

THE STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR INDIGENT BURIAL SERVICES
 RFP 11-012

This Agreement is made and entered into by and between the FORT BEND COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, hereinafter referred to as "County" and HERNANDEZ FUNERAL HOME, INC., authorized to conduct business in the State of Texas, hereinafter referred to as "Contractor."

I. RECITALS

County has the authority to provide for the care of indigents and other qualified recipients pursuant to TEXAS LOCAL GOVERNMENT CODE Section 81.027, and other statutes), and provision of that care constitutes a public purpose.

Pursuant to the terms of this Agreement, Contractor will provide personal and professional services for the care of indigents and other qualified recipients, thus providing services which will further the achievement of a public purpose.

NOW, THEREFORE, in consideration of the hereinafter set forth agreements, covenants, and payments, the amount and sufficiency of which are acknowledged, County and Contractor agree to the terms and conditions stated in this Agreement.

II. GENERAL TERMS

2.0 CONTRACT TERM

2.1 **Initial Term.** The Parties acknowledge and agree that this Agreement shall continue in full force for the Initial Term which begins upon execution of this Agreement, and terminates September 30, 2011 unless earlier terminated by the Parties pursuant to the terms of this Agreement.

2.2 **Renewal Term(s).** Unless sooner terminated pursuant to the terms of this Agreement, and upon approval of funding by the Commissioners Court during the budget process relating to any Renewal Term, this Agreement shall automatically renew on October 1, 2011, for an additional one-year term, and each successive October 1 for up to an additional four (4) years. The exercise of any option to renew under this provision shall be with the understanding that all terms and conditions, including the negotiated rates, remain unchanged and in full force and effect, unless this Agreement

is specifically amended pursuant to Section 3.0 of this Agreement to make any changes in those terms. Non-competitive renewal shall be based upon the Contractor's positive performance and County's continuing need for the services.

3.0 AMENDMENTS

3.1 **Written.** Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be made in writing and signed by both Parties.

3.2 **Acknowledgments as to Amendments.**

3.2.1 **Authority to Change.** It is acknowledged by Contractor that no officer, agent, employee or representative of County has any authority to change the terms of this agreement or any attachments to it unless expressly granted that authority by the Commissioners Court under a specific provision of this Agreement or by separate action by the Commissioners Court. Verbal discussion or other indications of changes to this Agreement will NOT be effective.

3.2.2 **Non-compliance.** It is acknowledged by Contractor that any action taken by Contractor which does not comply with the terms of this Agreement and which has not been approved under the terms of the Agreement or written amendment thereto as pursuant to this Section 3.0 subjects Contractor to disallowance of payments related to such actions and possible termination of this Agreement.

4.0 ENTIRE AGREEMENT

4.1 **All Agreements.** All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, have been reduced to writing and are contained in this Agreement. Contractor's response to RFP 11-012 is incorporated by reference into this Agreement as if set forth herein verbatim for all purposes.

4.2 **Contractor Communication.**

4.2.1 **General Communication.** Contractor and County agree that, unless otherwise designated specifically in any provision, all communication, requests, questions, or other inquiries related to this Agreement shall initially be presented by Contractor to the County Purchasing Agent.

4.2.2 **Agreement Issues.** At any time that Contractor has an issue, problem, dispute, or other question ("issue") concerning this Agreement, Contractor may

first contact County through the Purchasing Agent. Contractor shall provide written notice of the issue to the Purchasing Agent, with such written notice including a specific written description of the issue as well as the Contractor's desired resolution of the issue. Contractor and County will make a good faith effort to resolve the issue to their mutual satisfaction in a timely manner. It is understood and agreed that any resolution of the issue which necessitates a change in any term or condition of this Agreement, including a waiver of any term or condition, shall be handled only as a written amendment pursuant to Section 3.0 of this Agreement.

III. RESPONSIBILITIES AND OBLIGATIONS OF CONTRACTOR

5.0 CONTRACTOR PERFORMANCE

5.1 Services and Activities.

5.1.1 Requirements. During any Agreement Term, Contractor shall perform, in a satisfactory manner as determined by County, services and activities in accordance with the terms of this Agreement, including but not limited to the following:

- A. County will only provide heavy-duty body bags. Contractor must supply all other body bags that will meet the requirements of the Harris County and Galveston County Medical Examiner.
- B. Contractor shall have a minimum of two (2) transport vehicles for use of this Agreement. In the event more than (2) transport vehicles are necessary to fulfill the terms of this Agreement, Contractor shall have access to additional transport vehicles.
- C. Contractor shall have an on-site storage cooler for use of this Agreement.
- D. Contractor shall allow County to inspect Contractor's facility at any time during the term of this Agreement.
- E. Contractor shall provide notice to County of all burial services conducted and shall allow County to attend at County's discretion.
- F. Contractor's services and clothing shall represent "best commercial practices," including but not limited to fully enclosed shoes/boots and full-length pants. Casual clothing not identified with Contractor's name and/or logo shall not be permitted. Contractor's employees, agents and representatives clothing shall clearly identify Contractor or each employee, agent or representative shall have a Contractor identification badge readily visible on clothing.
- G. Upon dispatch, Contractor shall contact the County Sheriff's Office dispatch/communications division identifying themselves as Unit #99, confirming receipt of call and advising an estimated time of arrival to the scene. Upon arrival at scene, Contractor shall notify

- Sheriff's Office dispatch. At time of departure from the scene, Contractor shall notify Sheriff's Office dispatch of destination, including Contractor's facility or Medical Examiner and shall notify Sheriff's Office dispatch upon arrival at destination.
- H. Contractor shall use the highest degree of care and sensitivity when transporting bodies under this Agreement. Transport stretchers shall be padded and secured in vehicles in a manner that immobilizes the body from movement during normal transport. Padding shall be installed on all head-bars to prevent injury during any sudden stops. A pillow shall be used between the head and head-bar for additional support during transport.
 - I. Contractor shall only transport bodies from the same crime scene in the same vehicle and shall immediately transport to the Medical Examiner or Contractor's facility as directed by the law enforcement death investigator. Stops between the crime scene and final destination are strictly prohibited.
 - J. Contractor is prohibited from any discussions with family members at the crime scene or at time of body retrieval. In the event family members have questions regarding services provided, Contractor shall refer family members to the law enforcement death investigator at the scene.
 - K. Contractor shall provide a contact telephone number to County for after-hours calls that is manned 24/7. Answering services are not permitted.
 - L. Contractor's employees, agents or representatives who arrive at a scene must either hold a valid funeral director license or be authorized by the funeral director.
 - M. In the event of natural disasters of any kind, including hurricanes, flooding, etc., Contractor shall have sufficient staff available to provide services under this Agreement to County.

5.1.2 Failure to Perform. In the event of Contractor's non-compliance with any term of this Agreement, County may impose such sanctions as determined to be necessary by County, including withholding of payments to Contractor under the Agreement and suspension, termination or cancellation of the Agreement, in whole or in part. These actions by County may be taken in addition to any other specific action set forth in any provision of this Agreement or allowed by law.

5.1.3 Location of Services. Contractor shall provide services under this Agreement from the following location, which shall also be the address of the Contractor for all purposes under this Agreement and for all notices hereunder:

Hernandez Funeral Home
800 4th Street
Rosenberg, Texas 77471
Jose F. Hernandez, President, Funeral Director

5.1.4 Qualifications. Contractor warrants that Contractor is a duly qualified, capable business entity; has and will maintain and provide County with current copies of all necessary license and certifications related to the professional services being provided hereunder; and will perform all services under this agreement according to the applicable federal, state and local rules and regulations and all applicable professional ethics requirements.

5.2 Insurance.

5.2.1 Contractor shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage and limits of coverage. Contractor shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- A. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- B. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- C. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$100,000 each accident and \$300,000 in the annual aggregate. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- D. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

5.2.2 The policies specified in Section 5.2.1 A-D shall name Fort Bend County as an additional insured. Furthermore, the Workers' Compensation and Liability Insurance carriers shall grant a waiver of subrogation in Fort Bend County's

favor.

5.2.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.

5.2.4 Contractor shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.

5.2.5 Approval of the insurance by County shall not relieve or decrease the liability of Contractor.

5.3 **Indemnification and Claims.**

5.3.1 **INDEMNIFICATION.** Contractor agrees to and shall indemnify and hold harmless County, its officers, agents, and employees, from and against any and all claims, losses, damages, negligence, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, for any act or omission by Contractor, or for damage to any property, arising out of or in connection with the work done by Contractor under this Agreement, whether such injuries, death or damages are caused by Contractor's sole negligence or the joint negligence of Contractor and any other third party.

5.3.2 **Claims Notification.** If Contractor receives notice or becomes aware of any claim, or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against Contractor or County, Contractor shall give written notice to County of: the claim, or other action within three (3) working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner provided in Section 18.0 of this Agreement. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to these claims or actions.

5.4 **Miscellaneous Responsibilities.**

5.4.1 **Change in Identity.** Contractor shall notify the Purchasing Agent immediately in writing, and in advance where possible, of any significant change affecting the Contractor, including change of Contractor's name or identity, ownership or control, payee identification number and other. Failure to provide such information in a timely manner may delay payment under this Agreement or result in other action by County regarding Contractor's status under this Agreement.

6.0 **ACKNOWLEDGMENTS, WARRANTS, AND ASSURANCES**

6.1 **Accurate Information.** Contractor warrants that all reports, data and information submitted to County will be accurate, reliable and verifiable. Approval by County of such shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, agents or associates for the accuracy and competency of their reports, information documents, or services, nor shall approval be deemed to be the assumption of such responsibility by County for any defect, error, omission, act or negligence or bad faith by Contractor, its employees, agents, or associates.

6.2 **Payment of Taxes.** Contractor acknowledges and agrees that neither federal, state, nor local income tax, nor payroll tax of any kind will be withheld or paid by County on behalf of Contractor or the employees of Contractor. Contractor will not be treated as an employee with respect to the services performed under the terms and conditions of this Agreement for federal and state tax purposes. Contractor accepts responsibility for the compensation of employees, withholding and payment of taxes, and for purchasing any liability, disability or health insurance coverage deemed necessary by Contractor. Contractor understands that Contractor is responsible to pay, according to the law, Contractor's income tax. If Contractor is not a corporation, Contractor further understands that the Contractor may be liable for self-employment (social security) tax, to be paid by Contractor according to law.

7.0 **COMPLIANCE**

7.1 **Federal, State and Local Laws.** Contractor shall provide all services and activities performed under the terms of this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state, and local orders, laws, regulations, rules, policies, and certifications governing any activities undertaken during the performance of this Agreement including, but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794); the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] ("ADA"), Chapter 73, TEXAS ADMINISTRATIVE CODE, HEALTH AND SAFETY CODE, Section 85.113 (relating to workplace and confidentiality guidelines

regarding AIDS and HIV); Health Insurance Portability and Accountability Act of 1996 (HIPAA); Contractor shall not discriminate against any employee, applicant for employment, based on race, religion, color, gender, national origin, age or handicapped condition. In performance of all services and activities under this Agreement, Contractor will comply with applicable state and federal licensing and certification requirements, health and safety standards, and regulations prescribed by the U.S. Department of Health and Human Services and the Texas Department of Health.

7.2 **Confidentiality.**

7.2.1 **Method.** Contractor shall establish a method to secure the confidentiality of records and other information relating to the terms of this Agreement in accordance with the applicable federal laws, rules and regulations, the applicable state and local laws, rules, and regulations and applicable professional ethical standards.

7.2.2 **Privacy.** Contractor shall comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information, or other information made confidential by law, and shall maintain patient and client records in compliance with state laws relating to the security and retention of medical or patient records.

8.0 **RETENTION AND ACCESSIBILITY OF RECORDS**

8.1 **Retention of Records - Time Requirement.** Contractor shall create and maintain all records and reports required and/or created relevant to performance under this Agreement, including but not limited to those specifically set out in this Section 8.0, until all evaluations, audits and other reviews have been completed and all questions or issues (including litigation) arising from those evaluations, audits and reviews are resolved satisfactorily to County, or three (3) years after the end of the final contract period, whichever occurs later.

8.2 **Access.** Contractor shall give County, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Contractor pertaining to this agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are required to be retained by Contractor, and for any additional time period that the records are retained by Contractor.

9.0 **REPORTING REQUIREMENTS**

9.2 **Reimbursement Reports.** Pursuant to Section 13.2.1, Contractor shall deliver to County reports that provide all of the information requested in the Request For

Payment, as required by County within fifteen (15) days after the end of the month to which the report relates. If Contractor fails to provide this information to County in a complete and correct form and in a timely manner as set forth in this Agreement, such failure may impact timing of payment by County.

10.0 ASSIGNMENT FOR TAXES. Notwithstanding anything to the contrary contained in this agreement, if Contractor is delinquent in the payment of property taxes, or of any taxes due to Fort Bend County, at any time of invoicing for payment, Contractor hereby assigns any payment and/or advance to be made for services and activities provided under this agreement to the Fort Bend County Tax Assessor-Collector for payment of delinquent taxes, and authorizes County to transfer those funds directly to the Fort Bend County Tax Assessor-Collector.

IV. RESPONSIBILITIES AND OBLIGATIONS OF COUNTY

11.0 LIMITATIONS

11.1 County Approval.

11.1.1 County's Satisfaction. Section 13.2 notwithstanding, the Parties expressly acknowledge and agree that County shall not be responsible for the costs of any services provided under this Agreement that are not fully performed according to the terms of this Agreement to County's satisfaction and with County's approval, which shall not be unreasonably withheld.

11.1.2 Responsibility and Liability. Approval of County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, agents or associates for the accuracy and competency of their reports, information, documents, or services, nor shall approval be deemed to be the assumption of such responsibility by County for any defect, error, omission, act or negligence or bad faith by Contractor, its employees, agents, or associates.

11.2 Prior Debts. County shall not be liable for costs incurred or performances rendered by Contractor before or after the term of this Agreement; for expenses not billed to County within the applicable time frames set forth in this Agreement; or for any payment for services or activities not provided pursuant to the terms of this Agreement.

11.3 Monitoring. County reserves the right to perform periodic on-site monitoring of Contractor's compliance/performance with the terms of this Agreement and of the adequacy, effectiveness and timeliness of Contractor's performance under this Agreement. Such monitoring may include review of any and all performance activities as well as any and all records or other documentation maintained in relation to Contractor's performance under this Agreement.

12.0 COUNTY OBLIGATIONS.

12.1 **Current Revenue Funds.** County shall make payments for invoices for services under this Agreement from current revenue funds available to County and set aside for this purpose. County is paying for the performance of governmental functions and services from current revenues available to County. The payment is in an amount that fairly compensates Contractor for the services or functions performed under this Agreement.

12.2 **Immunity or Defense.** It is expressly understood and agreed by all Parties that, neither the execution of this Agreement, nor any conduct of any representative of County relating to this Agreement, shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit.

V. FINANCIAL PROVISIONS

13.0 CONTRACTOR'S COMPENSATION

13.1 **Maximum Funds.**

13.1.1 **Maximum Amount.** Subject to the requirements in Sections 13.1.2 and 13.2 and other applicable provisions of this Agreement, in consideration of full and satisfactory performance of the services and activities provided by Contractor under the terms of this Agreement, as determined by County, County shall provide compensation not to exceed the amount included in the County budget and designated for this purpose for this Agreement for the term of this Agreement unless or until an increase in the County budget for this Agreement is approved by Commissioners Court.

13.1.2 **Payment to Contractor.** County shall pay Contractor an agreed upon rate as follows:

- A. Infant/Child burial - wooden cloth-covered casket; pink or blue with white crepe interior:
 - 1. \$550.00 per burial (1'6", 1'9", or 2')
 - 2. \$660.00 per burial (2'0", 2'6" to 3'6")
- B. Regular Adult burial – cloth-covered or metal casket
 - 1. \$900.00 per burial any size over 3'6" length – interior size up to 24" width (shoulder to shoulder)
- C. Oversized Adult burial – cloth-covered or metal casket – \$900.00 for regular adult burial plus the following:
 - 1. \$423.41 per burial (27" width cloth covered or metal casket)

- 2. \$455.89 per burial (29" width cloth covered or metal casket)
- 3. \$542.49 per burial (33" width cloth covered or metal casket)
- 4. \$585.79 per burial (36" width cloth covered or metal casket)
- 5. \$2,250.51 per burial (44" width – metal, non-gasketed)
- 6. \$2,358.76 per burial (48" width – metal, non-gasketed)
- D. \$425.00 per cremation
- F. \$150.00 per body pick-up, bag and transport to Contractor's facility
- G. \$170.00 per body pick-up, bag and transport to Harris County Medical Examiner or Galveston County Medical Examiner
- H. \$20.00 per day for cooler storage after first 24 hours
- I. \$200.00 extra charge for opening/closing of grave for oversized caskets for 36", 44" and 48" widths.

13.1.3 Payments to Contractor as references in Section 13.1.2 include the following:

- A. Pick-up from facility and transport to Contractor's facility, Harris County or Galveston County Medical Examiner;
- B. Cemetery plot and Contractor's compliance with cemetery rules/regulations
- C. Casket – pinewood or metal, cloth covered, non-protective
- D. Attempts to locate family member(s) and discussions regarding arrangements
- E. Embalming services
- F. Transport to cemetery
- G. Grave Space at a County-approved cemetery
- H. Opening/closing of grave space
- I. Funeral director at graveside services
- J. Temporary Metal Grave Marker
- K. Grave side service provided by a minister. Contractor must notify County at least 28 hours prior to any service conducted under this Agreement.
- L. Filing and documenting of all required paperwork, including receiving checks from estate, if any. Contractor shall cooperate with County to verify claims are processed properly and promptly and shall provide reimbursement to County in the event funds are located to assist with burial and services.
- M. Filing of Death Certificate
- N. Clothing for burial, if required. Contractor may contact County Social Services in the event clothing is required.

13.2 **Payments to Contractor.**

13.2.1 **Payment(s)**

- (a) Request for Payment.
- (i) Request for Payment. Contractor shall submit to County a Request for

Payment in the form included in Attachment A within thirty (30) days of the interment or cremation.

(ii) **Timely Filing of Request.** Any delay by Contractor in the filing of the complete and correct Request for Payment Form may impact the ultimate receipt of payment by Contractor. County shall pay Contractor for authorized expenditures, as determined and approved by County reported in that Request for Payment within thirty (30) days of receipt by County of that complete and correct (as explained in Section 13.2.1(b) below) Request for Payment.

(b) **Complete and Correct Request.** Contractor understands and agrees that the payment by County of the Request for Payment amount will only be made where a complete and correct Request for Payment is determined by County to have been filed.

13.2.2 **Request Limitation.** County shall not be liable to Contractor for any costs incurred by Contractor in the performance of this agreement which are not billed under the applicable terms of this Agreement within sixty (60) days following the provision of the service or sixty (60) days following the termination of the Initial Term (or any renewal term, as applicable to the term in which the services were provided), whichever occurs first. Costs billed by Contractor on or after the 61st day following the termination of any term shall be considered disallowed and may not be paid by County.

VI. SUSPENSION/TERMINATION

14.0 **SUSPENSION.** If Contractor fails to comply with any term of this Agreement, including failure to deliver reports required by Section 9.0 and make corrections required by Section 15.5, or if the Commissioners Court requests a financial review or performance evaluation, County may, upon written notification to Contractor, suspend this Agreement in whole or in part and withhold further payments to Contractor.

15.0 TERMINATION

15.1 **Reasons for Termination.** County shall have the right to terminate this Agreement, in whole or in part, at any time by providing sixty (60) days notice to Contractor.

15.2 **Notification.** County Purchasing Agent shall notify Contractor pursuant to the "Notice" provision of this Agreement in writing at least thirty (30) days before the date of termination of the decision to terminate; the effective date of the termination; and in the case of partial termination, the portion of the Agreement to be terminated.

15.3 **Contractor Termination.** Contractor may terminate this Agreement in whole or in part at any time, by giving ninety (90) days written notice pursuant to Section 18.0 if there is termination of significant other funding upon which Contractor depends

for performance under this Agreement or if Contractor is dissolved only if the dissolution is not caused by a breach of this Agreement. Contractor's notice shall include a complete explanation of the reasons(s) for termination under this Section 15.3 and designation of the effective date of termination. The Purchasing Agent shall notify Contractor in writing of acceptance of termination pursuant to this Section 15.3 upon finding that Contractor's claim(s) under this Section 15.3 have been established to County's satisfaction.

15.4 **Mutual Termination.** Any Party has the right to terminate this Agreement, in whole or in part, when the Parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both Parties agree, in writing, upon the termination conditions, including the effective date of the termination; the provisions under which termination shall be accepted; and, in the case of partial termination, the portion of the Agreement to be terminated.

15.5 **Correction.** At least thirty (30) days before the effective date of termination pursuant to any provision of this Agreement, County shall notify Contractor in compliance with Section 18.0 of the reasons for termination, the effective date of termination and the portion of this Agreement to be terminated. Where applicable, as determined by County, Contractor may avoid the termination of this Agreement if Contractor corrects the causes for the reasons for termination stated in the notice to the satisfaction of County, as determined by County, prior to the effective date of termination, or an extended date if agreed to in writing by the Parties.

15.6 **Results of Termination.** Notwithstanding any exercise by County of its right of suspension under Section 14.0 of this Agreement or of early termination pursuant to this Section 15.0 or any provision of this Agreement, Contractor shall not be relieved of any liability to County for damages due to County by virtue of any breach of this Agreement by Contractor, or for any amounts paid to Contractor by County and determined by County to be overpayment(s), disallowed payment(s), or payment(s) subject to refund under the terms of this Agreement. County may withhold payments to Contractor until the exact amount of damages or payments due to County from Contractor is agreed upon or is otherwise determined, and is paid in full.

VII. MISCELLANEOUS PROVISIONS

16.0 INDEPENDENT CONTRACTOR.

16.1 The Parties expressly acknowledge and agree that Contractor is an independent contractor and assumes all of the rights, obligations and liabilities applicable to it as an independent contractor. No employee of Contractor shall be considered an employee of County or gain any rights against County pursuant to County's personnel policies. The relationship of County and Contractor under this

Agreement is not and shall not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties shall be an independent contractor relationship. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party or which shall hold itself out to be binding on the other Party.

17.0 SUBCONTRACTS

17.1 **Prior Approval.** Contractor shall not enter into any Subcontracts for any service or activity relating to the performance of this Agreement without the prior written approval or the prior written waiver of this right of approval from County through the Purchasing Agent. Approval of this Agreement will constitute approval as required by this Section 17.1 for those Subcontracts/Subcontractors specifically identified in the this Agreement, if any.

17.2 **Contract Limitation.** This Agreement sets out the agreements and obligations between County and Contractor only, and does not obligate County in any way to any of Contractor's Subcontractors, nor to any other third party. This Agreement creates no third party beneficiary rights as between County and any of Contractor's Subcontractors. Contractor has the sole responsibility for payment for services rendered by Subcontractors with Subcontractor's sole recourse in the event of Contractor non-payment, insolvency or cessation of operations against Contractor or Contractor's bankruptcy estate. County shall not under any circumstances be liable to Contractor's creditors or Subcontractors for any payments under this Agreement. Contractor agrees to include notice of the requirements in this section in every Subcontractor agreement.

18.0 NOTICES.

18.1 **Requirements.** Except as otherwise specifically noted herein, any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

18.2 **County Address.** The address of County for all purposes under this Agreement shall be:

Fort Bend County Judge
301 Jackson, Suite 728
Richmond, Texas 77469

With copies to (registered or certified mail with return receipt is not required):

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A
Rosenberg, Texas 77471

Hopie Solomon, Director
Social Services Department
4520 Reading Road, Suite A
Rosenberg, Texas 77471

18.3 **Contractor Address.** The address of the Contractor for all purposes under this Agreement and for all notices hereunder shall be:

Hernandez Funeral Home, Inc.
P.O. Box 1042
Rosenberg, Texas 77471
Jose F. Hernandez, President, Funeral Director

18.4 **Change of Address.** Each Party may change the address for notice to it by giving notice of the change in compliance with Section 18.0. Any change in the address or ownership shall be reported to the Purchasing Agent within twenty (20) days of the change.

18.5 **Change of Name.** If a change of name is required by Contractor, the Purchasing Agent shall be notified in writing immediately. No change in the obligation of or to Contractor will be recognized until it is approved by the Commissioners Court. Failure to timely provide notice under Section 18.4 and/or 18.5 may result in delay of payment.

19.0 **PROHIBITIONS**

19.1 **Conflict of Interest.**

19.1.1 Participation. Contractor shall ensure that no person who is an employee, agent, consultant, officer, or elected or appointed official of Contractor who exercises or has exercised any functions or responsibilities with respect to activities performed pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to these activities has or may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, Subcontract or agreement with respect to it, or the proceeds under it, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

19.2 **Solicitation.** Contractor warrants that no persons or selling agency was or has been retained to solicit this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by Contractor to secure business.

For breach or violation of this warranty, County shall have the right to terminate this Agreement without liability, or, in its discretion to, as applicable, add to or deduct from compensation for consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.0 ASSIGNABILITY

20.1 **Written Approval**. No Party may assign any of the rights or duties created by this Agreement without the prior written approval of the other Party. This provision includes assignment, sale, merger or any other action resulting in any change in the status of Contractor. It is acknowledged by Contractor that no officer, agent, employee or representative of County has any authority to assign any part of this Agreement unless expressly granted that authority by the Commissioners Court. Submission of a request for approval under this Section 20.1, "Assignment," shall be made in writing to the Purchasing Agent. Failure to secure the approval required in this Section 20.1 may result in delay of payment or other sanctions.

20.2 **Binding Agreement**. This Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the Parties to this Agreement.

21.0 LEGAL AUTHORITY

21.1 **Contractor Authority**. Contractor guarantees that Contractor possesses the legal authority to enter into this Agreement, receive funds authorized by this Agreement, and to perform the services Contractor has obligated itself to perform under this Agreement.

21.2 **Signors**. The person or persons signing this Agreement on behalf of Contractor, or representing themselves as signing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he, she or they have been duly authorized by Contractor to sign this Agreement on behalf of Contractor and to bind Contractor validly and legally to all terms, performances, and provisions in this Agreement.

21.3 **Suspension**. County shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Contractor or the person signing this Agreement to enter into this Agreement or to render performances under it. Contractor and any person signing this Agreement are liable to County for any money disbursed by County for performance of the provisions of this Agreement, if County has suspended or terminated this Agreement for any breach.

22.0 INTERPRETATIONAL GUIDELINES

22.1 **Computation of Time.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that County has declared a holiday for its employees these days shall be omitted from the computation.

22.2 **Numbers and Gender.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Contract clearly requires otherwise.

22.3 **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection, and are not to be used in construing this Agreement.

23.0 OTHER PROVISIONS

23.1 **Survival of Conditions.** Applicable provisions of this Agreement, as determined by County, shall survive beyond termination or expiration of this Agreement until full and complete compliance with all aspects of these provisions has been achieved where the Parties have expressly agreed that those provisions should survive any such termination or expiration or where those provisions remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

23.2 **Non-Waiver of Default.** One or more acts of forbearance by any Party to enforce any provision of this Agreement or any payment, act or omission by any Party shall not constitute or be construed as a waiver of any breach or default of any other Party which then exists or may subsequently exist.

23.3 **Reservation of Rights.** If any Party to this Agreement breaches this Agreement, the other Party(ies) shall be entitled to any and all rights and remedies provided for by the Texas law and any applicable Federal laws or regulations. All rights of County, under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. The exercise of or failure to exercise any right or remedy in this Agreement of County or the failure to act in accordance with law based upon the other Party's breach of the terms, covenants, and conditions of this Agreement, or the failure to demand the prompt performance of any obligation under this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken or not taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

23.4 **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Fort Bend County, Texas, except with respect to transports to the Harris County or Galveston County Medical Examiner. It is expressly understood that any lawsuit, litigation, or dispute arising out of or relating to this Agreement will take place in Fort Bend County, Texas.

23.5 **Severability.** If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

23.6 **Sectarian Activity.**

23.6.1 **Religious Influence.** Within the limits and understandings set forth in herein, Contractor shall ensure that provision of services under this Agreement shall be carried on in a manner free from religious influence. Contractor shall not execute any agreement with any primarily religious organization to receive compensation from Contractor unless the agreement includes provisions such as those set forth herein or as provided by County, to effectuate this assurance. Contractor shall submit such agreements to County prior to the release of any compensation to such Contractor.

23.7 **Dispute Resolution.** When the Contractor and/or County have been unable to successfully resolve any question or issue related to this Agreement, the Parties agree to use the mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. Unless both Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. The Parties agree to each pay one-half (½) the cost of a mediator through the Fort Bend County Dispute Resolution Center.

23.8 **County Public Purpose.** By execution of this Agreement, the Commissioners Court hereby finds that the issues, problems and needs to be addressed by the services to be provided under the terms of this Agreement, and specifically set forth herein constitute a significant public concern impacting members of the indigent population which the County serves. The Commissioners Court further finds that the provision of services to be provided by Contractor pursuant to this Agreement will further the public purpose of addressing those health and human services issues, problems and needs identified in this Agreement.

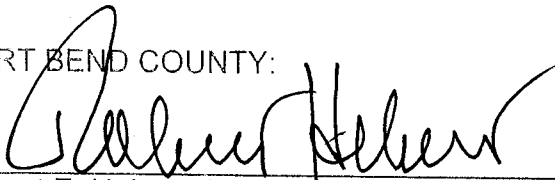
23.9 **Force Majeure.** Neither Party shall be financially liable to the other Party for delays or failures to perform caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). Such delays or failures to perform shall extend the period of performance until these exigencies have been removed. The party seeking to avail itself of this clause shall notify the other Party

within five (5) business days or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible. Contractor agrees that breach of this provision entitles County to reduce or stop payments or immediately terminate this Agreement.

VIII. EXECUTION

This Agreement shall become effective on the date executed by County.

FORT BEND COUNTY:


Robert E. Hebert, County Judge

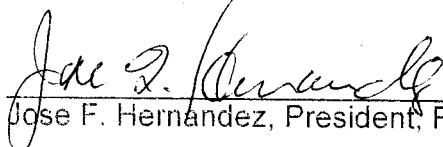
1-4-2011
Date

Attest:


Dianne Wilson, County Clerk



CONTRACTOR: HERNANDEZ FUNERAL HOME, INC.


Jose F. Hernandez, President, Funeral Director

12/15/10
Date

I/MER. Agreements. Hernandez Funeral Home/Indigent Burial. Agr. 3948

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$100,000.00 to accomplish and pay the obligation of the Fort Bend County under this Agreement.


Ed Sturdivant, Fort Bend County Auditor

MESA AUTO INS AGEN
4607 AVE H
ROSENBERG, TX 77471
281-341-5100

PROGRESSIVE

Policy number: 07676202-0

Underwritten by:
PROGRESSIVE COUNTY MUTUAL INS CO
October 20, 2010
Page 1 of 1

Certificate of Insurance

Certificate Holder

HERNANDEZ FUNERAL HOME
INC
P.O. BOX 1042
ROSENBERG, TX 77471

Insured

HERNANDEZ FUNERAL HOME
INC
P.O. BOX 1042
ROSENBERG, TX 77471

Agent

MESA AUTO INS AGEN
4607 AVE H
ROSENBERG, TX 77471

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Effective Date: Oct 18, 2010

Policy Expiration Date: Oct 18, 2011

Insurance coverage(s)

BODILY INJURY/PROPERTY DAMAGE

Limits

\$100,000/\$300,000/\$50,000

Description of Location/Vehicles/Special Items**Scheduled autos only**

2006 CHRYSLER TOWN & COUNTRY A4GP44R96R793592
2001 DODGE GRAND CARAVAN S 2B3GP44G71R131875
2000 CHRYSLER TOWN & COUNTRY C4GP54L9YB682839

Certificate number

29310NET202

Please be advised that certificate holders will be notified in the event of a mid-term cancellation.





CERTIFICATE OF LIABILITY INSURANCE

OP ID: SS

DATE (MM/DD/YYYY)

12/28/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Inco Wessendorff Ins Services P O Box 300 Richmond, TX 77406-0300 Inco Wessendorff Ins Services		281-342-2857 281-342-7367	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: HERNA-7
INSURED Hernandez Funeral Home Jose F. Hernandez dba P O Box 1042 Rosenberg, TX 77471	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Allied Insurance Co			
INSURER B: Allied Insurance Co			
INSURER C:			
INSURER D:			
INSURER E:			
INSURER F:			

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS TR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY	<input checked="" type="checkbox"/>	BPSC7204842516	12/28/10	12/28/11	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
	GENERAL AGGREGATE \$ 2,000,000					
	PRODUCTS - COMP/OP AGG \$ 2,000,000					
	GEN'L AGGREGATE LIMIT APPLIES PER					
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					\$
	<input type="checkbox"/> NON-OWNED AUTOS					\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE				EACH OCCURRENCE \$
	EXCESS LIAB					AGGREGATE \$
	DEDUCTIBLE					\$
	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/> Y <input type="checkbox"/> N	WCP7204842516	12/28/10	12/28/11	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E L EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E L DISEASE - EA EMPLOYEE \$ 500,000
						E L DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder is listed as Additional Insured as respects General liability as required by written contract, subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER**CANCELLATION**

FBCOU-1

Fort Bend County
4520 Reading Road, Suite A
Rosenberg, TX 77471

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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