

# AGREEMENT FOR FORENSIC PATHOLOGY SERVICES

by and between  
SEDGWICK COUNTY, KANSAS  
and  
JUDY DISTEFANO, D.O., P.C.

This Agreement, made and entered into this \_\_\_ day of \_\_\_\_\_ 2016, by and between Sedgwick County, Kansas ("County") and Judy Distefano, D.O., P.C., a professional corporation licensed to do business in the State of Kansas ("Contractor").

## WITNESSETH:

**WHEREAS**, Contractor provides contracted medical services in the area of forensic pathology; and

**WHEREAS**, County desires to engage Contractor to provide said services in the area of forensic pathology for service in its Regional Forensic Science Center ("RFSC"); and

**WHEREAS**, the parties desire to state in writing the terms and conditions under which Contractor will provide said services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto do agree as follows:

1. **Services.** Contractor shall provide the services of Ronald F. Distefano, D.O. ("Physician") to deliver forensic pathology services as requested by the Director of the RFSC.

2. **Relationship of Parties.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, including Physician, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, including Physician, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

3. **Scope of Services.** Contractor, through Physician, will investigate deaths in a timely manner according to generally accepted professional standards, perform autopsies, and submit a completed autopsy. For purposes of this agreement, the performance of autopsies may include, but is not limited to, the following items:

1. Perform internal and external gross examination of a body
2. Collect specimens for toxicological, histological and biochemical analyses
3. Interpret results of any and all toxicological, histological and biochemical analyses
4. Review pertinent medical records, investigative reports (which may include scene investigation), and consultant reports

5. Generate a signed written report that provides a medical opinion as to the cause and manner of death

4. **Term.** The initial term of this Agreement shall be for one (1) year and shall commence on the date ascribed in the introductory paragraph hereof, with County's sole option to renew for one (1) year. County shall notify Contractor in writing at least forty-five (45) days prior to the expiration of this Agreement of its intent to renew.

5. **Compensation.** In return for services rendered pursuant hereto, County agrees to pay Contractor at the rate of \$1,100.00 per "completed autopsy," with a maximum of 125 completed autopsies per year. In no event shall compensation paid under any single term of this Agreement exceed \$137,500. For purposes of this Agreement, the term "completed autopsy" shall mean the completion of internal and external gross examination of a body; collection of specimens for toxicological, histological and biochemical analyses and interpretation of all results; review of pertinent medical records, investigative reports (which may include scene investigation), and consultant reports; and generation of a signed written report that provides Physician's medical opinion as to the cause and manner of death.

Contractor will be responsible for payment of Physician's mileage fees and/or other travel costs associated in performing this Agreement.

County will not provide compensation of any kind in the event that Physician is needed and/or required to provide testimony with regard to a case for which he provided services. Physician shall be independently responsible for making arrangements with the party requesting such testimony.

6. **Kansas Medical License.** Physician shall maintain an active Kansas medical license and shall submit proof of such to the Director of the RFSC prior to commencement of this Agreement. In the event Physician fails to present such proof, or to maintain an active Kansas medical license during the duration of this Agreement, this Agreement shall be terminated without consequence to County.

7. **Professional Liability Coverage.** Contractor shall secure, on behalf of Physician, the minimum professional liability insurance required under the Kansas Health Care Provider Insurance Availability Act, K.S.A. 40-3401 *et seq.* Such insurance coverage shall be provided by an insurance company licensed to do business in the State of Kansas. Contractor shall provide evidence of such coverage to the Director of the RFSC and the County's Risk Management Director prior to the start of this Agreement. Contractor and Physician agree to notify the Director of the RFSC and the County's Risk Management Director of any incident that might reasonably be expected to become a claim or any liability or malpractice liability claim made or litigation instituted, which directly or indirectly, contingently or otherwise in any way affects or might affect the County.

8. **Insurance Requirements.** Contractor agrees to maintain the following minimum limits of insurance coverage throughout the term of this Agreement:

<b>Worker's Compensation</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$500,000.00

**Contractor's Liability Insurance:**

Form of insurance shall be by a Comprehensive General Liability and Comprehensive Automobile Liability

<b>Bodily Injury:</b> Each occurrence Aggregate	\$500,000.00 \$500,000.00
<b>Property Damage:</b> Each occurrence Aggregate	\$500,000.00 \$500,000.00
<b>Personal Injury:</b> Each person aggregate General aggregate	\$500,000.00 \$500,000.00
<b>Automobile Liability – Owned, Non-Owned, and Hired:</b> Bodily injury each person Bodily injury each occurrence	\$500,000.00 \$500,000.00
<b>Professional Liability</b>	As required by this Agreement

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. Contractor shall furnish a certificate evidencing such coverage, with County listed as an additional insured, except for professional liability, workers' compensation and employer's liability. Certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited, or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum BEST rating of A-VIII and licensed to do business in the State of Kansas. Contractor shall provide proof of such coverage to the Director of the RFSC and the County's Risk Management Director prior to commencement of this Agreement.

9. **Restraint on Practice.** Physician agrees not to engage in any professional activities that will cause a conflict of interest or appear to cause a conflict of interest that interferes with the effectiveness of Contractor's obligations under this Agreement. Notwithstanding these restrictions, nothing herein contained is intended to limit the right of Physician to clinically practice, write, publish, lecture, study, advise, testify and consult regarding the practice of medicine for a fee.

10. **Access to County Facilities.** Given the nature of the contracted services, County will supply the necessary safety and investigatory materials, supplies, equipment and tools required to accomplish the services agreed to be performed in accordance with this Agreement. Contractor shall supply, at its own expense, any additional materials, supplies, equipment and tools Physician so desires. Physician shall have access to the RFSC twenty-four (24) hours per day.

11. **Termination without Cause.** Either party may terminate this Agreement upon thirty (30) days' written notice to the other party indicating the effective date thereof. In the event of termination under this provision, Physician shall be obligated to complete any and all projects currently under his responsibility, and shall do so within sixty (60) days of the effective date of termination. Physician shall complete such obligations according to the same standards as those required during the duration of this Agreement. If ancillary information (i.e., toxicology or other forensic reports) necessary to complete autopsy reports and/or certificates within sixty (60) days of termination is not available to Physician, Physician will complete said reports, certificates and examinations within sixty (60) days of receipt of necessary ancillary information.

Contractor will not be entitled to receive any further payments under this Agreement until all work called for has been fully performed within the above-prescribed time period. If Physician fails to complete all work contracted for prior to notice of termination within the above-prescribed time period, any extra cost or damage to the County resulting from such failure shall be deducted from any money due or coming due to Contractor. Contractor shall further bear any extra expenses incurred by the County in completing the assigned work, and all damage sustained, or which may be sustained by the County by reason of such failure.

**12. Termination with Cause.** County reserves the right to terminate this Agreement immediately upon default and/or breach by Contractor or as a result of the failure of Contractor to provide acceptable services. Under this provision, default may include, but is not limited to the following:

1. Physician's inability to maintain the appropriate licensure to practice medicine within the State of Kansas or to maintain board certification in forensic pathology;
2. A material breach of this Agreement, including, but not limited to the failure to perform duties assigned consistent with this Agreement, or the negligent performance of duties assigned; or the commission of any act designated in K.S.A. 65-2836 or K.S.A. 65-2837, as amended, which could result in the suspension or revocation of Physician's license to practice the healing arts, regardless of whether the license is either suspended or revoked; or
3. Physician's conviction of any felony offense or other conviction involving falsehood or dishonesty.

In the event of termination of this Agreement as a result of a breach and/or default by Contractor, County will not be liable for any fees other than payment to Contractor for those services rendered and completed prior to termination.

**13. Indemnification.** To the fullest extent of the law, Contractor shall defend, indemnify and hold harmless County and its elected and appointed officials, officers, managers, members, employees and agents, from any and all claims brought by any third-party person or entity whatsoever, arising from any act, error, or omission of Contractor, its subcontractors, agents, servants, officers, or employees, including Physician, in connection with Contractor's performance of this Agreement or any other agreements between Contractor and the County entered into by reason of this Agreement. Contractor shall defend, indemnify and hold harmless County and its elected and appointed officials, officers, managers, members, employees and agents, with respect to any third-party claim arising, or alleged to have arisen from negligence and/or willful, wanton or reckless acts or omissions of Contractor, its subcontractors, agents, servants, officers, or employees, including Physician, and any and all losses or liabilities resulting from any such claims, including, but not limited to, damage awards, costs, and reasonable attorney's fees. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements. Contractor agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

**14. Record Keeping.** Contractor agrees that it will maintain appropriate and complete records of the services performed hereunder for the benefit of County and that these records will be made available to County at any time. Said records shall also be made available by Contractor for the purpose of audit and review of Physician's services provided hereunder. Records generated shall be created, maintained and stored according to the records maintenance system of County and, as such, are property of the County.

15. **Confidentiality.** Contractor agrees that all County information, records and data to which Physician may have access to or custody of shall be protected by Contractor from any unauthorized disclosure.

16. **Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County:                   Regional Forensic Science Center  
                              Attn: Dr. Timothy P. Rohrig, Director  
                              1109 N. Minneapolis  
                              Wichita, KS 67214

and

Sedgwick County Counselor's Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203 3790

Contractor:             Judy Distefano, D.O., P.C.  
                              3460 E. 76<sup>th</sup> Street  
                              Tulsa, Oklahoma 74136

17. **Governing Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

18. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

19. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

20. **Amendment.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

21. **Subcontractor.** Neither this Agreement nor any rights or obligations created by it shall be subcontracted by either party without the prior written consent of the other. Any attempt at subcontracting without such consent shall be null and void.

22. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

23. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SEDGWICK COUNTY, KANSAS:

JUDY DISTEFANO, D.O., P.C.:

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James M. Howell, Chairman  
Commissioner, Fifth District

R. F. Distefano D.O.  
RONALD F. DISTEFANO, SECRETARY 3/15/2016

APPROVED AS TO FORM ONLY:

ATTESTED TO:

Misha C. Jacob-Warren  
Misha C. Jacob-Warren  
Assistant County Counselor

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Kelly B. Arnold  
County Clerk