

# DRAFT

STATE OF TEXAS       §  
  §  
COUNTY OF HIDALGO   §

## CONTRACT FOR SERVICES

THIS Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **HIDALGO COUNTY, TEXAS** (the "County") and \_\_\_\_\_, M.D., an individual engaged in the practice of medicine and specializing in forensic pathology (the "Contractor").

### WITNESSETH:

**WHEREAS**, the County does not have a medical examiner's office and as such the need exists to contract the services of a pathologist to perform autopsies on an as needed basis;

**WHEREAS**, the parties recognize that the proper functioning of autopsies and the related services requires the supervision and direction of a physician who has the training, experience, and qualifications necessary to practice medicine in the specialty of pathology;

**WHEREAS**, Contractor was the successful respondent to the Request for Qualifications ("RFQ") sought by the County for a contractor to provide turnkey autopsies and related services more particularly described in the "Cost Proposal for Pathologist to Provide Turnkey Autopsy and Related Services for Hidalgo County Bid No. 2010-002-00-00-otm" the Curriculum Vitae of \_\_\_\_\_, M.D., (see Exhibit "B" attached hereto); and the Hidalgo County Request for Qualifications Bid No. 2010-002-00-00 otm (see Exhibit "C" attached hereto), all of which are incorporated herein and made a part of this Agreement;

**WHEREAS**, County has determined that the proper, orderly and efficient delivery of quality autopsy services, as described in Exhibits A, B, and C, collectively hereinafter

referred to as the “Services” to the County, can be accomplished best by contracting with Contractor;

**WHEREAS**, County has determined that for proper and efficient operation of the Services, the Contractor must complete autopsies within twenty-four (24) hours of receiving such order and that the Contractor must be available to provide the Services that are requested twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year as further described herein;

**WHEREAS**, Contractor is willing to accept the responsibility of providing Services to County in accordance with recognized medical standards, and the terms and conditions set forth in this Agreement; and

**WHEREAS**, the parties desire to provide a full statement of their agreement in connection with the performance of the Services during the term of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises of the parties hereto, and of the mutual covenants and conditions hereinafter expressed, the parties hereto covenant each with the other, as follows:

### **1. OBLIGATIONS OF THE CONTRACTOR**

Contractor agrees to provide the following services to the County during the term of this Agreement:

**1.1 Autopsies.** For purposes of this Agreement, an “autopsy” shall include but not be limited to:

“A post mortem examination of the body of a person, including x-rays and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death and includes removing a sample of body fluids, tissue or organs in order to determine the nature and cause of death even when a complete post mortem examination of the body is not done.”

The Contractor shall provide all of the components necessary to perform an autopsy, including but not limited to providing an X-ray machine, an X-ray developer,

histology lab services and toxicology lab services. Contractor agrees to use proper professional standards and devote such time necessary to provide the Services on an as needed basis.

**1.2 Logistics.** Contractor will provide personnel, space, equipment, and supplies necessary to perform autopsies. **HOWEVER, SHOULD THE COUNTY SECURE A FACILITY AT WHICH THE CONTRACTOR WILL PERFORM AUTOPSIES AND SHOULD THE COUNTY ALSO SECURE NECESSARY EQUIPMENT AND SUPPLIES FOR THE PERFORMANCE OF AUTOPSIES (THROUGH ITS FACILITY VENDOR), THEN THE PARTIES AGREE THAT THE AMOUNT OF THIS AGREEMENT SHALL BE REDUCED TO INCLUDE ONLY THE CONTRACTOR'S SERVICES FOR THE PERFORMANCE OF AUTOPSIES AND RELATED SERVICES AND NOT THE COST OF A FACILITY AND/OR EQUIPMENT.**

**1.3** Contractor agrees to confine her practice to serving the County except when practice at other institutions or locations does not impair the fulfillment of her obligations under this Agreement as determined by the County in its sole discretion, and such other practice is agreed to in writing by the County.

**1.4 Administration.** The Contractor will communicate with the County regarding the administration of autopsies. Notwithstanding anything herein to the contrary, the County will not have or exercise any control over the manner in which the medical duties of the Contractor are performed as would jeopardize the status of the Contractor as an independent contractor.

**1.5 Quality of Care.** The Contractor will continually work to improve the quality of and maintain a reasonable cost for autopsies furnished on behalf of the County.

**1.6 Records.** The Contractor shall, at Contractor's expense, keep or cause to be kept in an adequate filing system, accurate and complete records of each autopsy performed. Such records shall be the property of the County. Upon termination of this Agreement, Contractor agrees to deliver to County all records in its possession pertaining to the Services within thirty (30) days.

**1.7 Education.** Contractor shall attend conferences and meetings at her own expense, provided such attendance does not impair the performance of her obligations under this Agreement.

**1.8 Coverage.** Contractor will be responsible for making arrangements acceptable to, and at no additional expense to the County, for adequate autopsy coverage during any absence. Contractor agrees to complete autopsies within twenty-four (24) hours of receiving an order for an autopsy and shall be available to provide the Services twenty-four (24) hours a day, seven (7) days a week, and three hundred and sixty-five (365) days a year. Contractor shall remain responsible for the Services at all times during the term of this Agreement. However, the parties agree that the Contractor may have a qualified substitute physician render the Services. Contractor must submit the name of the qualified physician to the County and make all necessary arrangements for the performance of Services should Contractor not be available for a period exceeding twenty-four (24) hours. **FAILURE TO PROVIDE ADEQUATE COVERAGE AS DESCRIBED HEREIN IS AN EVENT FOR WHICH THIS AGREEMENT MAY BE IMMEDIATELY TERMINATED.** While this Agreement allows for a qualified substitute physician to render the Services, it is not the intent of the parties to have another forensic pathologist other than Contractor perform the services on a regular basis. Any abuse of this substitute physician provision by Contractor, in the opinion of the County, shall result in the County having sole discretion to terminate this Agreement immediately.

**1.9 Criminal Proceedings.** Contractor agrees to testify, when necessary, in all criminal proceedings as required by subpoena including but not limited to inquest hearings, trials and other judicial processes. Contractor shall also submit to the Hidalgo County District Attorney's Office, no later than two (2) weeks after an autopsy has been completed, written reports including but not limited to all findings from the completed autopsy and all laboratory results.

**1.10 Ethics.** Contractor shall insure that in performing services under this Agreement, that all work shall be performed using best and most diligent efforts and professional skills and shall render care in accordance with and in a manner consistent with the highest standards of the specialty of forensic pathology and that all conduct shall be in a manner consistent with the principles of medical ethics and of the American Medical Association.

**1.11 Certification.** The Contractor shall be board eligible or certified in Anatomic and Forensic Pathology and/or by the American Board of Pathology and shall be licensed to practice medicine in the State of Texas.

## **2. INSURANCE COVERAGE**

**2.1 Professional Liability Insurance.** At all times during the term of this Agreement, the Contractor will carry professional liability insurance in the amount of \$100,000.00/\$300,000.00 at Contractor's expense. The Contractor will provide a certificate of insurance to the County evidencing such coverage and will notify the County immediately if any change in coverage occurs for any reason.

**2.2. Automobile Insurance.** Contractor shall also provide proof of automobile liability insurance coverage with limits of at least \$300,000.00/\$500,000.00, consistent with potential exposure to County under the Texas Torts Claims Act. Coverage shall include injury or death of persons and property damage claims (with limits up to \$500,000.00) arising out of the services provided to County hereunder.

**2.3. Optional Medical Malpractice Insurance.** It is further agreed that in the event of cancellation or termination of the Agreement, the Contractor shall purchase the Optional Extension Period Coverage available to a physician under their medical malpractice insurance policy. Evidence of such coverage shall be immediately furnished to the County on request by the County.

### **3. CONTRACTOR'S COVENANTS AND WARRANTIES**

**3.1.** Contractor makes the following representations and warranties to County:

**3.2 Licensure.** Contractor is duly licensed to practice medicine in the State of Texas and is board eligible or certified in the field of Anatomic and Forensic Pathology.

**3.3 Suspension of License.** Contractor has not practiced medicine in any state in which her license has ever been suspended or revoked.

**3.4 Discipline.** Contractor has never been reprimanded, sanctioned, or disciplined by a licensing board or state or local medical society or specialty board.

**3.5 Malpractice Judgment.** There has never been entered against Contractor a final judgment in a malpractice action having an aggregate award to the plaintiff in excess of \$10,000.00.

**3.6 Settlement.** No action based on an allegation of malpractice by Contractor has ever been settled by payment to the plaintiff of an aggregate amount in excess of \$10,000.00.

**3.7 Membership Denial.** Contractor has never been denied membership or re-appointment of membership on the medical staff of any hospital, and no hospital medical staff membership or clinical privileges of Contractor have ever been suspended, curtailed, or revoked.

### **4. PARTIES' RELATIONSHIP**

**4.1 Relationship of the Parties.** Contractor, at all times will act as an Independent Contractor providing the Services and will not act or hold herself out to third parties as an employee or agent of County in the provision of the Services under this Agreement. The County shall not control how the results or the details of the Services are provided and/or achieved. As an Independent Contractor, Contractor shall supply her own tools, equipment, materials, supplies and/or labor as may be necessary to complete the Services (except as provided for in paragraph 1.2 above in which the County may contract with another to provide the facility and/or equipment) and shall not rely on or

require the County to supply any of the above, unless otherwise specified in this Agreement.

## **5. TAXES AND BENEFITS**

**5.1** County will not withhold income tax or Social Security tax on behalf of the Contractor or any of Contractors partners, employees, subcontractors, or agents. In addition, none of the foregoing will have any claim under this Agreement or otherwise against the County for vacation pay, sick leave, unemployment insurance, worker's compensation, retirement benefits, disability benefits, or employee benefits of any kind. The Contractor will have exclusive responsibility for the payment of all such taxes and arrangement for insurance coverage and will discharge such responsibility fully.

## **6. INCURRING FINANCIAL OBLIGATION**

**6.1** Contractor will incur no financial obligation on behalf of the County without prior written approval of the County. Contractor will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings.

## **7. OTHER PERSONNEL**

**7.1** All salaries, wages, taxes, insurance, worker's compensation insurance and other expenses and benefits incidental to the employment of physicians, non-physicians or other personnel by the Contractor will be the responsibility and obligation of the Contractor.

## **9. CONSULTATION**

**8.1 Consultation.** While this Agreement is in effect, the parties intend that the Contractor shall be the exclusive source of performing the Services for the County. However, the County may allow another pathologist to perform the Services in emergency cases, special circumstances or in cases for which the Contractor or any associates of the Contractor are not qualified or are unable to render services.

## **9. FEES**

**9.1 Fees.** The Contractor shall be compensated in accordance with the Cost Proposal attached hereto in Exhibit "A". This fee schedule may be amended only by the mutual written agreement of the Contractor and the County. The Contractor will bill and collect fees only for actual Services performed on behalf of the County in accordance with the specifications.

## **10. NON-DISCRIMINATION**

**10.1** Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing Services under this Agreement or in the selection of physicians or non-physician employees, or independent contractors.

## **11. REGULATORY REQUIREMENTS**

**11.1** Contractor will perform the Services at all times in compliance with federal, state, and local laws, rules, regulations and all currently accepted and approved methods and practices of the professional specialty of forensic pathology.

## **12. HOLD HARMLESS**

**12.1** The Contractor will indemnify and hold County harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by,

resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Agreement, whether such act, omission, or failure was the Contractor's or that of any person providing services hereunder through or for the Contractor. Upon written notice from the County, the Contractor will resist and defend at his own expense, and by counsel reasonably satisfactory to County, any such claim or action. The Contractor will carry proper insurance with the County as an additional named insured to the extent such is reasonably available.

**12.2** To the extent provided for by law, the County will indemnify and hold the Contractor harmless from any and all claims, actions, liability, or expenses (including costs of settlements, judgments, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging the negligent or intentional actions or omissions of the County, its employees or any failure to perform any obligation undertaken or any covenant made by the County under this Agreement.

### **13. TERMINATION OF AGREEMENT**

**13.1 Term.** The initial term of this Agreement shall be twelve (12) months commencing \_\_\_\_\_ 2010, and shall be renewed for an additional twelve (12) month period unless otherwise terminated as provided herein.

**13.2 Termination without Cause.** The County and the Contractor each shall have the right to terminate this Agreement without cause on sixty (60) days written notice to the other.

**13.3 Termination with Cause.**

A. Termination by County. The County may terminate this Agreement immediately upon the occurrence of any of the following events:

- (1) Any conduct of the Contractor which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the County.

- (2) The failure of Contractor to provide coverage as required by Section 1.8 (Coverage) herein.
- (3) The resignation, expulsion, suspension, disciplining of Contractor or the loss of privileges as a forensic pathologist; the loss of Contractor's professional medical licenses; the loss of Contractor's pathologist board certification in the field of forensic pathology; or the loss of or failure to provide evidence of liability insurance, as required by Section 2.1 (Insurance) herein.
- (4) The conviction of the Contractor of any crime punishable as a felony involving moral turpitude or immoral conduct.
- (5) The death of Contractor or the occurrence of illness or injury reasonably likely to lead to the inability of Contractor to personally perform services under this Agreement for a period in excess of thirty (30) days.
- (6) The failure of Contractor immediately to bar any individual from performing services under this Agreement, if such individual does not meet the qualifications required by this Agreement, if such individual commits a material breach of one of the terms of this Agreement, or if one of the events listed in (1) through (4) above occurs with respect to such individual.
- (7) In addition, if the Contractor commits a material breach of any of the terms of this Agreement, other than those listed in subsections (1) through (6) above, then the County may terminate this Agreement upon no less than thirty (30) days written notice.
- (8). Termination by Contractor. In the event the County breaches any material term of this Agreement, then the Contractor may terminate this Agreement upon no less than thirty (30) days written notice.

**13.4 Non-Interference.** Following the expiration of this Agreement or its termination with or without cause, Contractor agrees to do nothing that may interfere with any County contract with any other individual or entity for the provision of the Services.

**14. NOTICES**

**14.1 Notice.** Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to the Contractor: \_\_\_\_\_

If to County: \_\_\_\_\_

**15. LAW**

The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Texas.

**16. NO IMPLIED WAIVER**

Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

**17. SEVERABILITY**

The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

**18. ASSIGNABILITY**

The Contractor may not assign Contractor's rights or obligations under this Agreement without the County's written consent. Any assignment in violation of this

provision shall give the County the right to terminate this Agreement immediately, upon written notice to the Contractor.

#### **19. AMENDMENTS**

Any amendments to this Agreement will be effective only if in writing and signed by the County and the Contractor.

#### **20. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

#### **21. INTERPRETATION**

The defined terms used herein are for convenience only and do not limit the contents of this Agreement.

#### **22. NO WAIVER**

No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

#### **23. VARIATIONS OF PRONOUNS**

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

#### **24. AUTHORIZATION FOR AGREEMENT**

The execution and performance of this Agreement by County and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Contractor and County in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES on this the \_\_\_\_\_ day of \_\_\_\_\_  
, 2010.

\_\_\_\_\_, M.D.

\_\_\_\_\_  
**HIDALGO COUNTY**

\_\_\_\_\_  
Rene A. Ramirez, County Judge

**ATTESTED**

\_\_\_\_\_  
Arturo Guajardo, Jr, County Clerk

Approved as to Form:  
Atlas & Hall, L.L.P.

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