

STATE OF TEXAS

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COUNTY OF FORT BEND

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**AGREEMENT FOR TB PHYSICIAN PROFESSIONAL SERVICES
FY 2023**

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as "County") and Thomas A. Kaspar, M.D. (hereinafter referred to as "Physician").

WITNESSETH

WHEREAS, County desires that Physician provide professional medical services related to the diagnosis and treatment of tuberculosis patients (hereinafter "Services"); and

WHEREAS this Agreement is authorized pursuant to Section 81.005 of the TEXAS HEALTH AND SAFETY CODE; and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the TEXAS LOCAL GOVERNMENT CODE; and

WHEREAS, Physician represents that he or she is qualified and desires to perform such services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

- 1.01 Physician hereby enters into an Agreement with County to provide Professional Services as described in the Scope of Services, attached here as Exhibit A.
- 1.02 License. Throughout the term of this Agreement, Physician must maintain an unrestricted license to practice medicine in the State of Texas, duly registered in Fort Bend County. Physician must also maintain state and federal licenses to prescribe all classes of controlled drugs except Schedule I drugs.

Section 2. Compensation and Payment

- 2.01 Physician shall be paid five thousand dollars and no/100 (\$5,000.00) per month, for a total Maximum Compensation of sixty thousand dollars and no/100 (\$60,000.00) for the Term of Performance. This monthly amount shall not exceed five thousand dollars and no/100 (\$5,000.00) per month. Physician is deemed an independent contractor and is not entitled to overtime or other benefits as described in Section 11. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
- 2.02 All performance of Services by Physician including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- 2.03 County will pay Physician based on the following procedures: Beginning on November 1, 2021, Physician shall submit to County two (2) original copies of invoices showing the monthly amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 3. Limit of Appropriation

- 3.01 Physician clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of sixty thousand dollars and no/100 (\$60,000.00) specifically allocated to fully discharge any and all liabilities County may incur.
- 3.02 Physician does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Physician may become entitled to and the total maximum sum that County may become liable to pay to Physician shall not under any conditions, circumstances, or interpretations thereof exceed sixty thousand dollars and no/100 (\$60,000.00).

Section 4. Term

- 4.01 The time for performance of the Scope of Services by Contractor shall begin on October 1, 2022 and end on September 30, 2023.
- 4.02 Physician shall devote such of his time as is reasonably needed to fulfill the responsibilities and duties of the Professional Services under the terms of this Agreement. It is understood that Physician may continue to engage in private medical practice when not performing duties under this Agreement.

Section 5. Modifications and Waivers

- 5.01 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- 5.02 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- 5.03 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 6. Termination

6.01 Termination for Convenience

6.01.1 County may terminate this Agreement at any time upon thirty (30) days written notice.

6.02 Termination for Default

6.02.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

6.02.1.1 If Physician fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing.

6.02.1.2 If Physician materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or fails to cure such breach to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

6.02.2 If, after termination, it is determined for any reason whatsoever that Physician was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 6.01 above.

6.03 Upon termination of this Agreement, County shall compensate Physician in accordance with Section 2, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Physician's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

- 6.04 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Physician.

Section 7. Inspection of Books and Records

To the extent allowed by law, Physician will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Physician for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 8. Insurance

Throughout the term of this Agreement, County shall obtain and maintain for Physician, at County's sole cost and expense, a policy of professional liability insurance or medical malpractice insurance. Such policy shall remain in force at all times during the term of this Agreement and shall provide coverage to Physician for Professional Services provided under this Agreement. Any policy provided under this Agreement shall not be applicable for services provided beyond the scope of this Agreement.

Section 9. Indemnity

PHYSICIAN SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF PHYSICIAN, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF PHYSICIAN OR ANY OF PHYSICIAN'S AGENTS, SERVANTS OR EMPLOYEES.

Section 10. Confidential and Proprietary Information

- 10.01 Physician acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Physician or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Physician shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Physician) publicly known or is contained in a publicly available document; (b) is rightfully in Physician's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Physician who can be shown to have had no access to the Confidential Information.
- 10.02 Physician agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Physician uses in maintaining the confidentiality of its

own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Physician shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Physician shall advise County immediately in the event Physician learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Physician will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Physician against any such person. Physician agrees that, except as directed by County, Physician will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Physician will promptly turn over to County all documents, papers, and other matter in Physician's possession which embody Confidential Information.

- 10.03 Physician acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Physician acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- 10.04 Physician in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- 10.05 Physician expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 11. Independent Contractor

It is agreed by the parties that all times and for all purposes, in the performance of work or services hereunder, Physician shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Physician or, where permitted, of its subcontractors. Physician and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 12. Notices

12.01 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

12.02 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Jacquelyn Johnson-Minter, MD, MPH, MBA
Director Fort Bend County Health & Human Services
4520 Reading Road
Rosenberg, TX 77471

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Physician: Thomas A. Kaspar, M.D.

12.03 A Notice is effective only if the party giving or making the Notice has complied with subsections 12.01 and 12.02 above and if the addressee has received the Notice. A Notice is deemed received as follows:

12.03.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

12.03.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 13. Compliance with Laws

Physician shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Physician shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 14. Performance Representation

Physician represents to County that Physician has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Physician will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards. Physician represents to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the Agreement.

Section 15. Assignment

15.01 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

15.02 Neither party may delegate any performance under this Agreement.

15.03 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 16. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 17. Successors and Assigns

County and Physician bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 18. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 19. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 20. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Physician release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 21. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 22. Certain State Law Requirements for Contracts

The contents of this Section are required by Texas Law and are included by County regardless of content.

Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 23. Human Trafficking

BY ACCEPTANCE OF CONTRACT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

Section 24. Entire Agreement

This instrument contains the entire Agreement between the parties hereto relating to the rights herein granted and the obligation herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

IN WITNESS WHEREOF, THIS AGREEMENT shall be effective upon execution of all parties.

FORT BEND COUNTY

PHYSICIAN

KP George, Fort Bend County Judge

Thomas A. Kaspar, M.D.

Date

Date

ATTEST:

Laura Richard, County Clerk

Reviewed by:

Jacquelyn Johnson-Minter, M.D., MPH, MBA
Director, Health and Human Services

Exhibit A – Scope of Work

I:\AGREEMENTS\2023 Agreements\HHS\Kaspar MD TB\2023 Physician Agreement (Kaspar) for TB Services (kns- 10.24.22)

AUDITOR'S CERTIFICATE

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

Robert Ed Sturdivant, County Auditor

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A

SCOPE OF WORK

- 1.01 Contractor hereby enters into an Agreement with County to provide Professional Services as described below.
- 1.02 Physician's duties under this Agreement shall include:
 - (A) Diagnosis and treatment of tuberculosis (TB) patients;
 - (B) Oversight of patient treatment by nurses/nurse practitioner, as well as consultation with clinic nurse, community physicians and Texas Center for Infectious Diseases (TCID) physicians regarding TB patients, as needed;
 - (C) Examination of and recommendations for patients with Latent TB Infection;
 - (D) Quality Assurance/Quality Improvement activities during regular clinic hours as available, to include medical record reviews and clinical cohort reviews;
 - (E) As needed, collaborate with County Attorney's Office to prepare documentation and provide testimony for Court- Ordered isolation to TCID;
 - (F) As needed, confer with state and federal public health authorities on travel restriction for persons with active TB disease.
- 1.03 Physician's regularly scheduled activities shall include:
 - (1) Staffing the TB clinic for a minimum of eight (8), four (4)-hour sessions each month, to include days at both clinics as appropriate for patient case load and complexity
 - (2) As needed response to program nurses to review/revise patient medication orders