

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

CONTRACT FOR SERVICE
C-XX-XXX-XX-XX

THIS Agreement, made and entered into this _____, day of _____ 2021, by and between **HIDALGO COUNTY, TEXAS** (the "County") and _____, 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 in accordance with Chapter 49 of the Code of Criminal Procedure;

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

WHEREAS, County desires to contract with a competent licensed physician to provide professional turnkey autopsies and related services more particularly described in this Agreement.

WHEREAS, Contractor submitted both a cost proposal to provide professional turnkey autopsies and related services for Hidalgo County, attached hereto as Exhibit "A"; and Contractor's Curriculum Vitae attached hereto as Exhibit "B"; all of which are incorporated by reference herein and made part of this Agreement;

WHEREAS, pursuant to Texas Government Code Section 2254.004 and Section 262.024, "The Professional Services Procurement Act," the County can select and contract with a professional services provider on the basis of demonstrated competence and qualifications to perform the services; and for a fair and reasonable price to assist the County by providing said services; and

WHEREAS, County has determined that the proper, orderly and efficient delivery of quality autopsy services, as described in this Agreement and Exhibit “A”-Cost Proposal, 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;

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**

1.1 Medical Services. Contractor agrees to provide Services to the County during the term of this Agreement, including but not limited to:

- 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, as well as chemical tests of body fluids”.

1.2 Standards. Contractor agrees to use proper professional standards as set by the National Association of Medical Examiners and/or other industry national organizations, and devote the

time necessary to provide the Service on an as needed basis.

- 1.3 Priority.** Contractor agrees to make serving the County his/her medical practice priority. Contractor may practice at other institutions and locations, so long as 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, 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.
- 1.4 Logistics.** Contractor, as applicable, will provide personnel necessary to perform autopsy services as more fully described in this Agreement.
- 1.5 Location.** Contractor agrees to perform Services at the County Morgue facility or a location as designated by the County. Fees will remain the same regardless of location. All morgue expenses will be the responsibility of the County unless otherwise indicated or agreed.
- 1.6 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.
- 1.7 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.
- 1.8 Records.** Records written, produced, collected, assembled or maintained in connection with services provided under this agreement shall be considered property of the County and held on behalf of the County. The Contractor shall provide to the County accurate and complete records of each autopsy or related service performed either on the County's electronic server or by hardcopy in conjunction with all applicable confidentiality laws, regulations and County policy. Contractor may maintain records in connection with services provided under this agreement. If records are maintained, they should be kept in a private and secure manner, and any electronic

storage/filing system should be kept up to date and secure in accordance with general IT standards. Upon termination of this Agreement, Contractor shall provide any records in its possession in connection with services provided under this agreement that were not previously provided within thirty (30) days.

1.9 Education. Contractor will be expected to attend conferences and meetings at Contractor's own expense, provided such attendance does not impair Contractor's performance or obligations under this Agreement.

1.10 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, 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.

1.11 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. 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 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.

- 1.12 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.
- 1.13 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 in accordance with the National Association of Medical Examiners and/or other industry national organization standards 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.
- 1.14 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; as well as, at all times in compliance with federal, state, and local laws, rules, regulations.
- 1.15 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.
- 1.16 Contact.** The Contractor shall provide his/her own telephone and pager numbers or other relevant

contact information to the appropriate County officials.

1.17 Contractor's Employees. 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.

1.18 Contractor's Expenses. 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.

1.19 Insurance Coverage. Contractor shall provide the following insurance coverage.

a. **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 his/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.

b. **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.

1.20 Contractor's Covenants and Warranties. Contractor makes the following representations and warranties to County:

- a. **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.
- b. **Suspension of License.** Contractor has not practiced medicine in any state in which her license has ever been suspended or revoked.
- c. **Discipline.** Contractor has never been reprimanded, sanctioned, or disciplined by a licensing board or state or local medical society or specialty board.
- d. **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.
- e. **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.
- f. **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.

2. OBLIGATIONS OF THE COUNTY

- 2.1 **Location.** County shall be obligated to provide a facility for purposes of allowing Contractor to fulfill obligations under this agreement. Services will be performed at the County Forensic Center facility or as designated by the County. Fees will remain the same regardless of location. All morgue expenses will be the responsibility of the County unless otherwise indicated or agreed.
- 2.2 **Turnkey Service; Medical/Assistance Staff and Autopsy Facility,** The County may provide the available funding to secure necessary personnel and/or staff, including but not limited to Forensic Center Autopsy Technicians, to assist with Services; Forensic Center Administrator, as well as, computers, printers, and other equipment necessary to assist the Autopsy Technicians, Administrator or other County staff, and/or County contractor(s), or as required by this Agreement. If Contractor (Physician) engages the services of any other medical assistants to render autopsies or other staff, it will be at NO additional expense or liability to the County of Hidalgo. Contractor (Physician) shall have access to an Autopsy Facility within Hidalgo County as designated by the County. County shall allot Contractor an office area at the County Forensic Center Facility and

have reasonable access to County office equipment on site at the Autopsy Facility for purposes of providing services.

2.3 Equipment and Supplies. County 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. County will also provide equipment and supplies for the performance of autopsies. The equipment and supplies provided by County may change, as necessary and by written agreement of the parties. Equipment includes but is not limited to:

- a. Tissue containers (at contracted facility only);
- b. Counter top digital scale (for infants);
- c. Formalin (at contracted facility only);
- d. Camera, digital;
- e. Large glass measuring cup;
- f. Ladle (small stainless steel-1 prefer plastic);
- g. Tea strainer;
- h. Colander;
- i. Autopsy knives (do not need disposable);
- j. Rib Cutters;
- k. Mayo dissecting scissors;
- l. Autopsy Saws;
- m. Short scissors;
- n. Forceps (3 toothed okay)
- o. Microscope;
- p. Histology Laboratory (reference)-(with Contractor input as to preference);
- q. Toxicology Laboratory (reference))-(with Contractor input as to preference);
- r. X-ray portable and processor;

2.4 Laboratories. County shall contract with laboratory(ies) accredited according to rules set forth by Department of Public Safety to perform a forensic analysis for the purposes of introducing physical evidence for use in a criminal proceeding and will be responsible for any laboratory fees. Contractor agrees that said contracts may require denoting Contractor as the Physician in charge to the extent necessary to procure said contracts.

2.5 Transport. County at its discretion shall transport or contract with a third party vendor to transport

dead bodies to and from the County facility unless arrangements are agreed upon between parties.

- 2.6 Confirmation of Information.** County reserves the right to confirm/verify any and all documentation submitted not limited to (Curriculum Vitae, Licenses, Certifications, Letter of “Good Standing” from Medical Examiners Board, Professional Liability Insurance).

3. PARTIES' RELATIONSHIP

- 3.1 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. County will provide no other items other than those that may be necessary to provide services.

- 3.2 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.

4. TAXES AND BENEFITS

- 4.1** 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.

5. FEES

- 5.1 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 in accordance with the Texas Prompt Payment Act, Tex.Govt.Code Ch. 2251.

6. NON-DISCRIMINATION

6.1 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. Contractor agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964, as amended and related state and federal law.

7. INDEMNIFICATION

7.1 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.

7.2 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.

8. TERMINATION OF AGREEMENT

8.1 **Term.** Initial term of contract will commence upon award and execution of contract for a two year term with the County's sole option to renew for an additional two one (1) year terms under the same fees/rates, terms and conditions.

8.2 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 (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.

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.

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

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

8.5 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.

9 **NOTICES**

9.1 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:

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

10 LAW

10.1 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.

11. MISCELLANEOUS

11.1 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.

11.2 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).

- 11.3 Severability.** The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 Amendments.** Any amendments to this Agreement will be effective only if in writing and signed by the County and the Contractor.
- 11.8 Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.
- 11.9 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.
- 11.10 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.

11.11 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.

11.12 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.

CONTRACTOR

NAME

COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

By: _____

Printed Name: _____

Title: _____

Approved By Commissioners Court On: _____

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

Victor M. Garza, Assistant District Attorney

EXHIBIT "A"
FEE PROPOSAL
FORENSIC
PATHOLOGIST

DRAFT

EXHIBIT "B"
CURRICULUM VITAE
FORENSIC PATHOLOGIST

DRAFT

EXHIBIT "C"
INSURANCE
REQUIREMENTS
FORENSIC
PATHOLOGIST