

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between Board of County Commissioner of Arapahoe County, Colorado (“Board”) and Dr. Kelly C. Lear (“Dr. Lear”) as of the day and year indicated below.

WHEREAS, Dr. Lear, Arapahoe County Coroner, has been re-elected for a third term to begin in January, 2023 and end in January, 2027, and

WHEREAS, pursuant to C.R.S. § 30-2-102 the salary of the Arapahoe County Coroner is currently set at \$131,701.00; however, pursuant to C.R.S. § 30-2-108 a board of county commissioners may provide additional compensation to a county coroner who performs post-mortem examinations (also known as autopsies), which additional compensation is to be paid from the county treasury; and

WHEREAS, Dr. Lear is a licensed medical doctor and is a certified forensic pathologist and will be performing post-mortem examinations of the bodies of deceased persons on behalf of the citizens of Arapahoe County; and

WHEREAS, the Board has elected to provide additional compensation to Dr. Lear for performing post-mortem examinations by increasing her yearly compensation for her to a total of \$320,000.00 per year (“Total Yearly Compensation”), to be paid bi-weekly over the course of the year in the same manner as other County officials and employees, with the amount that is in addition to her statutory salary (“Additional Compensation”) being specifically for her services in performing and supervising post-mortem examinations; and

WHEREAS, as further additional compensation the Board has also elected to grant Dr. Lear permission to use County facilities to perform post-mortem examinations and other services in addition to those provided in her role as Arapahoe County Coroner, subject to Dr. Lear agreeing to payment of certain fees and reimbursement of costs to the County, as also set forth below; and

WHEREAS, Dr. Lear and the Board are desirous of entering into this Memorandum of Understanding in order to memorialize their understanding with regard to the foregoing.

NOW, THEREFORE, in consideration of the mutual promises herein outlined, the parties agree:

1. For her term of office beginning in January of 2023 and ending in January of 2027, Dr. Lear agrees to perform all of her job functions and duties as Arapahoe County Coroner, to include reasonably necessary post-mortem examinations, in exchange for the payment of the Total Yearly Compensation of \$320,000.00, as described above. Her job functions and duties as Arapahoe County Coroner can generally be described as follows:
  - a. Administer the Office of Coroner

- b. Conduct and/or supervise staff in performing death investigations for deaths occurring in Arapahoe County
  - c. Perform and/or supervise licensed staff in performing post-mortem examinations for deaths occurring in Arapahoe County, with at least 40% of such examinations being performed per year by Dr. Lear personally
  - d. Provide medico-legal consultation on deaths occurring in Arapahoe County, including:
    - i. Courtroom testimony
    - ii. Consultation with prosecutors/defense attorneys
    - iii. Medical consultation for law enforcement
    - iv. Other as needed
2. Dr. Lear also performs additional professional services as a forensic pathologist that are not on behalf of the citizens of Arapahoe County, and not included in the compensation paid by the County. Dr. Lear is hereby granted a revocable license to use the County owned coroner facilities for purposes of providing such additional professional services, subject to the following conditions:
- a. Private post-mortem examinations (performed, e.g., for other counties, private citizens, and law firms):
    - i. Dr. Lear will reimburse the County for each private post-mortem examination performed by her or her staff (whether for another governmental entity or a private entity) the sum of \$175.00.
    - ii. County staff who assist in the provision of such additional professional services will “clock-out” so that the County is not compensating them for the time taken to perform those services.
    - iii. The \$175.00 reimbursement to the County is intended to compensate the County for the materials (scalpels, cassette tapes, chemicals, etc.) used, as well as utilities and office expenses (phone, fax, mailing, etc.).
  - b. Testimony in civil cases arising out of “County cases” (those services performed as part of Dr. Lear’s constitutional or statutory duties, or as part of the compensation negotiated by the Board of County Commissioners):
    - i. Dr. Lear will reimburse the County 100% of all fees received for such services. Invoices documenting the fees billed will be attached to the reimbursed sums to ensure accurate accounting for this portion of the MOU.
  - c. Use of the County facilities for medico-legal consultations for district attorneys throughout the state, law firms, or other clients on “non-County cases”:
    - i. Dr. Lear will reimburse the County 5% of her invoices for such time. This reimbursement is intended to compensate the County for utilities and office expenses related to such services. Invoices documenting the fees billed will be attached to the reimbursed sums to ensure accurate accounting for this portion of the MOU.
  - d. Reimbursements to the County for additional professional services will be made quarterly throughout the calendar year by Dr. Lear.
3. Dr. Lear will ensure that fees for any transport services or other services that are not ordinarily paid for the by the County are billed to the recipient of such services and

reimbursed to the County if paid by the County. Reimbursements to the County will be made quarterly throughout the calendar year by Dr. Lear.

4. Dr. Lear agrees that her employment duties as a Coroner, as set forth in section 1. above, for which she is paid compensation by the County, will continue to have the first priority and that she will continue to work at least 40 hours per week (excepting time taken for vacation) on such duties. If for some reason Dr. Lear is unable or unwilling to continue to fully perform her post-mortem examination duties as described in section 1. c. above, then the Board, at its discretion, may make an equitable adjustment to her Additional Compensation so that what Dr. Lear has been and is paid is proportional to the amount that the actual number of post-mortem examinations is to the required number (for example, if Dr. Lear performs only 50% of the post-mortem examinations required to be performed by her under this MOU, then the Additional Compensation may be adjusted by reducing it by 50%).
5. In addition to those services described above, Dr. Lear will continue to perform pro bono consultation to the citizens of Colorado and the United States as time permits. As of the date of this Agreement, such services may be anticipated to include:
  - a. Lectures to various medical and civic organizations
  - b. Publications
6. The County or any of its duly authorized representatives shall have reasonable access to any books, documents, papers, and records of Dr. Lear which are pertinent to Dr. Lear's performance under this MOU for the purpose of making an audit, examination, or excerpts. Dr. Lear shall keep all such books, documents, papers, and records for a minimum period of three years.
7. This MOU shall be governed by the laws of the State of Colorado. Venue for any civil action related to this agreement shall be in Arapahoe County.
8. Dr. Lear shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees, and agents from and against any and all losses, damages, liabilities, claims, suits, actions, or awards, including costs, expenses, and attorney's fees, incurred or occasioned as a result of the acts or omissions of Dr. Lear, or her principals, employees, agents, or subcontractors arising out of or in any way connected with the services she performs other than those services for which she is compensated by the County. Dr. Lear's obligation to indemnify pursuant to this section, and to provide any extended insurance coverage where applicable, shall survive the completion of the performance of services other than those for which she is compensated by the County, and shall survive the termination of the MOU.
9. At all times while performing services other than those for which she is receiving compensation from the County, Dr. Lear shall be an independent contractor, and shall not be entitled to worker's compensation benefits and shall be obligated to pay federal and state income tax on any monies earned pursuant to those services. Notwithstanding any provision appearing in this MOU, all personnel hired by Dr. Lear to perform those services shall be and remain at all times employees or contractors of Dr. Lear for all purposes.

10. This MOU represents the entire and integrated agreement between the County and Dr. Lear and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this MOU must be in writing and be signed by both parties. If any portion of this MOU is found by a court of competent jurisdiction to be void and/or enforceable, it is the intent of the parties that the remaining portions of this MOU shall be of full force and effect.

11. The term of this MOU shall be from January 10, 2023 through January 12, 2027, with the exception that this agreement shall automatically terminate prior to such date if Dr. Lear resigns or if for some other reason she no longer holds the Office of Arapahoe County Coroner.

By: Dr. Kelly C. Lear

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

ARAPAHOE COUNTY

By: \_\_\_\_\_  
Chair, Board of County Commissioners  
(Or representative authorized by resolution)

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

