

**INTERLOCAL AGREEMENT BETWEEN
THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON
AND
FORT BEND COUNTY
FOR UTMB FORENSIC PATHOLOGY SERVICES**

This Interlocal Agreement is between Fort Bend County, Texas (the "COUNTY"), and The University of Texas Medical Branch at Galveston, for and on behalf of its Department of Pathology ("UTMB") to perform forensic pathology services for the COUNTY.

PREAMBLE

WHEREAS, the COUNTY is authorized to establish and provide for medical examiner services and to appoint a medical examiner pursuant to Article 49.25, Texas Code of Criminal Procedure; and,

WHEREAS, UTMB has qualified personnel to operate in the capacity of a medical examiner;

WHEREAS, pursuant to provisions of the Texas Government Code Chapter 791, Interlocal Cooperation Act, the parties are authorized to enter into a contract with each other; and,

NOW THEREFORE, the parties agree that UTMB will provide certain medical examiner services for the COUNTY in accordance with the following terms and conditions.

I. UTMB RESPONSIBILITIES

- 1.1 **Personnel.** Under this Agreement, UTMB's Department of Pathology agrees to provide UTMB faculty physicians and associated staff necessary to perform medical examiner services as requested by COUNTY. UTMB will provide at least one faculty physician (the "Consulting Forensic Pathologist") who will provide medical examiner services for COUNTY. That individual shall be licensed by the Texas State Board of Medical Examiners and be board certified in the field of forensic pathology. The Consulting Forensic Pathologist may appoint other UTMB Department of Pathology physicians licensed by the Texas State Board of Medical Examiners to assist in the performance of the Consulting Forensic Pathologist's duties. Residents-in-Training may participate in autopsies under supervision of a faculty physician.
- 1.2 **Autopsies.** The Consulting Forensic Pathologist shall perform those duties required of a medical examiner with respect to autopsies excluding site investigations, in accordance with the laws of the United States and the State of Texas.
 - 1.2.1 Autopsies shall determine the manner and cause of death to the extent such can be ascertained, including toxicology examinations when appropriate where death does not appear from natural causes or is undetermined. The Consulting Forensic Pathologist shall provide a written autopsy report to the requesting authority/agency within a reasonable time period and provide an initial summary form to expedite certification of death and the flow of information.

- 1.2.2 Autopsies shall be fully documented through the use of reputable digital photographic techniques, utilizing secure and unalterable computer storage techniques), laboratory analysis of tissue and other samples deemed necessary by the Medical Examiner, and written reports. Tissue samples will be maintained by UTMB and in a sufficient quantity to allow for future testing.
- 1.2.3 Autopsies shall be performed under the direction of the Galveston County Medical Examiner at the Galveston County Medical Examiner's Office located at 6607 Hwy 1764, Texas City, Texas 77591. Fees charged by Galveston County for usage of its facility are incorporated into the compensation set forth in Section 2, below. The facility shall be suitable for autopsy examinations, including access to x-ray facilities, and a professional support staff shall be provided as needed. In consultation with the County, the Galveston County Medical Examiner may request that an autopsy be performed at UTMB or other suitable facility by an appropriately licensed physician.
- 1.2.4 Records of autopsy reports, lab tests and reports, data, documents, x-ray, photographs, investigator reports, correspondence, magnetic recording, or other tangible item ("autopsy records") relating to COUNTY autopsies shall be stored in the records of the Consulting Forensic Pathologist. For purposes of this contract solely, the Consulting Forensic Pathologist shall be deemed to be the Custodian of Records for the records relating to any COUNTY autopsy. A copy of such information shall be provided to COUNTY immediately upon completion of a final report. UTMB shall perform all record management and storage tasks relating to autopsy records. UTMB shall allow COUNTY access to COUNTY autopsy records for copying purposes. UTMB shall only be reimbursed for the actual cost of the copies to UTMB. Fees for public request of copies of autopsy records shall be in accordance with Health & Safety Code Section 671.012 and rules adopted by the General Services Commission for charges for public records. COUNTY may at its own expense make copies of documentation for any legal purpose.
- 1.2.5 The Consulting Forensic Pathologist shall make a report on a quarterly basis the total number of autopsies performed for the COUNTY.
- 1.2.6 The Consulting Forensic Pathologist shall conduct autopsies at the written authorization of any County Justice of the Peace or other person(s) authorized by law to order an autopsy. The written authorization will be provided to the consulting forensic Pathologist by the COUNTY without undue delay. No autopsy will be performed prior to the receipt by the consulting forensic Pathologist of the written authorization.
- 1.3 Other Duties. In addition to the above, UTMB will also perform these duties:
 - 1.3.1 Provide telephone consultation with a pathologist 24 hours a day in response to incoming inquiries.
 - 1.3.2 Provide law enforcement briefings and pre-trial conferences at UTMB as necessary on autopsy cases.
 - 1.3.3 Provide one hour notice prior to start of autopsy if County agency makes the request in writing on the Investigator's Report.

- 1.4. **Standard of Performance.** The Consulting Forensic Pathologist shall perform all services and exercise all discretionary powers in a manner consistent with the applicable canons of forensic medicine, professional ethics, and professional judgment.
- 1.5 **Court Appearances.** UTMB agrees that UTMB personnel performing services pursuant to this Agreement shall appear as reasonably necessary during grand jury proceedings, court hearings, and trials in Fort Bend County at the written request of the COUNTY'S District Attorney. However, UTMB shall not be responsible for court appearances under this section relating to autopsy services involving non-UTMB personnel or non-UTMB experts. In the event of court appearances where neither the COUNTY nor the State is a party to the proceeding, or in those court appearances under this section relating to autopsy services involving non-UTMB personnel, UTMB may charge the non-COUNTY party any fee in connection with its participation in the court proceedings.

II. COUNTY RESPONSIBILITIES

2.1 Compensation

- a. **Compensation for services.** For services performed by the Medical Examiner, Deputy Medical Examiner(s), and staff employed at the Medical Examiner's Office, the County will pay UTMB in accordance with the terms of this Agreement. UTMB shall submit invoices to the County no more than monthly but no less than quarterly. Each payment shall be paid within thirty (30) days of receipt of invoice by County and in accordance with provisions of Texas Government Code Chapter 2251, commonly called the Texas Prompt Pay Act. All payments shall be made payable to UTMB and mailed to the following:

The University of Texas Medical Branch at Galveston
Post Office Box 4786-750
Houston, Texas 77231-04786

- b. **Fees and Payment.** During the term of this Agreement, the COUNTY shall pay for each full autopsy and for each external view autopsy performed due and payable within thirty (30) days of receipt of invoice by County. The full autopsy fee includes the autopsy, report, toxicology screen if required, routine slides and histology, routine x-rays if required, pathologist consultation and court testimony. Any complicated, non-routine testing such as, but not limited to, non-routine toxicology, non-routine radiographic studies, trace elements and dental work, shall be charged to the County at UTMB's cost in addition to the fees below. The following fees shall be made payable in accordance with 2.1:

- (i) **\$2,600** for each full autopsy performed; and
- (ii) **\$ 950.00** for each external view autopsy performed

- c. It is expressly understood and agreed that COUNTY has available the total maximum sum of funds hereinafter certified available by the County Auditor for the purpose of satisfying COUNTY's obligations under the terms and provisions of this Agreement; that notwithstanding anything to the contrary, or that may be construed to the contrary, the

liability of COUNTY as to payment under the terms and provisions of this Agreement is limited to this sum, plus additional amounts of funds from time to time certified available pursuant to Sections 111.061 through 111.073 of the Local Government Code, as amended, for the purpose of satisfying COUNTY's obligations under the terms and provisions of this Agreement; and that when and if all the funds so certified are expended for the purpose of satisfying COUNTY's obligations under the terms and provisions of this Agreement, the sole and exclusive remedy of UTMB is to terminate this Agreement.

- 2.2 Court Appearances.** COUNTY agrees to use its best efforts to schedule any necessary testimony by the Consulting Forensic Pathologist in a manner that will provide a minimum amount of disruption to the Consulting Forensic Pathologist's routine.
- 2.3 COUNTY DUTIES.** COUNTY agrees to perform the following duties:
- 2.3.1 Provide legal authorization for autopsy examination to the Consulting Forensic Pathologist prior to examination.
 - 2.3.2 Provide necessary information, including related police reports, medical records, names of treating physicians, allied information, and support necessary for an informed pre-examination and review.
 - 2.3.3 Provide the body with clothing and, if all or part of the clothing has previously been removed, provide it with the body for examination, correlation, and documentation.
 - 2.3.4 Provide any items associated with treatment and/or lifesaving attempts undisturbed and, if necessary, assist in distinguishing features of medical/surgical treatment from those due to injury. When available, obtain and forward for analysis any blood, body fluid or other such specimens obtained during life.
 - 2.3.5 Provide for examination any medications prescribed for, or thought to have been used by, the deceased.
 - 2.3.6 Provide for examination any weapons, ammunition, instruments, or case-related items such as suspected suicide notes, or copies of notes, especially any that are found on/about the person of the deceased. If weapon is not provided, will provide detailed description with appropriate measurements.
 - 2.3.7 If the identity of the deceased is unknown or in doubt, help acquire any information, items or records necessary to help establish identification by scientific means.
 - 2.3.8 In the event the next-of-kin should request tissue or organ donation, coordinate procedures with the Consulting Forensic Pathologist to promote optimum handling and to ensure that appropriate examination can be completed.
 - 2.3.9 Transport the body to and from the morgue to the autopsy room at the location designated in 1.2.3.
 - 2.3.10 If requested, send an authorized representative to take possession of items of value or evidence that may be discovered.
 - 2.3.11 Provide the necessary personnel to perform any investigatory functions and related administrative support for crime scenes and death sites.
 - 2.3.12 Notify Consulting Forensic Pathologist of any severely abusively injured child at time of hospitalization.

- 2.3.13 Promptly at the request of the consulting Forensic Pathologist, the COUNTY will make arrangements to remove from the Medical Examiner's office the remains of the deceased after the performance of the autopsy if the next-of-kin have not been informed of the death or no next-of-kin has been located or identified.

III. MUTUAL AGREEMENTS

3.1 Indemnification:

- 3.1.1 To the extent authorized by the laws and constitution of the State of Texas, the COUNTY agrees to hold the State of Texas, the Board of Regents of The University of Texas System, UTMB, its officers, employees, and agents harmless from and indemnify each of them against any and all claims, actions, damages, suits, proceedings, judgments, and liabilities, excluding attorney fees, for personal injury, death, or property damage resulting from the acts or omissions of COUNTY or its agents, or employees.
- 3.1.2 To the extent authorized by the laws and constitution of the State of Texas, UTMB agrees to hold the COUNTY, its officers, employees, and agents harmless from and indemnify each against any and all claims, actions, damages, suits, proceedings, judgments, and liabilities, excluding attorney fees, for personal injury, death, or property damage resulting from the acts or omissions of UTMB or its agents, or employees.

- 3.2 **Insurance.** UTMB represents and warrants to COUNTY that UTMB shall maintain in full force and effect during the term of this Agreement self-funded professional liability coverage for designated faculty physicians known as The University of Texas System Medical Malpractice Self-Insurance Plan. Liability for the tortious conduct of all other UTMB employees including house staff is provided for solely by Chapters 101 and 104 of the Texas Tort Claims Act.
- 3.3 **Amendments.** This Agreement may be amended when set forth in writing and signed by the parties to the Agreement.
- 3.4 **Notice.** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be mailed by certified or registered mail addressed as set forth below or at such other address as may be specified by written notice:

UTMB:

Cheryl A. Sadro, CPA, MSM
Executive Vice President and Chief Business & Finance Officer
The University of Texas Medical Branch at Galveston
301 University Boulevard
Galveston, Texas 77555-0128

cc:

Michael Laposata, MD, PhD
Professor and Chair, Department of Pathology
University of Texas Medical Branch at Galveston

301 University Blvd.
Galveston, Texas 77555-0609

COUNTY: Fort Bend County Judge, Robert E. Hebert
401 Jackson
Richmond, Texas 77469

- 3.5 **Term.** Regardless of the date of execution, this Agreement shall be in effect from March 1, 2017 through August 31, 2018, unless terminated earlier as provided herein. The Agreement supercedes any prior agreement between the parties. A subsequent one (1) year term may be effected upon the mutual written consent of the parties. A party may terminate this Agreement for any reason by giving the other party ninety (90) days written notice of such intent to terminate. The parties understand and agree that this Agreement is contingent upon the existence of an agreement between UTMB and the County of Galveston allowing UTMB to use the County's autopsy facilities located in Texas City, or the availability of another suitable forensic facility acceptable to both the County and UTMB.
- 3.6 **Assignment.** Neither party may assign any of the rights or duties created by this contract without the prior written approval of the other party.
- 3.7 **Venue.** This contract is governed by the laws of the State of Texas.
- 3.8 **Severability.** Any invalidity of any part of this contract will not cause the remaining parts hereof to be invalid.
- 3.9 **Waiver.** No waiver of any default by COUNTY in the performance of UTMB will constitute a waiver of any subsequent default.
- 3.10 **Independent Contractor.** UTMB recognizes that it is engaged as an independent contractor and acknowledges that COUNTY will have no responsibility to provide benefits normally associated with employee status. UTMB, in accordance with its status as an independent contractor, agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer or employee of the COUNTY, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits.
- 3.11 **Entire Agreement.** This contract constitutes the entire Agreement between the parties and no oral representation between the parties made prior to or after the execution of this contract will be given any force and effect unless reduced to writing herein.
- 3.12 **HIPAA COMPLIANCE**
Acknowledgment of HIPAA Obligation and Other Regulations Implementing the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d) ("HIPAA"). To the extent County comes into contact with information considered Individually Identifiable Health Information as defined by 42 U.S.C. §1320(d), Protected Health Information or Electronic Protected Health Information (collectively known as "Protected Informa-

tion") as regulated by the Department of Health and Human Services (DHHS) through the adoption of standards, 45 CFR Parts 160 and 164 (Privacy Rule) and 45 CFR Parts 160, 162 and 164 (Security Rule), collectively referred to as "the HIPAA Rules," County agrees to keep private and to secure any information considered Protected Information in accordance with federal law.

- A. County agrees to only use and disclose Protected Information as required to perform the services outlined in this Agreement. County may use and disclose Protected Information for the proper management and administration of the County's operations and for data aggregation services to the extent permitted by the HIPAA Rules.
- B. County will not use or further disclose Protected Information other than as permitted or required under this Agreement or as required by law.
- C. County will use appropriate safeguards to prevent the use or disclosure of Protected Information for any reason other than as provided by this Agreement. County shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Information that it creates, receives, maintains, or transmits on behalf of UTMB.
- D. County agrees to promptly notify UTMB of any use or disclosure of Protected Information not provided for in this Agreement of which it becomes aware. Contactor shall report to UTMB any instances, including security incidents, of which it is aware in which Protected Information is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.
- E. County shall require any agents or subcontractors who receive Protected Information to be bound by the same restrictions and conditions outlined in this Agreement. Additionally, County shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of electronic Protected Information that County creates, receives, maintains, or transmits on behalf of UTMB.
- F. To the extent it is determined County maintains a Designated Record Set, County agrees to follow 45 CFR §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Rules.
- G. County agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from UTMB available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining UTMB's compliance with the HIPAA Privacy Regulations.
- H. After termination of the Agreement, County agrees to return or destroy all Protected Information, if feasible, and, if not feasible, County agrees to continue to protect the Protected Information from wrongful uses and disclosures.
- I. County understands that UTMB may terminate this Agreement immediately if UTMB determines County violated a material term of this Agreement and County's actions are not successful in remedying the breach. If termination is not feasible UTMB may report the problem to the Secretary of Health and Human Services.
- J. County may use and disclose de-identified Protected Information if UTMB approves of the use of de-identified Protected Information and the Protected Information is de-identified in compliance with the HIPAA Rules.

- 3.13 **Dispute Resolution.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by UTMB and COUNTY to attempt to resolve any claim for breach of contract made by COUNTY that cannot be resolved in the ordinary course of business. The Vice President for Business and Administration officer of UTMB shall examine COUNTY'S claim and any counter-claim and negotiate with COUNTY in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by COUNTY; (ii) neither the issuance of this Agreement by UTMB nor any other conduct, action or inaction of any representative of UTMB relating to this Agreement constitutes or is intended to constitute a waiver of UTMB's or the state's sovereign immunity to suit; and (iii) UTMB has not waived its right to seek redress in the courts.
- 3.14 Notwithstanding the foregoing, neither party waives any rights of sovereign immunity to which it may be entitled pursuant to statute or at common law.

EXECUTED this _____ day of _____, 2017

FORT BEND COUNTY

THE UNIVERSITY OF TEXAS MEDICAL
BRANCH AT GALVESTON

By: _____
Robert E. Hebert
County Judge

By: Cheryl A. Sadro
Cheryl A. Sadro, CPA, MSM
Executive Vice President and
Chief Business and Finance Officer

Date: _____

Date: 7/18/17

ATTEST:

Laura Richard , County Clerk

Auditor's Certificate

I hereby certify that funds are available in the amount of \$_____ to accomplish
and to pay the obligation of Fort Bend County.

Ed Sturdivant, County Auditor

Content Reviewed
By: Michael Laposata
Michael Laposata, M.D., Ph.D,
Professor and Chair,
Department of Pathology

Date: 5/16/17

By: Danny O. Jacobs
Danny O. Jacobs, MD, MPH, FACS
Executive Vice President, Provost and
Dean of the School of Medicine

Date: 7/14/17

Reviewed as to Legal Form:

Michelle T. Rangel
Assistant County Attorney

Rex McCallum 6/2/17
Rex McCallum, MD, FACP, FACP Date
Vice President and Chief Physician Executive