

STATE OF TEXAS §
 § CONTRACT No. 2010-002-05-10
COUNTY OF HIDALGO §

CONTRACT FOR SERVICES

THIS Agreement, made and entered into this 10th day of May, 2011, by and between HIDALGO COUNTY, TEXAS (the "County") and NORMA JEAN FARLEY, M.D., an individual engaged in the practice of medicine and specializing in forensic pathology (the "Contractor").

W I T N E S S E T H:

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 performance 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. 2010-002-06-30-otm” (see Memorandum dated September 24, 2010 attached hereto as Exhibit “A”); the Curriculum Vitae of Norma Jean Farley, M.D., which contains the Contractor’s bid response (see Exhibit “B” attached hereto); and the Hidalgo County Request for Qualifications Bid No. 2010-002-06-30-otm” (see Exhibit “C” attached hereto), all of which are incorporated by reference herein and made a part of this Agreement;

WHEREAS, Hidalgo County has entered into a service contract with Ceballos Funeral Home, Inc. (RFP No. 2010-243-07-06-YZV) for a facility at which the Contractor will perform all autopsies for Hidalgo County.

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 will provide on call services 24 hours a day and shall provide autopsy services between 8:00 a.m and 5:00 p.m., Monday through Friday and will have a pathologist, pathology assistant or investigator to be available for after hours calls from

law enforcement, tissue procurement agencies, justices of the peace, and the County District Attorney's office as more fully described in the Contractor's bid response attached herein as Exhibit "B";

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 (as needed) 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.”

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

1.2 Equipment and Supplies. Contractor shall provide the components necessary to perform an autopsy, including but not limited to providing an X-ray machine, an X-ray developer, reference histology lab services and reference toxicology lab services. Contractor agrees to use proper professional standards and devote such time necessary to provide the Services on an as needed basis. Contractor will also provide the following equipment and supplies for the performance of autopsies:

1. Tissue containers (at contracted facility only)
2. Counter top digital scale (for infants)
3. Formalin (at contracted facility only)

4. Camera, digital
5. Large glass measuring cup
6. Ladle (small stainless steel-1 prefer plastic)
7. Tea Strainer
8. Colander
9. Autopsy knives (do not need disposable)
10. Rib cutters
11. Mayo dissecting scissors
12. Autopsy Saws
13. Short scissors
14. Forceps (3 toothed okay)
15. Microscope
16. Histology Laboratory (reference)
17. Toxicology Laboratory (reference)
18. X-ray portable and processor (with mobile imaging at first)

Any additional equipment and/or supplies necessary to perform the Services identified in this Agreement shall be invoiced separately with supporting documentation showing the need for the additional equipment and supplies, and with prior written approval from the District Attorney's office.

The County has also secured a contract with a third party (RFP No. 2010-243-07-06-YZV) for a facility at which autopsies will be performed. This third party vendor shall be responsible for providing the remaining necessary equipment and supplies to the Contractor for the performance of autopsies until an appropriate County Morgue Facility has been designated.

The equipment and supplies provided by Contractor may change, as necessary and by agreement of the parties, at the time an appropriate County Morgue Facility has been designated.

1.3 Logistics. Contractor will provide personnel, space, equipment, and supplies necessary to perform autopsy services as more fully described in the Contractor's

bid response attached herein as Exhibits "A" and "B". HOWEVER, SHOULD THE COUNTY SECURE A DESIGNATED FACILITY AT WHICH THE CONTRACTOR WILL PERFORM AUTOPSIES AND SHOULD THE COUNTY ALSO SECURE NECESSARY EQUIPMENT, INSTRUMENTS AND SUPPLIES FOR THE PERFORMANCE OF AUTOPSIES (THROUGH ITS FACILITY VENDOR), THEN THE PARTIES AGREE THAT THE AMOUNT OF THIS AGREEMENT SHALL INCLUDE ONLY THE CONTRACTOR'S SERVICES FOR THE PERFORMANCE OF AUTOPSIES AND RELATED SERVICES AND NOT THE COST OF A FACILITY AND/OR EQUIPMENT (as more fully described in the Contractor's bid response attached herein as Exhibits "A" and "B").

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 **Availability of Contractor and Commencement of Autopsies.** Contractor agrees to provide on call services 24 hours a day and shall provide autopsy services between 8:00 a.m and 5:00 p.m., Monday through Friday (except on County holidays) and will have a pathologist, pathology assistant or investigator to be available for after hours calls from law enforcement, tissue procurement agencies, justices of the peace, and the County District Attorney's office as more fully described in the Contractor's bid response attached hereto as Exhibit "B".

1.9 **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. The County shall not unreasonably withhold acceptance of any such arrangements. Contactor 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 forty-eight (48) hours. FAILURE TO PROVIDE ADEQUATE COVERAGE AS DESCRIBED HEREIN IS AN EVENT FOR WHICH THIS AGREEMENT MAY BE IMMEDIATELY TERMINATED WITHOUT PENALTY. 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, upon reasonable determination by the District Attorney, shall result in the County having sole discretion to terminate this agreement effective immediately.

1.10 Method for Providing Service Orders to Contractor. The County shall make all requests for autopsies in writing, either by fax, personal delivery or by documents accompanying the corpse to the autopsy facility.

1.11 Criminal Proceedings. Contractor agrees to testify at the County's request, when necessary, in all criminal proceedings involving homicides and where an autopsy has been performed, 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, written reports including but not limited to all findings from the completed autopsy and all laboratory results. All reports, findings and results shall be submitted no later than thirty (30) business days after an autopsy and all ancillary tests are completed (i.e. toxicology, neuropathology, ballistics, DNA, sexual assault kit, etc.), with preliminary findings to be submitted to the Hidalgo County District Attorney's office or requesting agency within five (5) business days after the performance of an autopsy and/or by agreement of the parties.

1.12 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.

1.13 **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 and will provide general liability insurance covering her activities in providing services for the County in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et. seq., Texas Civil Practice and Remedies Code. The County shall be named as an Additional Insured under the Contractor's liability insurance policy. 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.

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. OBLIGATIONS OF THE COUNTY

4.1 The County shall be obligated to provide a facility for purposes of allowing Contractor to fulfill her obligations under this Agreement.

4.2 At the time a dedicated County morgue facility is established, the County shall provide the available funding to secure necessary personnel and/or staff as described in the attached Exhibit "A".

4.3 Contractor agrees to make serving the County her medical practice priority. Contractor may practice at other institutions and locations when, in the reasonable opinion of the County District Attorney, such other medical practice does not impair the fulfillment of her obligations under this Agreement or diminish the quality of service received by Hidalgo County. If, in the reasonable opinion of the County District Attorney, the provision

of Services are impaired or diminish due to another medical practice of the Contractor, then the County may unilaterally terminate this Agreement immediately without penalty.

4.4 Delivery of Corpses. The County, through a third party vendor (RFB. 2010-003-09-28-YZV), shall be responsible for the transport and delivery of corpses to the facility where autopsies shall be performed. The transport and/or delivery of the corpses shall not be the responsibility of the Contractor.

5. PARTIES' RELATIONSHIP

5.1 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 (as specified in paragraphs 1.2 above) and shall not rely on or require the County to supply any of the above, unless otherwise specified in this Agreement.

6. TAXES AND BENEFITS

6.1 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.

7. INCURRING FINANCIAL OBLIGATION

7.1 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.

8. OTHER PERSONNEL

8.1 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

9.1 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 the event the Contractor is unavailable.

10. FEES

10.1 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. The County will pay Contractor no later than thirty (30) days from the time the County is invoiced for the Services.

11. NON-DISCRIMINATION

11.1 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.

12. REGULATORY REQUIREMENTS

12.1 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.

13. INDEMNIFICATION

13.1 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 TO THE EXTENT CONTRACTOR'S LIABILITY CARRIER PROVIDES A DEFENSE AND INDEMNITY. UPON WRITTEN NOTICE FROM THE COUNTY, THE CONTRACTOR WILL RESIST AND DEFEND, 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, AS PROVIDED IN PARAGRAPH 2.1 ABOVE.

13.2 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.

14. TERMINATION OF AGREEMENT

14.1 Term. The initial term of this Agreement shall be twenty-four (24) months commencing May 10, 2011 and ending on May 9, 2013.

14.2 Renewal Option. The County shall have the sole option to extend this Agreement for an additional one (1) year term under the same fees, rates, terms and conditions. County shall provide the Contractor a minimum of sixty (60) days notice of its intent to renew this Agreement for the additional one (1) year term.

14.3 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 (60) 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.

(B). 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.

14.4 Termination without Cause. The parties may terminate this Agreement without cause upon no less than sixty (60) days written notice.

14.5 Termination by mutual agreement. In the even a Medical Examiner System is established by the County, this Agreement will be terminated by mutual agreement of the parties.

14.6 Non-Interference. Following the expiration of this Agreement or its termination with or without cause, Contractor shall not interfere with any County contract with any other individual or entity for the provision of the Services.

15. NOTICES

15.1 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: Norma Jean Farley, M.D.
200 S. 10th St. Ste-1105
McAllen, Texas 78501

If to County: Ramon Garcia County Judge
100 E. Cano
Edinburg, Texas 78540

15. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND IS PERFORMABLE IN HIDALGO COUNTY, 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. COMMITMENT OF CURRENT REVENUES

17.1 In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon thirty (30) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex.Loc. Govt. Code Ann. § 271.903.

18. SEVERABILITY

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

19. 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.

20. AMENDMENTS

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

21. ENTIRE AGREEMENT

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

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 _____, 2011.

Norma Jean Farley, M.D.

HIDALGO COUNTY

Ramon Garcia, County Judge

ATTESTED

Arturo Guajardo, Jr, County Clerk

Approved as to Form:
Josephine L. Ramirez,
Assistant Criminal District Attorney-County Affairs

By:

APPROVED BY COMMISSIONERS COURT: _____