

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**INTERLOCAL AGREEMENT BETWEEN
FORT BEND COUNTY
AND
AUSTIN COUNTY
FOR PERFORMANCE OF POSTMORTEM EXAMS**

THIS INTERLOCAL AGREEMENT (the "Agreement") is made pursuant to chapter 791 of the Texas Government Code (the Interlocal Cooperation Act) and chapter 49 of the Texas Code of Criminal Procedure, and is entered into by and between Fort Bend REQUESTING COUNTY , (hereinafter "FBC"), a body corporate and politic under the laws of the State of Texas, and Austin County a body corporate and politic under the laws of the State of Texas, ,Court ("Requesting County").

PREAMBLE

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;

WHEREAS, Fort Bend County has established and maintains the Office of Medical Examiner ("ME Office") as authorized by article 49.25 of the Texas Code of Criminal Procedure;

WHEREAS, the REQUESTING COUNTY does not have a medical examiner, and a justice of the peace is required to conduct an inquest into the death of a person who dies in the county under certain circumstances;

WHEREAS, if the justice of the peace determines that a postmortem examination is necessary, the justice of the peace may order that a postmortem examination of the body be performed by a physician;

WHEREAS, REQUESTING COUNTY is also subject to being ordered to secure postmortem examinations in circumstances other than those found in Chapter 49 of the Texas Code of Criminal Procedure; and

WHEREAS, the REQUESTING COUNTY desires to obtain the services of the Fort Bend County Medical Examiner ("FBCME") to perform postmortem examinations on persons who died in the REQUESTING COUNTY and to provide sworn testimony in connection with any inquest by a justice of the peace or any criminal investigation or prosecution conducted by a prosecuting attorney.

NOW, THEREFORE, FBC and the REQUESTING COUNTY, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

I.
TERM

The term of this Agreement shall begin on October 5, 2020 and end on September 30, 2021, unless terminated in accordance with the provisions contained herein. This Agreement shall automatically renew for a one-year term each October 1 through September 30 on the same terms and conditions, unless the parties change any term(s) by written and executed Amendment or the Agreement is terminated by a party in accordance with Section VI of this Agreement.

II.
DUTIES

A. Request for Service.

1. When a justice of the peace in the Requesting County determines pursuant to Article 49.10 of the Code of Criminal Procedure, that a postmortem examination is necessary on the body of a deceased person who died within their jurisdiction, the justice of the peace may request that the FBCME perform an autopsy.
2. Requesting County may also request service by forwarding an order signed by a TDCJ warden, District Court, or Governor ordering that a postmortem examination be performed by or at Requesting County's expense. An order not signed by a justice of the peace must be accompanied by a written request signed by Requesting County's County Judge's Office to be considered a Request for Services under this Agreement.

B. Postmortem Examinations. Fort Bend, by and through the FBCME, will perform Postmortem examinations as requested in Section IIA of this Agreement. In those cases where a complete autopsy is believed to be unnecessary by the Medical Examiner to ascertain the cause and manner of death, the FBCME will advise Requesting County of this finding and may perform an external examination of the body, which can include taking x-rays of the body and extracting bodily fluids, or tissues for laboratory analysis.

C. Requesting County Responsibilities. Requesting County agrees to perform the following duties:

1. Each request for a postmortem examination shall be in writing and accompanied by an order that complies with Section IIA of this Agreement. Fort Bend County and the FBCME may rely on any order submitted in this manner as an authorized request of Requesting County. However, the FBCME shall have the discretion to decline any specific request for autopsy for any reason and/or perform an external examination of the body.
2. The following records shall accompany the body: (a) the completed form titled "Fort Bend County Medical Examiner Out of County Investigator's Report" (attached hereto and incorporated herein); (b) the entire police report, including scene photographs and; (c) all relevant medical records, including hospital admission and emergency room records, if applicable, and antemortem hospital specimens or

- justice of the peace will contact hospital to have all specimens retained for later delivery to the ME Office. Failure to provide all necessary records may result in the FBCME refusing to accept the body for a postmortem examination.
3. Each body transported to the FBCME for a postmortem examination must be enclosed inside a zippered body bag acceptable to the ME Office. The body bag shall have the deceased's name affixed to the outside and security seal.
 4. Bodies may be received at the ME Office as follows:
 - A. During regular business hours: During the hours of 8:00 am-12:00pm, 1:00pm-4:30pm on non-holiday Mondays through Fridays and 8:00am-12:00pm on non-holiday Saturdays.
 - B. After hours upon the issuance of an electronic key card by the FBCME to Requesting County's transport providers which will allow access to the cooler receiving area of the FBMEO. The decision to grant an electronic key card is within the sole discretion of FBCME (in accordance with all internal FBC policies) and once granted; may be revoked at any time, with or without reason stated.
 5. Clothing shall accompany each body if all or part of the clothing has previously been removed, clothing should be provided with the body for examination, correlation and documentation.
 6. Requesting County shall provide for examination of any medications prescribed for or thought to be used by the deceased. ME Office may dispose of medication after it is inventoried unless submitting requests its return.
 7. Requesting County should 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 a weapon is not provided, a detailed description with appropriate measurements will be provided.
 8. If the identity of the deceased is unknown or in doubt, Requesting County shall notify FBCME of such and should help acquire any information, items or records necessary to help establish identification by scientific means. If no Scientific Identification is requested/performed, the submitting authority is solely responsible for the correct certification of the identity of the deceased.
 9. In the event the next-of-kin should request tissue or organ donation, Requesting County should coordinate procedures with the ME Office to promote optimum handling and to ensure that appropriate examination can be completed.
 10. If requested, Requesting County should send an authorized representative to take possession of items of value or evidence that may be discovered.
 11. Requesting County should provide the necessary personnel to perform any investigatory functions and related administrative support for crime scenes and death sites.
 12. Requesting County should notify the ME Office of any severely abusively injured child at time of hospitalization.
 13. Promptly, at the request of the ME Office, Requesting County will make arrangements to remove from the ME 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.

- D. Location. Examinations shall be performed at the ME Office located at 3840 Bamore Road, Rosenberg, TX 77471, which is equipped with X-ray facilities and a professional support staff. In consultation with Requesting County, Fort Bend may request that an autopsy be performed at a suitable location other than the ME Office and performed by an appropriately licensed physician.
- E. Laboratory Analyses. The FBCME shall conduct a postmortem toxicological analysis, if appropriate, and any other tests considered necessary to assist in determining the cause and manner of death and identification.
- F. Testimony. FBCME personnel performing services pursuant to this agreement shall appear as reasonably necessary to provide testimony in a criminal case before a district court of the Requesting County. The Requesting County agrees to use its best efforts to schedule the testimony of the FBCME personnel in such a manner to cause the least amount of disruption in their work schedule.
- G. Reports. Within a reasonable time after the completion of a postmortem examination, the FBCME will provide a written copy of the preliminary cause of death statement to the justice of the peace or County Judge representative who requested the autopsy. The FBCME will provide copies of the autopsy report to the justice of peace County Judge representative as reasonably available after finalization of the report.
- H. Transportation. The Requesting County shall have the sole responsibility for transporting the deceased to the FBC Medical Examiner's Office. Upon notification by the Medical Examiner that the autopsy has been completed, the Requesting County shall arrange for the deceased to be transported immediately to a funeral home.
- I. Training. The FBCME will conduct one annual training seminar in Fort Bend at the ME Office that Requesting County's justices of the peace, their court personnel and other County officials and employees including investigators will be invited to attend.
- J. No Interment. Fort Bend County shall have no responsibility for burying the remains of the deceased. Consistent with Tex. Health & Safety Code Ann. § 711.002(e), the Requesting County shall have sole responsibility for interment of the body.
- K. Records Custodian. The Justice of the Peace or County Judge representative who requests services under this agreement is the custodian of the records generated by the ME Office in providing these services.
- L. Agreement is not exclusive. This Interlocal Agreement is a non-exclusive agreement for the provision of services; either party may enter into the same or similar agreements

with other individuals, organizations, or entities

III.

CONSIDERATION FOR SERVICES

- A. Autopsy Fees. In consideration for the services provided by the FBCME, the Requesting County agrees to pay Fort Bend County all costs and expenses associated with performing the autopsy in accordance with the following schedule:
- | | |
|----------------------------------|--------------------|
| (1) Standard Autopsy Examination | \$2600.00 per body |
| (2) External Examination | \$850.00 per body |
- B. Storage of Bodies. The Requesting County shall pay Fort Bend County the additional sum of Forty Five Dollars (\$45) per day for each body that remains at the ME Office beyond forty-eight hours after notification by the Medical Examiner that the body is ready to be released to the Requesting County. This provision shall survive termination of this Agreement and shall apply to any bodies currently remaining at the ME Office
- C. Additional Costs. In the event that Fort Bend should incur any additional costs related to performing the examination, Requesting Entity will reimburse Fort Bend for the actual cost incurred with no administrative fee to be applied. Examples include, but are not limited to: any special tests requested by the Requesting County or deemed appropriate by the FBCME that are performed in accordance with this Agreement; non-routine testing (toxicology, radiographic etc.), trace elements and dental work.
- D. Invoice. Fort Bend County shall submit an invoice to the Requesting County in accordance with Exhibit A to this Agreement for post mortem services performed under this Agreement thirty (30) days after the service is completed. The Requesting County shall pay the total amount of the invoice within thirty (30) days of the date of receipt of the invoice by the Requesting County. If the Requesting County fails to pay any invoice within sixty (60) days after receipt, the Medical Examiner may refuse to accept any additional bodies for autopsy. Both Parties agree that Fort Bend County shall use their best efforts to invoice as indicated in the Exhibit but that the Requesting County will still issue payment for services rendered even if the invoice is not sent to the specified party in the Exhibit as long as the invoice is received by Requesting County.
- E. Fair Compensation. Fort Bend County and the Requesting County agree and acknowledge that the contractual payments contemplated by this agreement are reasonable and fairly compensate Fort Bend County for the services or functions performed under this Agreement.
- F. Death Certificates. The justice of the peace or County Judge representative who requested the postmortem examination be performed shall provide the FBCME with a copy of the signed Certificate of Death no later than fourteen (14) days after receipt of

the autopsy report. Failure to comply with this provision may result in termination of the contract by Fort Bend County.

IV.

FUNDS

- A. Current Funds. The Requesting County agrees and acknowledges that the contractual payments in this Agreement shall be made to Fort Bend County from current revenues available to the Requesting County.
- B. Certified Availability. The Requesting County has available and has specifically allocated sufficient funds as evidenced by a certification of funds by the Requesting County's County Auditor. In the event funds certified available by the Requesting County's County Auditor are no longer sufficient to compensate Fort Bend County for the services provided under this Agreement, Fort Bend County shall have no further obligation to complete the performance of any services until the Requesting County certifies sufficient additional current funds. The Requesting County agrees to immediately notify Fort Bend County regarding any additional certification of funds for this Agreement.
- C. Other Statutory Liability. This Agreement is not intended to limit any statutory liability of the Requesting County to pay for services provided by Fort Bend County when the funds certified by the Requesting County are no longer sufficient to compensate Fort Bend County for the services provided under this Agreement.
- D. Overdue Payments. It is understood and agreed that chapter 2251 of the Texas Government Code applies to late payments.

V.

RESPONSIBILITY FOR CLAIMS

Requesting County expressly agrees and acknowledges that Requesting County shall be responsible for any and all claims, causes of action, suits, losses, damages, and liability of any kind, including all litigation expenses, court costs, and attorney's fees, for any person's injury or death, or for damage to any property arising in connection with the investigative services performed for Requesting County under this agreement, other than for willful or malicious acts or omissions by the medical examiner or any other Fort Bend County officer, agent, or employee, for which liability, if any, shall be determined under Texas law.

V.

TERMINATION

- A. Without Notice. If the Requesting County defaults in the payment of any obligation in this Agreement, Fort Bend County is authorized to terminate this Agreement immediately without notice.
- B. With Notice. It is understood and agreed that either party may terminate this Agreement prior to the expiration of the term set forth above, with or without cause, upon thirty (30)

days prior written notice to the other party. By the next business day following the first ten (10) days of the subsequent calendar month after the effective date of such termination, Fort Bend County will submit an invoice showing the amounts due for the month in which termination occurs in the manner set out above for submitting monthly invoices.

VI.
NOTICE

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the parties at the following addresses:

To Fort Bend County: Fort Bend County
 401 Jackson
 Richmond, TX 77469
 Attn: County Judge

with a copy to: Fort Bend County Medical Examiner
 3840 Bamore Road
 Rosenberg, TX 77471
 Attn: Chief Medical Examiner

Requesting County: Austin County
 One East Main
 Bellville, TX 77418
 Attn: County Judge

Either party may designate a different address by giving the other party ten days' written notice.

VII.
MERGER

The parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

VIII.
VENUE

Exclusive venue for any action arising out of or related to this Agreement shall be in Fort Bend County, Texas.

IX.

MISCELLANEOUS

- A. The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. In the event that commencement, performance and/or completion of services requested under this Agreement are, or become, subject to court filing(s), proceeding(s) or order(s) (including but not limited to: injunctions of any type), it shall be the sole responsibility of the Requesting County to respond to and resolve any legal challenges to Fort Bend County's satisfaction before service will begin or continue. If service has begun prior to being halted as a result of court order, Requesting County agrees to issue full payment to Fort Bend County in accordance with the Autopsy Fees agreed to in Section III and/or retrieve the body on request of Fort Bend County.
- B. This instrument contains the entire Agreement between the parties relating to the rights granted and the obligations assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties. This Agreement may be executed in duplicate counterparts, each having equal force and effect of an original. This Agreement shall become binding and effective only after it has been authorized and approved by both counties, as evidenced by the signature of the appropriate authority pursuant to an order of the Commissioners Court of the respective County authorizing such execution.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2021.

FORT BEND COUNTY

By: _____
KP George, County Judge

ATTEST:

Date: _____

Laura Richard, County Clerk

AUSTIN COUNTY

By: _____
Tim Lapham, County Judge

Date: _____

ATTEST:

Austin County Clerk

Date: _____

Reviewed:

Stephen Pustilnik, M.D.
Chief Medical Examiner

Approved as to Legal Form:

Michelle L. Turner
General Counsel Division Chief

Exhibit A: Contacts and Invoice List

CERTIFICATION OF FUNDS

Pursuant to section 111.093 of the Texas Local Government Code, I certify that the county budget contains an ample provision for the obligations of Austin County under this Agreement and that funds are or will be available in the amount of _____ to pay the obligations when due.

By: _____
Billy Doherty, County Auditor

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Exhibit A:

Contacts and Invoice List

County Judge
Tim Lapham
One East Main
Bellville, Texas 77418
979-865-5911 phone
979-865-8786 fax
tlapham@austincounty.com

JP 1
Rick Yancey
One East Main
Bellville, Texas 77418
979-865-5911 phone
979-865-8928 fax
Jp1@austincounty.com

JP 2
Wilfred Krause
P.O. Box 176
Industry, Texas 78944
979-357-4477 phone
979-357-4470 fax
Jp2@austincounty.com

JP 3
Clyde Drake
201 Atchison
Sealy, Texas 77474
979-885-3195 phone
979-885-1156 fax
Jp3@austincounty.com

JP 4

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District Attorney

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979-865-5911 phone

979-865-5828 fax

Travis.koehn@austincounty.com

Auditor

Billy Doherty

One East Main

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979-865-5911 phone

979-865-5179 fax

billyd@austincounty.com

Treasurer

Bryan Haevischer

One East Main

Bellville, Texas 77418

979-865-5911 phone

bryanh@austincounty.com

Accounts Payable

Tinson Rasbury

One East Main

Bellville, Texas 77418

979-865-5911 phone