

STATE OF TEXAS       §  
  §  
COUNTY OF HIDALGO   §

**CONTRACT FOR SERVICES**  
**C-16-380-11-22**

THIS Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between **HIDALGO COUNTY, TEXAS** (the “County”) and **NORMA JEAN FARLEY, M.D.**, an individual engaged in the practice of medicine and specializing in forensic pathology (the “Contractor”).

**WITNESSETH:**

**WHEREAS**, the County does not have a medical examiner’s office and as such the need exists to contract the services of a pathologist to perform autopsies on an as needed basis;

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

**WHEREAS**, Contractor was sought by the County to provide turnkey autopsies and related services more particularly described in this Agreement and the “Cost Proposal for Pathologist to Provide Turnkey Autopsy and Related Services for Hidalgo County, attached hereto as Exhibit “A”; and the Curriculum Vitae of Norma Jean Farley, M.D., attached hereto as Exhibit “B”; all of which are incorporated by reference herein and made a part of this Agreement;

**WHEREAS**, Hidalgo County has entered into a service contract with Ceballos Funeral Home, Inc. (RFP No. 2010-243-07-06-YZV) for a facility at which the Contractor may perform autopsies for Hidalgo County, which are not performed in the designated County Morgue Facility;

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**WHEREAS**, County has determined that the proper, orderly and efficient delivery of quality autopsy services, as described in this Agreement and Exhibits A, collectively hereinafter referred to as the “Services” to the County, can be accomplished best by contracting with Contractor;

**WHEREAS**, County has determined that for proper and efficient operation of the Services, the Contractor will provide on call services 24 hours a day and shall provide autopsy services between 8:00 a.m. and 5:00 p.m., Monday through Friday and will have a pathologist, autopsy technician or other employee to be available for after hours calls from law enforcement, transport service, justices of the peace, and the County District Attorney’s office as more fully described in this Agreement and in Exhibit “A” attached herein;

**WHEREAS**, Contractor is willing to accept the responsibility of providing Services to County in accordance with recognized medical standards, and the terms and conditions set forth in this Agreement; and

**WHEREAS**, the parties desire to provide a full statement of their agreement in connection with the performance of the Services during the term of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises of the parties hereto, and of the mutual covenants and conditions hereinafter expressed, the parties hereto covenant each with the other, as follows:

## **1. OBLIGATIONS OF THE CONTRACTOR**

Contractor agrees to provide the following services to the County during the term of this Agreement:

**1.1 Autopsies.** For purposes of this Agreement, an “autopsy” shall include but not be limited to:

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“A post mortem examination of the body of a person, including x-rays (as needed) and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death and includes removing a sample of body fluids, tissue or organs in order to determine the nature and cause of death even when a complete post mortem examination of the body is not done.” Contractor agrees to use proper professional standards and devote the time necessary to provide the Services on an as needed basis.

**1.2 Equipment and Supplies.** Contractor shall provide the components necessary to perform an autopsy, including but not limited to providing an X-ray machine, an X-ray developer, reference histology lab services and reference toxicology lab services. Contractor agrees to use proper professional standards and devote such time necessary to provide the Services on an as needed basis. Contractor will also provide the following equipment and supplies for the performance of autopsies:

1. Tissue containers (at contracted facility only)
2. Counter top digital scale (for infants)
3. Formalin (at contracted facility only)
4. Camera, digital
5. Large measuring cups (at contracted facility only)
6. Ladles (small) (at contracted facility only)
7. Tea Strainer
8. Colander
9. Autopsy knives (do not need disposable)
10. Rib cutters (at contracted facility only)
11. Mayo dissecting scissors
12. Autopsy Saws (at contracted facility only)
13. Short scissors
14. Forceps

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15. Microscope
16. Histology Laboratory (reference)
17. Toxicology Laboratory (reference)
18. X-ray portable and processor

Any additional equipment and/or supplies necessary to perform the Services identified in this Agreement are the responsibility of the County or Designated Morgue Facility and shall be invoiced separately with supporting documentation showing the need for the additional equipment and supplies, and with prior written approval from the District Attorney's office.

The County has also secured a contract with a third party (RFP No. 2010-243-07-06-YZV) for a facility at which autopsies may be performed. This third party vendor shall be responsible for providing the remaining necessary equipment and supplies to the Contractor for the performance of autopsies not performed at the designated County Morgue Facility.

The equipment and supplies provided by Contractor may change, as necessary and by agreement of the parties, at the time an appropriate County Morgue Facility has been designated.

**1.3 Logistics.** Contractor will provide personnel, equipment, and supplies necessary to perform autopsy services as more fully described in this Agreement and Exhibits "A", attached herein. **HOWEVER, UPON DESIGNATION OF THE COUNTY MORGUE FACILITY AT WHICH THE CONTRACTOR WILL PERFORM AUTOPSIES AND SHOULD THE COUNTY ALSO SECURE NECESSARY EQUIPMENT, INSTRUMENTS AND SUPPLIES FOR THE PERFORMANCE OF AUTOPSIES (THROUGH ITS FACILITY VENDOR), THEN THE PARTIES AGREE**

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**THAT THE AMOUNT OF THIS AGREEMENT SHALL INCLUDE ONLY THE CONTRACTOR'S SERVICES FOR THE PERFORMANCE OF AUTOPSIES AND RELATED SERVICES AND NOT THE COST OF A FACILITY AND/OR EQUIPMENT, AS MORE FULLY DESCRIBED IN THIS AGREEMENT AND EXHIBIT "A", ATTACHED HEREIN, FOR AUTOPSIES AND RELATED SERVICES PERFORMED AT THE DESIGNATED COUNTY MORGUE FACILITY.**

**1.4 Administration.** The Contractor will communicate with the County regarding the administration of autopsies. Notwithstanding anything herein to the contrary, the County will not have or exercise any control over the manner in which the medical duties of the Contractor are performed as would jeopardize the status of the Contractor as an independent contractor.

**1.5 Quality of Care.** The Contractor will continually work to improve the quality of and maintain a reasonable cost for autopsies furnished on behalf of the County.

**1.6 Records.** The Contractor shall, at Contractor's expense, keep or cause to be kept in an adequate filing system, accurate and complete records of each autopsy performed. Such records shall be the property of the County. Upon termination of this Agreement, Contractor agrees to deliver to County all records in its possession pertaining to the Services within thirty (30) days.

**1.7 Education.** Contractor shall attend conferences and meetings at her own expense, provided such attendance does not impair the performance of her obligations under this Agreement.

**1.8 Availability of Contractor and Commencement of Autopsies.** Contractor agrees to provide on call services (24) hours a day and shall provide autopsy

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services between 8:00 a.m. and 5:00 p.m., Monday through Friday (except on County holidays) and will have a pathologist, autopsy technician, or other employee to be available for after hours calls from law enforcement, transport service, justices of the peace, and the County District Attorney's office as more fully in this Agreement and in Exhibit "A" attached herein.

**1.9 Coverage.** Contractor will be responsible for making arrangements acceptable to, and at no additional expense to the County, for adequate autopsy coverage during any absence. The County shall not unreasonably withhold acceptance of any such arrangements. Contractor shall remain responsible for the Services at all times during the term of this Agreement. However, the parties agree that the Contractor may have a qualified substitute physician render the Services. Contractor must submit the name of the qualified physician to the County and make all necessary arrangements for the performance of Services should Contractor not be available for a period exceeding forty-eight (48) hours. **FAILURE TO PROVIDE ADEQUATE COVERAGE AS DESCRIBED HEREIN IS AN EVENT FOR WHICH THIS AGREEMENT MAY BE IMMEDIATELY TERMINATED WITHOUT PENALTY.** While this Agreement allows for a qualified substitute physician to render the Services, it is not the intent of the parties to have another forensic pathologist other than Contractor perform the services on a regular basis. Any abuse of this substitute physician provision by Contractor, upon reasonable determination by the District Attorney, shall result in the County having sole discretion to terminate this agreement effective immediately.

**1.10 Method for Providing Service Orders to Contractor.** The County shall make all requests for autopsies in writing, either by fax, personal delivery or by documents accompanying the corpse to the autopsy facility.

**1.11 Criminal Proceedings.** Contractor agrees to testify at the County's request, when necessary, in all criminal proceedings involving homicides and where an

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autopsy has been performed by the Contractor, or criminal proceeding involving homicides where an autopsy was not performed but materials were reviewed by the Contractor, as required by subpoena, including but not limited to inquest hearings, trials and other judicial processes. Contractor shall also submit to the Hidalgo County District Attorney's Office, written reports including but not limited to all findings from the completed autopsy and all laboratory results. All reports, findings and results shall be submitted no later than thirty (30) business days after an autopsy and all ancillary tests are completed (i.e. toxicology, neuropathology, ballistics, DNA, sexual assault kit, etc.), with preliminary findings to be submitted to the Hidalgo County District Attorney's office or requesting agency within five (5) business days after the performance of an autopsy and/or by agreement of the parties.

**1.12 Ethics.** Contractor shall insure that in performing services under this Agreement, that all work shall be performed using best and most diligent efforts and professional skills and shall render care in accordance with and in a manner consistent with the highest standards of the specialty of forensic pathology and that all conduct shall be in a manner consistent with the principles of medical ethics and of the American Medical Association.

**1.13 Certification.** The Contractor shall be board certified in Anatomic and Forensic Pathology and/or by the American Board of Pathology and shall be licensed to practice medicine in the State of Texas.

## **2. INSURANCE COVERAGE**

**2.1 Professional Liability Insurance.** At all times during the term of this Agreement, the Contractor will carry professional liability insurance in the amount of \$100,000.00/\$300,000.00 at Contractor's expense and will provide general liability insurance covering her activities in providing services for the County in an amount not less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et.

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seq., Texas Civil Practice and Remedies Code. The County shall be named as an Additional Insured under the Contractor's liability insurance policy. The Contractor will provide a certificate of insurance to the County evidencing such coverage and will notify the County immediately if any change in coverage occurs for any reason.

**2.2. Automobile Insurance.** Contractor shall also provide proof of automobile liability insurance coverage with limits of at least \$300,000.00/\$500,000.00, consistent with potential exposure to County under the Texas Torts Claims Act. Coverage shall include injury or death of persons and property damage claims (with limits up to \$500,000.00) arising out of the services provided to County hereunder.

### **3. CONTRACTOR'S COVENANTS AND WARRANTIES**

**3.1.** Contractor makes the following representations and warranties to County:

**3.2 Licensure.** Contractor is duly licensed to practice medicine in the State of Texas and is board eligible or certified in the field of Anatomic and Forensic Pathology.

**3.3 Suspension of License.** Contractor has not practiced medicine in any state in which her license has ever been suspended or revoked.

**3.4 Discipline.** Contractor has never been reprimanded, sanctioned, or disciplined by a licensing board or state or local medical society or specialty board.

**3.5 Malpractice Judgment.** There has never been entered against Contractor a final judgment in a malpractice action having an aggregate award to the plaintiff in excess of \$10,000.00.

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**3.6 Settlement.** No action based on an allegation of malpractice by Contractor has ever been settled by payment to the plaintiff of an aggregate amount in excess of \$10,000.00.

**3.7 Membership Denial.** Contractor has never been denied membership or re-appointment of membership on the medical staff of any hospital, and no hospital medical staff membership or clinical privileges of Contractor have ever been suspended, curtailed, or revoked.

#### **4. OBLIGATIONS OF THE COUNTY**

**4.1** The County shall be obligated to provide a facility for purposes of allowing Contractor to fulfill her obligations under this Agreement.

**4.2** At the time a dedicated County Morgue Facility is established, the County shall provide the available funding to secure necessary personnel and/or staff and equipment as required by this Agreement and described herein and in Exhibit "A".

**4.3** Contractor agrees to make serving the County her medical practice priority. Contractor may practice at other institutions and locations when, in the reasonable opinion of the County, such other medical practice does not impair the fulfillment of her obligations under this Agreement or diminish the quality of service received by Hidalgo County. If, in the reasonable opinion of the County, the provision of Services are impaired or diminish due to another medical practice of the Contractor, then the County may unilaterally terminate this Agreement immediately without penalty.

**4.4 Delivery of Corpses.** The County, through a third party vendor (RFB. 2010-003-09-28-YZV), shall be responsible for the transport and delivery of corpses to

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the facility where autopsies shall be performed. The transport and/or delivery of the corpses shall not be the responsibility of the Contractor.

## **5. PARTIES' RELATIONSHIP**

**5.1 Relationship of the Parties.** Contractor, at all times will act as an Independent Contractor providing the Services and will not act or hold herself out to third parties as an employee or agent of County in the provision of the Services under this Agreement. The County shall not control how the results or the details of the Services are provided and/or achieved. As an Independent Contractor, Contractor shall supply her own tools, equipment, materials, supplies and/or labor as may be necessary to complete the Services (as specified in paragraphs 1.2 above) and shall not rely on or require the County to supply any of the above, unless otherwise specified in this Agreement.

## **6. TAXES AND BENEFITS**

**6.1** County will not withhold income tax or Social Security tax on behalf of the Contractor or any of Contractors partners, employees, subcontractors, or agents. In addition, none of the foregoing will have any claim under this Agreement or otherwise against the County for vacation pay, sick leave, unemployment insurance, worker's compensation, retirement benefits, disability benefits, or employee benefits of any kind. The Contractor will have exclusive responsibility for the payment of all such taxes and arrangement for insurance coverage and will discharge such responsibility fully.

## **7. INCURRING FINANCIAL OBLIGATION**

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**7.1** Contractor will incur no financial obligation on behalf of the County without prior written approval of the County. Contractor will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings.

## **8. OTHER PERSONNEL**

**8.1** All salaries, wages, taxes, insurance, worker's compensation insurance and other expenses and benefits incidental to the employment of physicians, non-physicians or other personnel by the Contractor will be the responsibility and obligation of the Contractor, until such time as the County designates the County Morgue Facility.

## **9. CONSULTATION**

**9.1 Consultation.** While this Agreement is in effect, the parties intend that the Contractor shall be the exclusive source of performing the Services for the County. However, the County may allow another pathologist to perform the Services in the event the Contractor is absent or may not be available for a period exceeding forty-eight (48) hours.

## **10. FEES**

**10.1 Fees.** The Contractor shall be compensated in accordance with the Cost Proposal attached hereto in Exhibit "A". This fee schedule may be amended only by the mutual written agreement of the Contractor and the County. The Contractor will bill and collect fees only for actual Services performed on behalf of the County in accordance with the specifications. The County will pay Contractor no later than thirty (30) days from the time the County is invoiced for the Services.

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## **11. NON-DISCRIMINATION**

**11.1** Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing Services under this Agreement or in the selection of physicians or non-physician employees, or independent contractors.

## **12. REGULATORY REQUIREMENTS**

**12.1** Contractor will perform the Services at all times in compliance with federal, state, and local laws, rules, regulations and all currently accepted and approved methods and practices of the professional specialty of forensic pathology.

## **13. INDEMNIFICATION**

**13.1 THE CONTRACTOR WILL INDEMNIFY AND HOLD COUNTY HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS AGREEMENT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE CONTRACTOR'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE CONTRACTOR TO THE EXTENT CONTRACTOR'S LIABILITY CARRIER PROVIDES A DEFENSE AND INDEMNITY. UPON WRITTEN NOTICE FROM THE COUNTY, THE CONTRACTOR WILL RESIST AND DEFEND, AND BY COUNSEL**

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**REASONABLY SATISFACTORY TO COUNTY, ANY SUCH CLAIM OR ACTION. THE CONTRACTOR WILL CARRY PROPER INSURANCE WITH THE COUNTY AS AN ADDITIONAL NAMED INSURED, AS PROVIDED IN PARAGRAPH 2.1 ABOVE.**

**13.2** To the extent provided for by law, the County will indemnify and hold the Contractor harmless from any and all claims, actions, liability, or expenses (including costs of settlements, judgments, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging the negligent or intentional actions or omissions of the County, its employees or any failure to perform any obligation undertaken or any covenant made by the County under this Agreement.

#### **14. TERMINATION OF AGREEMENT**

**14.1 Term.** The initial term of this Agreement shall be thirty-six (36) months commencing December 20, 2016, and ending on December 20, 2019.

**14.2 Renewal Option.** The County shall have the sole option to extend this Agreement for no more than two additional one (1) year terms under the same fees, rates, terms and conditions or as amended by written agreement between the County and the Contractor. County shall provide the Contractor a minimum of sixty (60) days notice of its intent to renew this Agreement for the additional one (1) year terms.

#### **14.3 Termination with Cause.**

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

- (1) To the extent provided under the law, any conduct of the Contractor which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the County.

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- (2) The failure of Contractor to provide coverage as required by Section 1.8 (Coverage) herein.
- (3) The resignation, expulsion, suspension, disciplining of Contractor or the loss of privileges as a forensic pathologist; the loss of Contractor's professional medical licenses; the loss of Contractor's pathologist board certification in the field of forensic pathology; or the loss of or failure to provide evidence of liability insurance, as required by Section 2.1 (Insurance) herein.
- (4) The conviction of the Contractor of any crime punishable as a felony involving moral turpitude or immoral conduct.
- (5) The death of Contractor or the occurrence of illness or injury reasonably likely to lead to the inability of Contractor to personally perform services under this Agreement for a period in excess of thirty (120) days.
- (6) The failure of Contractor immediately to bar any individual from performing services under this Agreement, if such individual does not meet the qualifications required by this Agreement, if such individual commits a material breach of one of the terms of this Agreement, or if one of the events listed in (1) through (4) above occurs with respect to such individual.
- (7) In addition, if the Contractor commits a material breach of any of the terms of this Agreement, other than those listed in subsections (1) through (6) above, then the County may terminate this Agreement upon no less than thirty (30) days written notice.

**(B). Termination by Contractor.** In the event the County breaches any material term of this Agreement, then the Contractor may terminate this Agreement upon no less than thirty (30) days written notice.

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

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

**14.6 Non-Interference.** Following the expiration of this Agreement or its termination with or without cause, Contractor shall not interfere with any County contract with any other individual or entity for the provision of the Services.

## **15. NOTICES**

**15.1 Notice.** Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to the Contractor: Norma Jean Farley, M.D.  
3100-A S. Bus. Hwy. 281  
Edinburg, Texas 78539

If to County: Ramon Garcia County Judge  
100 E. Cano  
Edinburg, Texas 78540

## **16. LAW**

**THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND IS PERFORMABLE IN HIDALGO COUNTY, TEXAS.**

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## **17. NO IMPLIED WAIVER**

Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

## **18. COMMITMENT OF CURRENT REVENUES**

**18.1** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon thirty (30) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex.Loc. Govt. Code Ann. § 271.903.

## **19. SEVERABILITY**

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

## **20. ASSIGNABILITY**

The Contractor may not assign Contractor's rights or obligations under this Agreement without the County's written consent. Any assignment in violation of this

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provision shall give the County the right to terminate this Agreement immediately, upon written notice to the Contractor.

## **21. AMENDMENTS**

Any amendments to this Agreement will be effective only if in writing and signed by the County and the Contractor.

## **22. ENTIRE AGREEMENT**

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

## **23. NO WAIVER**

No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

## **24. VARIATIONS OF PRONOUNS**

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

## **25. AUTHORIZATION FOR AGREEMENT**

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The execution and performance of this Agreement by County and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Contractor and County in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES on this the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
**Norma Jean Farley, M.D.**

**HIDALGO COUNTY**

\_\_\_\_\_  
Ramon Garcia, County Judge

**ATTESTED**

\_\_\_\_\_  
Arturo Guajardo, Jr, County Clerk

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Approved as to Form:  
Office of Criminal District Attorney

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By: Victor M. Garza  
Assistant District Attorney

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