [CJohnson@BraunKendrick.com](mailto:CJohnson@BraunKendrick.com)

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**Agenda Reference:** I

**Entity Proposing:** COMMITTEE OF THE WHOLE 12/3/18

**Description of Matter:** Move that per the November 27, 2018 letter from Sean Robinson with AKT Peerless, that Rhode Brothers Excavating be hired to remove and dispose of approximately 250 tons of oil stained soil at the new recycling center for an amount of \$16,250. Of this total, \$12,250 to be paid from the Recycling Fund and \$4,000 to be paid by Mr. Kozan per previous agreement.

*New Business -*

-Schedule of Public Budget Hearing - The motion to schedule a public hearing was missed to include in the December 3, 2018 Consent Agenda. Proper posting of the hearing has taken place.

18-M-199

Motion by Young, seconded by Vaughan that the Draft 2019 County Budget be approved for review at a public hearing to be held on December 13, 2018 at 9:00 A.M. Also, notice of the Public Hearing be placed in the local newspaper. And, copies of the updated budget be forwarded to county officials for review and comment. Motion Carried.

-Update Regarding Michigan Indigent Defense Program - Rahm Mormando provided an update regarding the program. The program is progressing positively and will be ready for the January 2, 2019 launch date.

-Emergency Action Guidelines - Steve Anderson explained need to adopt the guidelines.

18-M-200

Motion by Vaughan, seconded by Young per the recommendation of the Emergency Services Director that the Tuscola County Emergency Action Guidelines (EAG) which will enhance county emergency response capabilities be approved and adopted with an effective date of January 1, 2019 and expiration date of January 1, 2022. Motion Carried.

-Request to Use Courthouse Lawn -

18-M-201

Motion by Young, seconded by Jensen that per the December 4, 2018 request from the Right to Life that authorization is given to use the Courthouse Lawn on January 20, 2019 starting at 3:00 p.m. Motion Carried.

-Register of Deeds Employee Reclassification Request - Register Bishop explained his request to reclassify staff. Matter discussed.

E



FIBER OPTIC SUBSCRIPTION AGREEMENT

This Fiber Optic Subscription Agreement (the "Agreement"), effective as of date of installation and turn-up of services (the "Effective Date") sets forth the specific terms and conditions under which Air Advantage, LLC, a Michigan limited liability company ("Air Advantage"), shall supply the Services, as defined below, to (Customer Name) Tuscola County-CLEMIS Network, located at (Street) 207 E Grant St, (City) Caro, MI (Zip)48723 the undersigned ("Customer" or "you").

1. Services. Air Advantage will provide Customer, commencing on the Effective Date, with fiber optic connectivity by way of Air Advantage's fiber optic network (the "Services"). Customer agrees to pay for the Services as provided for below. Air Advantage offers three levels of the Services (check one):

Service Description	Speed	Rate
<input type="checkbox"/> Bandwidth subscription (private line access to internet, best effort delivery, unlimited data)	Up to ___ Mbps Down Up to ___ Mbps Up	\$ ___ / month
<input type="checkbox"/> Dedicated access (dedicated, private line access to internet, unlimited data)	_ Mbps	\$ ___ / month
<input checked="" type="checkbox"/> Private access (private, point-to-point or point to multi-point between on-network locations)	__100 x 20_ Mbps	\$__275.00__ / month

**\*One-time cost to install and activate fiber at your location: \$ 500.00.**

2. Termination. Continued use of the Services by Customer constitutes acceptance of this Agreement and any future versions. If you are dissatisfied with the Services or any related terms, conditions, rules, policies, guidelines, or practices, your sole and exclusive remedy is to discontinue using the Services and to terminate your account. The term (the "Service Term") shall begin on the Effective Date and end as provided for as follows:

- a. The parties may agree, in writing, to terminate this Agreement at any time.
- b. Air Advantage may terminate this Agreement at any time and for any reason upon not less than thirty (30) days written notice to Customer of its intention to terminate.
- c. Air Advantage may terminate this Agreement at any time with or without written notice to Customer upon an Event of Default.
- d. Customer may terminate this Agreement at any time after expiration of **Three (3) years** after the Effective Date.
- e. This Agreement shall be deemed terminated upon Customer and Air Advantage's execution of an agreement wherein Air Advantage provides services to Customer substantially similar to the Services.

You will be responsible for any outstanding payments for the remainder of the term of your Agreement.

If services are terminated you remain responsible for payment of all fees up to the conclusion of your Service Term or if your service has extended beyond the Service Term, then for service through the conclusion of the month during which service is terminated. Any termination of this Agreement shall not relieve you from any amounts owing or other liability accruing prior to the time that such termination becomes effective.

In the event of termination, Subscriber agrees to return all equipment provided to Subscriber by Air Advantage to Air Advantage upon request, but in no event later than seven (30) days of termination of Air Advantage service. The failure to do so obligates the Subscriber to be responsible for the replacement costs of all such equipment at its retail price and to have Subscriber's account adjusted accordingly for all such amounts. PLEASE BE AWARE THAT IF YOU TERMINATE YOUR SERVICE, ALL EXISTING EMAILS MAY BE LOST.





3. Equipment. Air Advantage will provide one Optical Network Terminal or other device or equipment at the customer location for connection to Air Advantage's fiber optic network (the "Network Termination"). The Network Termination will provide an Ethernet handoff to allow connection to the Customer's network. Unless otherwise agreed, Air Advantage shall not be responsible for connecting the Customer's network to the Network Termination. Check the box that applies:

Air Advantage will provide to Customer, at no additional charge, with all equipment (the "Equipment") used or required in order for Customer to receive the Services. Specifically the equipment included will be;

1) Optical Network Terminal (ONT)

Customer agrees to be responsible for any loss, theft or damage of the Equipment. Customer expressly disclaims any right, title, perpetual right of use or any other interest in or to the Equipment. Although, pursuant to the terms of this Agreement Air Advantage grants a revocable license to Customer to use the Equipment, the Equipment shall continue to be the property of Air Advantage.

Customer will provide all equipment used or required in order for Customer to receive the Services. Air Advantage will not be responsible (a) for any damage to, or (b) to maintain Customer's equipment.

4. Charges to Customer's Account. If, during the Service Term, Air Advantage provides Customer with additional or replacement Equipment or Customer makes changes to the Services so as to increase the level of Services, Customer's account will be charged for such Equipment or Service.

5. Charges and Payment. Recurring charges as specified in Paragraph 1, above, shall be billed by Air Advantage on a monthly basis in advance ("Monthly Recurring Charge") and non-recurring charges shall be billed in arrears. Customer shall make all payments due hereunder within 11 days after the date of Air Advantage's invoice; provided, however, that Air Advantage may, upon a failure of Customer to establish creditworthiness, in its sole discretion, include in its first invoice to Customer a deposit amount equal and applicable to the last monthly charge due for the Services. In the event Air Advantage has agreed to accept prepayment from Customer (which it may do in its sole discretion but shall not be obligated), and this Agreement is terminated prior to the period for which Customer has prepaid, Air Advantage shall return the unused portion of the prepayment, after all amounts owing Air Advantage by Customer have been satisfied.

6. Assignment. Customer may not assign, encumber or transfer its rights hereunder without the prior written approval of Air Advantage. Customer may not transfer or assign the Equipment.

7. Event of Default. An 'Event of Default' shall occur if: (i) Customer fails to make any payment required to be made by it under this Agreement and any such failure remains uncorrected for five (5) business days after receipt of written notice of such failure the date such payment was due; (ii) Customer fails to perform or observe any material term or obligation other than making payment, contained in this Agreement, and any such failure remains uncorrected for forty-five (45) calendar days after receipt of a notice from the non-defaulting party

informing the defaulting party of such failure; (iii) Customer use of the Equipment or Services in a manner that is a Prohibited Use, as set forth in Paragraph 9, below; or (iv) a voluntary proceeding shall be commenced by or an involuntary proceeding shall be commenced against either party in any jurisdiction seeking liquidation, reorganization or other relief under any bankruptcy or similar law which is not dismissed within sixty (60) calendar days of filing, either party shall make an assignment for the benefit of creditors or shall generally not agree to pay or not be able to pay its debts as they become due. THE PARTIES EXPRESSLY AGREE THAT CUSTOMER'S LOSS OF SIGNAL OR CUSTOMER'S RECEIPT OF A SIGNAL SO POOR IT IS UNAVAILABLE ("SERVICE OUTAGE") SHALL NOT CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT BUT SHALL ONLY OBLIGATE AIR ADVANTAGE TO PROVIDE OUTAGE CREDITS AS SET FORTH HEREIN.

8. Remedies.



a. Upon the happening of any Event of Default, the non-defaulting party may, in addition to any other rights it has according to law: (1) suspend its performance under this Agreement so long as such default remains uncorrected but only after providing written notice of such suspension to the defaulting party; or (2) terminate this Agreement by providing written notice of termination to the defaulting party.

b. If Customer is the defaulting party, Air Advantage may collect the total charges due from Customer in addition to terminating this Agreement.

9. Prohibited Uses. Customer shall not use the Services or the Equipment in a manner that (collectively, the "Prohibited Uses"): (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation, the laws and regulations governing export control, unfair competition, and to discrimination or false advertising); (c) is defamatory, trade libelist, unlawfully threatening or unlawfully harassing; (d) is obscene, pornographic or indecent; (e) distributes any viruses, trojan horses, worms, time bombs, cancel-bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (f) disrupts the normal use of the system for other customers, including for example: spawning dozens of processes, consuming large amounts of memory or CPU cycles for long periods of time, attempting to access other customers' account areas or conducting prerogative activities such as mass e-mailings which may result in retaliatory actions against Provider' systems.

10. Force Majeure. Air Advantage shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to, acts of God, fire, explosion, vandalism, fiber optic cable cut, storm or other similar catastrophes, any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or of any civil or military authority, national emergencies, insurrections, riots, wars, or strikes, lock-outs, work stoppages or other labor difficulties.

11. Service Outages and Outage Credit. In the event of a Service Outage of more than nine (9) consecutive hours in duration, pursuant to the terms and conditions contained in this Paragraph, Customer shall be provided with credit equal to that portion of the Services affected for the period of such Service Outage ("Outage Credits"). An Outage Credit shall be calculated as follows:

$$\text{Outage Credit} = \frac{(\text{Hours of outage} - 9 \text{ hours}) \times (\text{Total Monthly Recurring Charge})}{720}$$

A Service Outage shall be measured in hours and fractional portions thereof. A Service Outage shall be deemed to have: (a) commenced upon notification by Customer to Air Advantage; and (b) terminated upon restoration of the Services as evidenced by appropriate network tests by Air Advantage and Air Advantages notification to Customer. Customer may request an Outage Credit within 30 days of the Service Outage (an "Outage Credit Request"). Air Advantage shall not be required to provide Outage Credits for Service Outages more than 30 days from the date of an Outage Credit Request. Outage Credits should appear on Customer's bill for the Services within two (2) billing cycles, after the Outage Credit has been approved by Air Advantage. In no event shall Customer be entitled to or receive a cash refund as a result of a Service Outage. Outage Credits shall be Customer's sole and exclusive remedy for Service Outages. Customer shall not be entitled to Outage Credits as a result of outages due to or caused by: (i) the negligence or willful misconduct of the Customer or others authorized by Customer, including but not limited to Customer's employees; (ii) Customer's network failure; (iii) power failure; (iv) during any period in which Air Advantage is not given access to the Customer premises if necessary to resolve an outage; (v) during any period of unscheduled emergency maintenance or repair, scheduled maintenance, alteration or implementation; and (vi) during any Force Majeure Event as defined herein. Air Advantage may withhold issuance of any Outage Credits due Customer under this Agreement until any amounts past due by Customer have been paid in full.



12. Limitation of Liability. IN NO EVENT SHALL AIR ADVANTAGE OR ANY OF ITS AFFILIATES BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFIT OR REVENUE OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY OF SERVICE, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THIS AGREEMENT, EVEN IF CUSTOMER ADVISES AIR ADVANTAGE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT SHALL AIR ADVANTAGE OR ANY OF ITS AFFILIATES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY OUTAGE OR INCORRECT OR DEFECTIVE TRANSMISSIONS, OR ANY DIRECT OR INDIRECT CONSEQUENCES THEREOF, INCURRED OR SUFFERED WHILE USING THE AIR ADVANTAGE NETWORK.

13. Disclaimer of All Warranties. AIR ADVANTAGE HEREBY DISCLAIMS ANY WARRANTIES EITHER EXPRESS, IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, EQUIPMENT, OR FACILITIES FURNISHED PURSUANT TO THIS SERVICE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. Miscellaneous. This Agreement and each provision hereof may be amended only by an instrument in writing signed by the parties hereto. No failure or delay on the part of either party in exercising any right hereunder and no course of dealing between the parties shall operate as a waiver of any provision hereof. In conjunction with this Agreement, each party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations and orders of any commission or other government body. This Service agreement shall be governed by the laws of the State of Michigan. All notices shall be in writing and shall be delivered by certified mail return receipt requested or any other delivery system which is capable of providing proof of delivery. Any such notice shall be deemed effective on the date of actual delivery. All notices shall be addressed as follows, if to Air Advantage to Air Advantage, LLC, 465 N Franklin, Frankenmuth, MI 48734, Attn: **Contracts Department**, and if to Customer, to the Customer's billing address. This Agreement and exhibits attached hereto, all of which are incorporated by reference, comprise the complete and exclusive statement of the agreement of the parties concerning the subject matter hereof, and supersede all previous statements, representations, and agreements concerning the subject matter hereof. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have signed their names as of this day and year first above written.

“Air Advantage”

Air Advantage, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

“Customer”

**Tuscola County-CLEMIS Network**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Please fill out the following (Print),

**Billing Address -** \_\_\_\_\_

\_\_\_\_\_

**Billing Method - (Auto-Pay, E-mailed, or Mailed)**

\* Please note e-mailed and mailed invoices may have a handling fee. \_\_\_\_\_

**E-mail -** \_\_\_\_\_

[mhoagland@tuscolacounty.org](mailto:mhoagland@tuscolacounty.org)

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**From:** Steve Anderson <[tcemanderson@tuscolacounty.org](mailto:tcemanderson@tuscolacounty.org)>  
**Sent:** Monday, June 3, 2019 11:21 AM  
**To:** [mhoagland@tuscolacounty.org](mailto:mhoagland@tuscolacounty.org)  
**Cc:** Clayette Zechmeister (Clayette Zechmeister); Mike Tuckey; Bardwell Thom; Dan Grimshaw; Kim Vaughan; Mark Jensen; Tom Young  
**Subject:** Re: Emergency State Funding for Road Repairs Granted

## Gov. Whitmer Declares State of Emergency for Tuscola County to Assist with Response to Widespread Flooding

**LANSING, Mich.** – Gov. Gretchen Whitmer today declared a state of emergency for Tuscola County in response to the county’s request for state assistance to address damage caused by recent flooding.

“I want to thank the emergency responders and others who have worked diligently to keep residents safe throughout this flooding incident,” said Whitmer. “This declaration will ensure the state can provide resources to Tuscola County communities to assist with recovery efforts.”

By declaring a state of emergency, Whitmer has made available all state resources in cooperation with local response and recovery efforts in the designated area. The declaration authorizes the Michigan State Police, Emergency Management and Homeland Security Division (MSP/EMHSD) to coordinate state efforts above and beyond what MSP/EMHSD has already been doing in conjunction with local agencies.

“We have remained engaged with Tuscola County officials throughout this flooding event,” said Capt. Emmitt McGowan, deputy state director of Emergency Management and Homeland Security and commander of the MSP/EMHSD. “My staff and I will continue to work with the county to make sure their resource needs are being met.”

On May 25, heavy rainfall caused widespread flooding in Tuscola County, damaging infrastructure and private property. The county formally requested assistance on May 29.

The county of Tuscola declared a local state of emergency on May 28, which activates local emergency response and recovery plans. By requesting a governor’s declaration, the county has determined local resources are insufficient to address the situation and state assistance is required to protect the health, safety and property to lessen or avert the threat of a crisis.

On Mon, Jun 3, 2019 at 10:33 AM [mhoagland@tuscolacounty.org](mailto:mhoagland@tuscolacounty.org) <[mhoagland@tuscolacounty.org](mailto:mhoagland@tuscolacounty.org)> wrote:

Good news. Representative Green stopped by and said that the emergency funding request for road repairs was granted by the state.

Michael R. Hoagland



# **SHERIFF**

## **TUSCOLA COUNTY**

SHERIFF GLEN SKRENT

UNDERSHERIFF ROBERT BAXTER

420 COURT STREET, CARO, MI 48723

Phone: 989-673-8161 Fax: 989-673-8164

To: Tuscola County Board of Commissioners  
From: Sheriff Glen Skrent  
Ref: LEAD  
Date: 5/17/2019

I was going to have Undersheriff Robert Baxter attend LEAD. I am requesting the county fund the cost of the class. If it is not funded he will not be attending. Thanks for your consideration.

Sheriff Glen Skrent

**mhoagland@tuscolacounty.org**

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**From:** Clayton J. Johnson <cjohnson@braunkendrick.com>  
**Sent:** Friday, June 7, 2019 9:02 AM  
**To:** 'Clayette Zechmeister'; 'MHoagland@TuscolaCounty.org'  
**Subject:** Pamphlet Distribution near Courthouse  
**Attachments:** Tuscola County- Courthouse Sidewalk Pamphlet distribution (S1496651x7B01A).pdf

Dear Clayette and Mike,

Please find attached my summary regarding the handling of a request to distribute pamphlets on the sidewalks of the courthouse grounds.

In summary, this practice is subject to free speech protections, so any restrictions must be very narrow. The prior permission of the Board of Commissioners is not necessary to allow a citizen to do so in a peaceful, safe manner which does not interfere with the operations of the courthouse.

Please feel free to let me know if you would like any additional information at all on this.

Thank you,  
Clay

CLAYTON J. JOHNSON  
Attorney  
Tel: 989.399.0606  
Fax: 989.799.4666  
Email: [CJohnson@BraunKendrick.com](mailto:CJohnson@BraunKendrick.com)

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## MEMORANDUM

**TO:** Tuscola County Board of Commissioners  
**FROM:** Clayton J. Johnson, Braun Kendrick Finkbeiner, PLC  
**DATE:** JUNE 7, 2019  
**SUBJECT:** TUSCOLA COUNTY- COURTHOUSE FREE SPEECH RESTRICTIONS

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### Issue

What permissible restrictions can a government body lawfully place on an individual's ability to exercise his or her free speech on the public areas surrounding a courthouse?

### Brief Answer

The distribution of pamphlets on the sidewalks of the courthouse grounds must be done in a peaceable manner, which does not interfere with the ability of the courthouse to carry on its operations, and which does not cause an unsafe condition. The ability of a citizen to do so within these parameters would not require the prior authorization of the County Board of Commissioners.

The sidewalk area outside a courthouse is a public forum for purposes of First Amendment protections of free speech. Regardless of the nature of the government property in question, reasonable logistical restrictions can be placed on the time, place, and manner of free speech conducted on the property, so long as the requirements are communicated to the user, are content-neutral, and are narrowly-tailored to serve a significant government interest.

For example, requesting the individual to stand a reasonable distance away from the door for traffic and safety purposes is perfectly acceptable. Placing restrictions on the content of the expression itself, however, is problematic and potentially lawful only if applied to communications made inside the courthouse.

### Analysis

"The First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *United States Postal Service v. Greenburgh Civic Association*, 453 US 114, 129 (1981). The degree of restrictions that can be imposed depends on the specific place where the expression is attempted.

- I. **The area surrounding the courthouse is a public forum where only restrictions on the time, place, and manner of expression may be imposed.**

Streets, sidewalks, and parks are public forums highly associated with the First Amendment and therefore expression made on them is highly protected. See *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 US 308, 315 (1967). "In such



places, the government's ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place and manner regulations as long as the restrictions are 'content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.'" *United States v. Grace*, 461 US 171, 177 (1983), quoting *Perry Education Ass'n. v. Perry Local Educator's Ass'n.*, 460 US 37, 45 (1983). The Supreme Court has further held that the sidewalk around a courthouse is considered a public forum like any other sidewalk.

Reasonable restrictions on the time, place, and manner of the expression on the public property may be communicated in any way that reasonably informs the user of the restriction. The restrictions may be posted on a sign or by a security guard. *Leiss v. United States*, 364 A.2d 803 (D.C. Ct. App. 1976). They may also be communicated by an administrative assistant or any other person with authority over the property. *Hemmati v. United States*, 564 A.2d 739 (D.C. Ct. App. 1989).

Speech, whether communicated orally or in writing is subject to First Amendment protections.

**II. The interior of the courthouse is likely a nonpublic forum where reasonable restrictions on the expression itself may be placed.**

Courts view the interior of courthouses as affording a higher degree of restriction on expression in light of the right to a fair trial. Given the court's inherent authority to maintain order and protect the fairness, dignity and integrity of the judicial process, it has been held reasonable for the judge to bar a defendant from wearing a T-shirt with a political message inside a courtroom. See *People v. Aleem*, 149 P.3d 765 (Colo. 2007). "A courthouse — and, especially, a courtroom — is a nonpublic forum." *Berner v. Delahanty*, 129 F.3d 20, 26 (1st Cir. 1997) (banning the wearing of political buttons in the courtroom). "The courtroom is a nonpublic forum...where the First Amendment rights of everyone (attorneys included) are at their constitutional nadir." *Mezibov v. Allen*, 411 F.3d 712, 718 (6th Cir. 2005).

In limited circumstances, restrictions on the expression itself in the interest of judicial fairness can extend to the outside areas of the courthouse. The Supreme Court has upheld a state statute prohibiting picketing or parading "in or near a building housing a court" when the demonstration is intended to interfere with or impede justice or to influence a judge, juror or court officer. *Cox v. Louisiana*, 379 US 559 (1965).

