

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

CONTRACT FOR SERVICE

C-20-519-11-03

THIS Agreement, made and entered into this **03rd day of November 2020**, by and between **HIDALGO COUNTY, TEXAS** (the "County") and **Denika Adams, D.O.**, 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 and related services 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 sought by the County to provide turnkey autopsies and related services more particularly described in this Agreement and the County's Requests for Qualifications (RFQ) which is incorporated herein by reference and made part of this Agreement for all purposes;

WHEREAS, Contractor responded to the RFQ with a statement of qualifications (SOQ) including a Curriculum Vitae attached hereto as Exhibit "A" and after the award provided a Cost Proposal attached as Exhibit "B", all of which are incorporated by reference herein and made a part of this Agreement for all purposes;

WHEREAS, County has determined that the proper, orderly and efficient delivery of quality autopsy services, as described in this Agreement, the RFQ and Exhibits A, 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, autopsy technician or other employee to be available for after hours calls from law enforcement, transport service, justices of the peace, and the County District Attorney's office as more fully described in this Agreement, the RFQ and in Exhibit "A" attached 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 post mortem examination and related services as referenced in this Agreement and County's RFQ to the County during the term of this Agreement, including but not limited to:

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.

Unless otherwise indicated, use of the word autopsy in this agreement shall also include all other post mortem examinations and related services as referenced in this Agreement and County's RFQ.

1.2 Equipment and Supplies. County shall provide the components necessary to perform an autopsy and other post mortem examinations, including, but not limited to those provided in the County's Request for Qualifications. Contractor agrees to use proper professional standards and devote such time necessary to provide the Services on an as needed basis. The equipment and supplies provided by County may change, as necessary and by written agreement of the parties. If it becomes necessary, the Contractor should be able to provide/obtain all equipment and all supplies necessary to perform the autopsies and other services including but not limited to those found in the RFQ.

1.3 Logistics. County will provide personnel, equipment, and supplies necessary to perform autopsy services as more fully described in this Agreement, the RFQ and in the attached Exhibit "A", which is made part of this Agreement.

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 and secure filing system, accurate and complete records of each autopsy performed. Contractor shall be responsible for maintaining any electronic filing system purchased by Contractor up to date and secure in accordance with general IT standards. Records written, produced, collected, assembled, or maintained in connection with services provided under this

agreement, shall be the considered records held on behalf of the County of Hidalgo. Upon termination of this Agreement, Contractor agrees to copy and deliver to County any electronic County of Hidalgo folders and/or autopsy photographs to County, on a County storage device, 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 (at Contractor's expense) a pathologist, autopsy technician, or other employee to be available for after hours calls from law enforcement, transport service, justices of the peace, and the County District Attorney's office as more fully described in this Agreement, the RFQ and in Exhibit "A" attached herein.

1.9 Coverage. Contractor will be responsible for making arrangements acceptable to, and at no additional expense to the County, for adequate autopsy coverage. The County shall not unreasonably withhold acceptance of any such arrangements. 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 may use qualified physicians to cover services during any absence exceeding 48 hours or to assist in the autopsy facility at her/his discretion, so long as the Contractor provides the name(s) and a record of qualifications of any physician(s) engaged to perform County of Hidalgo autopsies prior to the initial visit by physician(s). **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 by the Contractor, or criminal proceeding involving homicides where an autopsy was not performed but materials were reviewed by the Contractor, 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 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/his 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.

2.3 Other Insurance: the Contractor will carry any other insurance listed in the RFQ or which may be required by law no less than the minimum amounts prescribed by law or otherwise required. The County shall be named as an Additional Insured to the extent applicable and 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.

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/his 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/his obligations under this Agreement.
- 4.2 The County may provide the available funding to secure necessary personnel and/or staff, including but not limited to Autopsy Technicians, computers, printers, and other equipment necessary to assist the Autopsy Technicians, other County staff, and/or County contractor(s), or as required by this Agreement and as more particularly described herein the attached Exhibit

"A".

4.3 Contractor agrees to make serving the County her/his medical practice priority. Contractor may practice at other institutions and locations when, in the reasonable opinion of the County, such other medical practice does not impair the fulfillment of her/his obligations under this Agreement or diminish the quality of service received by Hidalgo County. If, in the reasonable opinion of the County, 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, shall be responsible for the transport and delivery of corpses to and from the facility where autopsies shall be performed, unless arrangements are agreed upon by the County and 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/himself 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/his 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 or the RFQ.

5.2 Non-Exclusive Services. Hidalgo County reserves the right to request these services from other sources other than the Contractor and shall not be in violation of any terms or conditions of this Agreement. The County assumes no liability or obligation for payment to the Contractor for work performed or costs incurred by the Contractor prior to the date authorized by the County

for the Contractor to begin work, during periods when work is suspended, or subsequent to the Termination Date.

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 absent or may not be available for a period exceeding forty-eight (48) hours.

10. FEES

10.1 Fees. The Contractor shall be compensated in accordance with the Cost Proposal attached hereto in Exhibit "B". 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 in accordance with the Texas Prompt Payment Act, Tex.Govt.Code Ch. 2251.

11. NON-DISCRIMINATION

11.1 Contractor will not discriminate on the basis of race, religion, color, national origin, sex age or disability, or any other protected class under law 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. Initial term of contract will commence upon award and execution of contract for a two (2) year term with the County's sole option to renew for an additional one (1) year term under the same fees/rates, terms and conditions.

14.2 Termination with Cause.

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

- (1) To the extent provided under the law, 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 (120) 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.

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

14.4 Termination by mutual agreement. In the event a Medical Examiner System is established by the County, this Agreement will be terminated.

14.5 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

Denika Adams, D.O.
121 Naples St.
Corpus Christi, TX 78404

If to County:

Hidalgo County
Attention: County Judge
100 East Cano, 2nd Floor
Edinburg, Texas 78539

16. LAW

16.1 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.

17. MISCELLANEOUS

17.1 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.

17.2 Commitment of Current Revenues. 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 in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1966).

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

17.4 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.

17.5 Immunities. Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

17.6 Required Contract Provision for Contracts Subject to Federal Award (if applicable): For County contracts subject to Federal award, the required contract clauses of 2 CFR 200.236 and the Federal Emergency Management Agency (FEMA) are incorporated herein and made part of this agreement for all purposes.

17.7 Amendments. Any amendments to this Agreement will be effective only if in writing and

signed by the County and the Contractor.

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

17.9 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.

17.10 Variation 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.

17.11 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.

17.12 Additional Documents. The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

SIGNATURE PAGE TO FOLLOW

EXECUTED and effective as of the day and year first written above.

COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

Printed Name: _____

Title: _____

Approved By Commissioners Court On: _____

APPROVED AS TO FORM:
Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

Robert Viña, III, Assistant District Attorney

C-20-519-00-00

EXHIBIT "A"
CURRICULUM
VITAE
FORENSIC
PATHOLOGIST

C-20-519-00-00

EXHIBIT "B"
FEE PROPOSAL
FORENSIC
PATHOLOGIST

C-20-519-00-00

EXHIBIT "C"
INSURANCE
REQUIREMENTS
FORENSIC
PATHOLOGIST