



**DeWight Dopslauf, C.P.M., CPPO  
Harris County Purchasing Agent**

April 20, 2021

Commissioners Court  
Harris County, Texas

**RE: Personal Services Exemption - Local Government Code § 262.024 (a)(4)**

Members of Commissioners Court:

Please approve an exemption from the competitive bid requirements and the attached Order(s) authorizing the County Judge to execute the attached Agreement(s) for the following:

**Description:** Radiographic Interpretation Services for Incoming Inmates of the Harris County Sheriff's Office  
**Vendor(s):** Stephen Kaminsky, M. D., P. A.  
**Term:** April 27, 2021 - October 26, 2021  
**Amount:** \$138,420  
**Reviewed By:** • Harris County Purchasing • Sheriff's Office

Purchase order(s) will be issued as required upon Commissioners Court approval.

Sincerely,

A handwritten signature in blue ink, appearing to read "DeWight Dopslauf".

DeWight Dopslauf  
Purchasing Agent

FHS  
Attachment(s)  
cc: Vendor(s)

**FOR INCLUSION ON COMMISSIONERS COURT AGENDA APRIL 27, 2021**

# AGREEMENT BETWEEN HARRIS COUNTY AND STEPHEN KAMINSKY M.D., P.A.

THE STATE OF TEXAS     §  
                                  §  
COUNTY OF HARRIS     §

This Agreement is made and entered into by and between Harris County ("County"), a body corporate and politic under the laws of the State of Texas acting by and through the Harris County Sheriff's Office (the "Sheriff"), and Stephen Kaminsky, M.D., P.A. ("Kaminsky" or "Contractor"), a professional association organized under the laws of the State of Texas. County and Kaminsky are referred to herein collectively as the "Parties" and individually as a "Party."

## *Recitals*

The County maintains Detention Facilities for the housing of inmates subject to the custody and control of the Sheriff.

The County desires Kaminsky to provide radiographic interpretations of chest image diagnostic impressions (the "Services") of the incoming inmates, to detect the existence of tuberculosis ("TB") in the inmates.

The County also desires Kaminsky to provide all other radiographic interpretations, for the diagnosis of pneumonia and cancer, for incoming and housed inmates subject to the custody and control of the Sheriff.

Kaminsky warrants he is capable of providing the Services and he is willing to provide the Services.

## *Terms*

### 1) SCOPE OF SERVICES

- A) During the term of this Agreement, the County will provide Kaminsky with the chest image diagnostic impressions requiring interpretation and Kaminsky will provide radiographic interpretations of chest image diagnostic impressions ("X-rays") of the inmates housed in the Detention Facilities to detect the existence of TB.
- B) During the term of this Agreement, the County will also provide other X-rays requiring interpretation and Kaminsky will provide radiographic interpretations of

the X-rays to detect the existence of pneumonia and cancer of the inmates housed in the Detention Facilities.

- C) The "Detention Facilities" shall include all facilities used by the Sheriff for housing or keeping of inmates including, but not limited to, the following addresses: 701 N. San Jacinto, 711 N. San Jacinto, 1201 Commerce, and 1307 Baker and 1200 Baker, and all in Harris County, Texas.
- D) Kaminsky must provide the radiographic interpretations of the X-rays of the inmates within twenty-four (24) hours after an impression is made.
- E) The Sheriff shall designate the areas within the Detention Facilities where Kaminsky may perform radiographic interpretations.
- F) Kaminsky shall ensure that each radiologist ("Radiologist" or "Personnel") that Kaminsky assigns to the Detention Facilities to provide radiographic interpretation shall:
  - i) Follow the administrative policies, rules, and regulations of the Harris County Sheriff's Department Medical Division, including all security guidelines, which pertain to the operation and administration of the Detention Facilities; and
  - ii) Keep and maintain patient clinical records at the Detention Facilities in accordance with all applicable federal, state, and local laws, regulations, rules, and ordinances. Such records remain the property of the County and Kaminsky is not authorized to remove any records from the Detention Facilities without the prior written approval of the Sheriff.
- F) Kaminsky must work with the Sheriff in coordinating the provision of radiographic interpretations and supervise all aspects of the Services provided. Kaminsky further agrees to send a representative to attend and participate in scheduled clinical activities and appropriate conferences and meetings at the Detention Facilities.
- G) Kaminsky must provide a sufficient and adequate number of Radiologists at the Detention Facilities in order that inmates requiring radiographic interpretations are provided same in a timely manner.
- H) Each day during the term of this Agreement, Kaminsky must furnish the Sheriff a written report setting out the name of each inmate for whom Kaminsky made a radiographic interpretation during the immediately preceding day and the results of each such radiographic interpretation.
- I) Access to Books and Records. Kaminsky agrees to allow the Comptroller General of the United States, the Department of Health and Human Services

("HHS"), the County Auditor, or their duly authorized representatives, access to contracts, books, documents, and records necessary to verify the nature and extent of the costs of the Services provided by Kaminsky. Kaminsky agrees to allow such access until the expiration of six (6) years after the Services are furnished under the Agreement or any subcontract. Such access will be provided in accordance with the regulations of the Centers for Medicare and Medicaid Service ("CMS"). Kaminsky allows similar access to books, records, and documents related to contracts between Kaminsky and organizations related to or subcontracted by Kaminsky for this Agreement, as defined by the regulations of CMS.

## **2) AUTHORIZATION AND SUPERVISION**

- A) The Sheriff Office's Medical Administrator of the Medical Services Division (the "Medical Administrator") will be the contact person for Kaminsky.
- B) Performance of Services under this Agreement shall not begin until Kaminsky obtains authorization to begin from the Medical Administrator and receives a duly signed and approved Purchase Order issued by the Harris County Purchasing Agent.
- C) Kaminsky represents that he and all Personnel he assigns to perform Services under this Agreement possess all documentation including but not limited to licenses, special certifications, and accreditation required by law to perform these Services. Kaminsky and Personnel shall maintain, in good standing, appropriate licensing and accreditation as required to perform these Services through the State of Texas or other applicable licensing entities, during the term of this Agreement.
- D) Kaminsky agrees to perform the Services and ensure his Personnel perform the Services in accordance with generally accepted standards applicable thereto, and to observe and comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to this Agreement and performance hereunder.
- E) All radiologists Kaminsky provides for radiographic interpretations, under this Agreement, must be licensed to practice medicine in the State of Texas.
- F) All radiologists Kaminsky provides under this Agreement are subject to the approval of the Sheriff Office's Medical Administrator of the Medical Services Division.

## **3) COUNTY RESPONSIBILITIES**

- A) The County will provide clinical space, supplies, and equipment for the performance of the Services.

- B) Subject to availability, the County will provide staff to assist with clerical and other support services.
- C) The County will provide orientation and instruction as to the Sheriff's detention policies and guidelines to Kaminsky and Radiologists.

4) **TERM**

The Initial Term of this Agreement shall commence upon the execution of both parties and shall remain in full force and effect for six (6) consecutive months ("Current Term"), unless sooner terminated in accordance with the provisions of this Agreement.

5) **PAYMENT AND LIMITATION OF APPROPRIATION**

- A) In consideration of the Services to be performed by Kaminsky hereunder, the County agrees to pay Kaminsky a fee of Four and No/Dollars (\$4.00) for each radiographic interpretation of chest image (or film) diagnostic impression of an inmate performed to detect Tuberculosis pursuant to this Agreement. The County also agrees to pay Kaminsky a fee of Five and No/Dollars (\$5.00) for each radiographic interpretation diagnostic impression of an inmate performed to detect cancer or pneumonia pursuant to this Agreement. It is understood and agreed that Kaminsky is not authorized to charge the County for second or subsequent radiographic interpretations of chest image diagnostic impressions performed on the same inmate and which are related to the initial diagnostic impression.
- B) Kaminsky understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Kaminsky may become entitled to during the Current Term, and the total maximum sum that the County shall become liable to pay to Kaminsky for Services performed during the Current Term, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of One Hundred Thirty-Eight Thousand Four Hundred Twenty and No/Dollars (\$138,420.00).

D) **LIMIT OF APPROPRIATION:**

Kaminsky understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Kaminsky may become entitled to during the Extension Term and the Current Term, and the total maximum sum that the County shall become liable to pay to Kaminsky for Services performed during the Extension Term and the Current Term, shall not under any conditions, circumstances, or interpretations thereof exceed the sum of One Hundred Thirty-Eight Thousand Four Hundred Twenty

and No/Dollars (\$138,420.00). This sum represents the total maximum sum of funds certified available by the County Auditor of Harris County through the issuance of single or multiple Purchase Orders for the purpose of satisfying all of the County's obligations under the terms and provisions of this Agreement. Notwithstanding anything to the contrary, or that may be construed to the contrary, the County's liability under the terms and provisions of this Agreement is limited to this sum. When and if all the funds so certified are expended, Kaminsky's sole and exclusive remedy shall be to terminate this Agreement.

- E) Consideration. The Parties agree that the Kaminsky provided the same services as specified in this Agreement, between March 8, 2021 through March 31 2021, and as full compensation for rendered services, the County agrees to pay Twenty-Three Thousand Seventy and No/Dollars (\$23,070.00). Kaminsky understands and agrees that this compensation is part of, not in addition to, the One Hundred Thirty-Eight Thousand Four Hundred Twenty and No/Dollars (\$138,420.00) stipulated in subsection E of this Limit of Appropriation
- E) With regard to any renewal terms or extension of this Agreement, the County has not certified any funds for any renewal or extension period beyond the current fiscal year. Therefore, if the County exercises any renewal option, the renewal is subject to the future allocation and certification of funds for the renewal term.

## 6) METHOD OF PAYMENT

- A) On or about the last day of the calendar month during the performance of the Services to be provided under the Master Agreement, Kaminsky shall submit a sworn statement to: Harris County, Attn: Auditing, 1001 Preston 8<sup>th</sup> Floor, Houston, Texas 77002. Each statement shall be in a form acceptable to the County Auditor and shall include such detail of the Services as may be requested by the County Auditor for verification purposes. The statements shall, where applicable include at a minimum the following: a description of the Services; the name and classification of the person(s) performing the Service(s); the day(s) and the time(s) the Services were performed and the name of each person who performed Services; and the total amount billed for the Services.
- B) After receipt of a statement, the Sheriff's Office shall review each statement and approve it with such modifications as may be deemed appropriate and return the statement with any modifications to the County Auditor for payment. Subject at all times to the Limit of Appropriations and the County's right to withhold payment of any questionable charges, the County shall pay each such undisputed statement, as approved by the County Auditor, in accordance with Texas law.
- C) Kaminsky agrees to make its records available within the boundaries of Harris County for inspection during regular business hours by County officials or employees. In the event the County receives a court order or other request from a

duly authorized Federal, state, or local governmental entity that requires the County to provide Kaminsky's records ("Governmental Request"), Kaminsky agrees to make its records available within the timeframe specified in the Court Order or Governmental Request.

- D) Further, Kaminsky agrees to maintain, for a period of six (6) years, detailed records identifying, where applicable, the Services and each individual performing the Services, the date or dates the Services were performed, the hourly rates, the total amount billed for each individual, and the total amount billed for all Services, and provide such other details as may be requested by the County's Auditor for verification purposes.
- E) The approval or payment of any statement or invoice shall not be considered to be evidence of performance by Kaminsky or Radiologists to the point indicated by such statement or invoice or of receipt or acceptance by the County of the Services covered by such statement or invoice.

## **7) INSURANCE**

- A) Kaminsky shall maintain professional liability insurance coverage for each Radiologist provided by Kaminsky for the performance of the Services, covering personal injuries arising out of, or in connection with, the performance of the Services provided for, with coverage in the amount of not less than One Hundred Thousand and No/Dollars (\$100,000.00) for injuries or death to any one person, and not less than Three Hundred Thousand and No/Dollars (\$300,000.00) for injuries or death to more than one person in any accident or occurrence, and not less than One Hundred Thousand and No/Dollars (\$100,000.00) for any single occurrence for injury to or destruction of property, or in the amounts of the County's maximum limitations of liability under the Texas Tort Claims Act, as amended, whichever is greater.
- B) Kaminsky shall maintain Medical Malpractice Insurance coverage of One Million and No/Dollars (\$1,000,000.00) per occurrence and Two Million and No/Dollars (\$2,000,000.00) in the aggregate, at all times during the term of this Agreement.
- C) Kaminsky shall provide the County with a certificate of insurance evidencing the above-referenced types of coverage within thirty (30) days after the execution of this Agreement. Such certificate shall be mailed to Harris County Purchasing Agent at the address listed for notice, and a copy to the Sheriff's Office at the address listed for notice.

## **8) DANGEROUS PEOPLE AND INDEMNIFICATION**

- A) Kaminsky realizes and fully understands that Kaminsky and the Radiologists may be working with violent and potentially dangerous inmates. Therefore, it shall be the duty of Kaminsky to so inform the Radiologists, and to alert and inform the Sheriff or his designee of any threatened or potentially dangerous situation which may arise from or in conjunction with any Services rendered by Kaminsky pursuant to this Agreement. Kaminsky further agrees that County shall not be responsible for such violent or dangerous conduct, or liable for any damages arising therefrom, on the part of any persons with which Kaminsky or the Radiologists shall work or come in contact with, pursuant to this Agreement.

**KAMINSKY SHALL HOLD HARMLESS THE COUNTY FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO ANY PERSONAL INJURY OR DEATH OF KAMINSKY, RADIOLOGISTS, OR PERSONNEL.**

- B) **KAMINSKY SHALL HOLD HARMLESS THE COUNTY FROM AND AGAINST ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF KAMINSKY, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS PERFORMED UNDER THIS CONTRACT AND WHICH RESULT FROM ANY PERSONAL INJURY OR DEATH; NEGLIGENT ACT, ERROR, OR OMISSION; INTENTIONAL TORT; INTELLECTUAL PROPERTY INFRINGEMENT; OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER; COMMITTED BY KAMINSKY OR BY ANY PERSON EMPLOYED BY KAMINSKY, OR KAMINSKY'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH KAMINSKY EXERCISES CONTROL. KAMINSKY SHALL ALSO HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY THE COUNTY, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES WHICH MIGHT BE IMPOSED ON THE COUNTY AS THE RESULT OF SUCH ACTIVITIES BY KAMINSKY, ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH KAMINSKY EXERCISES CONTROL.**

**IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED DUE TO ANY ACT, ERROR, OR OMISSION COMMITTED BY KAMINSKY OR PERSONNEL, KAMINSKY SHALL MAKE EVERY EFFORT, INCLUDING BUT NOT LIMITED TO SECURING A SATISFACTORY BOND, TO OBTAIN THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION.**

**COUNTY RESERVES THE RIGHT TO BE INDEPENDENTLY REPRESENTED BY COUNSEL OF ITS OWN CHOICE IN CONNECTION WITH ANY SUCH SUIT OR PROCEEDING.**



9) **TERMINATION**

- A) The County may terminate this Agreement at any time by providing thirty (30) days notice in writing to the Contractor.
- B) Upon receipt of termination notice, Contractor shall discontinue all Services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- C) Within thirty (30) days after receipt of notice of termination, Contractor agrees to submit an invoice showing in detail the Services performed under this Agreement up to and including the date of termination.
- D) The County agrees to pay Contractor that proportion of the prescribed charges for the Services actually performed and deliverables actually received under this Agreement bear to the total Services or deliverables called for under this Agreement, less such payments on account of charges as have previously been made.
- E) *Force Majeure.* In the event that either Party is unable to perform any of its obligations under the Agreement or to enjoy any of the benefits because of natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected party (referred to as a "*Force Majeure* Event"), the Party who has been so affected immediately agrees to give notice to the other Party and agrees to do everything possible to resume performance. Upon receipt of such notice, the Agreement is immediately suspended. If the period of nonperformance exceeds ten (10) calendar days from the receipt of notice of the *Force Majeure* Event, the Party whose ability to perform has not been so affected may terminate the Agreement immediately by giving written notice to the other Party.
- F) Copies of all completed or partially completed information, programs, inventions, software (including source code), firmware, designs, documentation or data (the "Documents") developed, created or invented under this Agreement shall be delivered to the County when this Agreement is terminated or completed.
- G) Agreement Transition. In the event the Agreement ends by either expiration or termination, Contractor shall assist in the transition until such time that a new contractor can be completely operational. Contractor acknowledges its responsibility to cooperate fully with the replacement contractor and the County to ensure a smooth and timely transition to the replacement contractor. Such

transitional period shall not extend more than ninety (90) days beyond the expiration/termination date of the Agreement, or any extension thereof. During any transition period, all other terms and conditions of the Agreement shall remain in full force and effect as originally written, of damages due from Kaminsky is determined.

**10) INDEPENDENT CONTRACTOR**

- A) The Services performed by Kaminsky under this Agreement are performed by Kaminsky as an independent contractor and in addition to his regular business. Kaminsky and his Personnel shall remain independent contractors and none shall be considered an employee, agent, borrowed servant, or partner of the County.
- B) The County shall look to Kaminsky for results only. Kaminsky shall not be obligated to maintain any set, regular hours, nor perform any set number of hours of Service in fulfilling the Services.
- C) As an independent contractor, Kaminsky shall accept any directions issued by the Sheriff's Office through its authorized representatives pertaining to the goals to be attained and the results to be achieved. However, Kaminsky shall be solely responsible for the manner in which he shall perform the Services under the Agreement.
- D) Neither Kaminsky nor any Personnel shall have the legal status of an employee of the County and shall have no right in or claim to any of the County's employee benefits or group insurance plans or programs. Kaminsky acknowledges the independent contractor's status and his sole responsibility with respect to payment of any and all taxes or other assessments which may be payable as a result of the fees paid under this Agreement. The County shall not provide to Kaminsky Social Security, unemployment compensation, disability insurance, workers' compensation, or similar coverage, or any other statutory benefit for himself or any Personnel. The County shall not withhold from Kaminsky's compensation any federal, state or local taxes except as shall be required to be withheld pursuant to any applicable law or regulation.
- E) **IN THE EVENT THAT ANY STATE OR FEDERAL AGENCY OR COURT OF COMPETENT JURISDICTION DETERMINES THAT KAMINSKY, INCLUDING PERSONNEL, IS NOT AN INDEPENDENT CONTRACTOR, KAMINSKY AGREES TO INDEMNIFY AND HOLD HARMLESS THE COUNTY FOR ANY AND ALL DAMAGES, PENALTIES, ASSESSMENTS, TAXES, AND EXPENSES THAT MAY BE INCURRED BY COUNTY AS A RESULT OF THIS DETERMINATION.**

**11) NOTICE**

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or CA at the following addresses. If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To Kaminsky: Dr. Stephen Kaminsky, M.D., P.A.  
2726 Bissonnet St.  
Houston, Texas 77005

To the County: Harris County Sheriff  
1200 Baker  
Houston, Texas 77002  
Attn: Paul Thomas, Radiology Director

Copy to: Harris County Purchasing Agent  
1001 Preston, Suite 670  
Houston, Texas 77002  
Attn: Farrah Simon

Either Party may designate a different address by giving the other Party ten (10) days written notice.

**12) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT  
("HIPAA")**

The purpose of this Article is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§ 81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended (collectively referred to herein as the "Privacy and Security Requirements").

**A) Definitions.**

- i) Confidential Information is information that has been deemed or designated confidential by law (i.e., constitutional, statutory, regulatory, or

by judicial decision).

- ii) Protected Health Information ("PHI") is defined in 45 C.F.R. § 164.501 and is limited to information created or received by Kaminsky from or on behalf of the County.
- iii) Electronic Protected Health Information ("EPHI") shall mean individually identifiable health information that is transmitted by or maintained in electronic media.
- iv) Security Incident shall mean the unauthorized access, use, disclosure, modification, or destruction of Confidential Information, including, but not limited to, PHI and EPHI, or interference with the systems operations in an information system, including, but not limited to, information systems containing EPHI. This definition includes, but is not limited to, lost or stolen transportable media devices (e.g., flash drives, CDs, PDAs, cell phones, and cameras), desktop and laptop computers, photographs, and paper files containing Confidential Information, including, but not limited to, PHI and EPHI.

B) General.

- i) Kaminsky agrees to hold all PHI and EPHI confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended.
- ii) Kaminsky agrees to be bound by and comply with all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Privacy and Security Requirements. Compliance with this paragraph is at Kaminsky's own expense.
- iii) Kaminsky agrees to cooperate with state and federal agencies and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and any other process, including investigations, required as a result of Kaminsky's services to the County. Compliance with this paragraph is at Kaminsky's own expense.
- iv) The terms used in this Article shall have the same meaning as those terms in the Privacy and Security Requirements.

- C) Representation. Kaminsky represents that it is familiar with and is in compliance with the Privacy and Security Requirements, which include Federal and State of Texas requirements governing information relating to HIV/AIDS, mental health, and drugs or alcohol treatment or referral.

- D) Business Associate. Kaminsky is a "Business Associate" of the County as that term is defined under the Privacy and Security Requirements.
- i) Nondisclosure of PHI. Kaminsky agrees not to use or disclose PHI received from or on behalf of the County or created, compiled, or used by Kaminsky pursuant to the Agreement other than as permitted or required by this Article, or as otherwise required by law.
  - ii) Limitation on Further Use or Disclosure. Kaminsky agrees not to further use or disclose PHI or EPHI received from or on behalf of the County or created, compiled, or used by Kaminsky pursuant to this Agreement in a manner that would be prohibited by the Privacy and Security Requirements if disclosure was made by the County, or if either Kaminsky or the County is otherwise prohibited from making such disclosure by any present or future State or Federal law, regulation, or rule.
  - iii) Safeguarding PHI. Kaminsky agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Article or as required by State or Federal law, regulation, or rule.
  - iv) Safeguarding EPHI. Kaminsky agrees to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the County. These safeguards shall include the following:
    - a) Encryption of EPHI that Kaminsky stores and transmits;
    - b) Implementation of strong access controls, including physical locks, firewalls, and strong passwords;
    - c) Use of updated antivirus software;
    - d) Adoption of contingency planning policies and procedures, including data backup and disaster recovery plans; and
    - e) Conduct of periodic security training.
  - v) Reporting Security Incidents. Kaminsky agrees to report to the County any Security Incident immediately upon becoming aware of such. Kaminsky further agrees to provide the County with the following information regarding the Security Incident as soon as possible, but no more than five (5) business days after becoming aware of the Security Incident:
    - a) a brief description of what happened, including the dates the Security Incident occurred and was discovered;
    - b) a reproduction of the PHI or EPHI involved in the Security Incident; and

- c) a description of whether and how the PHI or EPHI involved in the Security Incident was rendered unusable, unreadable, or indecipherable to unauthorized individuals either by encryption or otherwise destroying the PHI or EPHI prior to disposal.

If Kaminsky determines that it is infeasible to reproduce the PHI or EPHI involved in the Security Incident, Kaminsky agrees to notify the County in writing of the conditions that make reproduction infeasible and any information Kaminsky has regarding the PHI or EPHI involved.

Kaminsky agrees to cooperate in a timely fashion with the County regarding all Security Incidents reported to the County.

Kaminsky agrees that the County will review all Security Incidents reported by Kaminsky and the County, in its sole discretion, will take the following steps in response, to the extent necessary or required by law, including, but not limited to:

- a) notifying the individual(s) whose PHI or EPHI was involved in the Security Incident, either in writing, via telephone, through the media, or by posting a notice on the County's website, or through a combination of those methods, of the Security Incident;
- b) providing the individual(s) whose PHI or EPHI was involved in the Security Incident with credit monitoring services for a period of time to be determined by the County, at no cost to the individuals; and
- c) providing notice of the Security Incident, as required by law, to the Secretary of the United States Department of Health and Human Services ("HHS").

Kaminsky agrees to reimburse the County for all expenses incurred as a result of Kaminsky's Security Incidents, including, but not limited to, expenses related to the activities described above. Kaminsky agrees that the County will select the vendors and negotiate the contracts related to said expenses.

- vi) EPHI and Subcontractors. Kaminsky shall require any agent to whom it provides PHI or EPHI, including a subcontractor, to agree to implement reasonable and appropriate safeguards to protect such PHI or EPHI. Further, Kaminsky agrees to give the County at least sixty (60) days advance notice of its intent to provide PHI or EPHI to an agent located outside of the United States.
- vii) Subcontractors and Agents. Kaminsky shall require any subcontractor or agent to whom Kaminsky provides PHI or EPHI received from or on behalf of the County or created, compiled, or used by Kaminsky pursuant to this Agreement, to agree to the same restrictions and conditions that apply to Kaminsky with respect to such PHI and EPHI.

- viii) Reciprocal Disclosures. The Parties agree that the Parties may reciprocally disclose and use PHI or EPHI for initial and continuing eligibility and compliance determinations related to the provision of benefits, for auditing and legal compliance purposes, and for compliance with laws, regulations, and rules related to the provision of medical or drug benefits to persons who may be eligible for such benefits under the Medicare Prescription Drug Benefit Program, Part D, or other federal or State of Texas programs.
- ix) Mitigation. Kaminsky agrees to mitigate, to the extent practicable, any harmful effect that is known to Kaminsky of a use or disclosure of PHI or EPHI by Kaminsky, or by a subcontractor or agent of Kaminsky, resulting from a violation of this Article, including violations of the Privacy and Security Requirements stated herein. Kaminsky also agrees to inform the County in advance of its actual mitigation and of the details of its mitigation plan, unless doing so would cause additional harm.
- x) Notice – Access by Individual. Kaminsky agrees to notify the County in writing within three (3) business days of any request by an individual for access to the individual's PHI or EPHI and, upon receipt of such request, direct the individual to contact the County to obtain access to the individual's PHI. Upon request by the County, Kaminsky agrees to make available PHI and EPHI to the County or, as directed by the County, to an individual in accordance with 45 C.F.R. § 164.524.
- xi) Notice – Request for Amendment. Kaminsky agrees to notify the County in writing within three (3) business days of any request by an individual for an amendment to the individual's PHI or EPHI and, upon receipt of such request from the individual, direct the individual to the County to request an amendment of the individual's PHI or EPHI. Kaminsky agrees to make available upon request PHI and EPHI for amendment and to incorporate any amendments to PHI and EPHI agreed to or directed by the County in accordance with 45 C.F.R. § 164.526.
- xii) Notice – Request for Accounting. Upon receipt of any request from an individual for an accounting of disclosures made of the individual's PHI or EPHI, Kaminsky agrees to notify the County in writing within three (3) business days of any such request, and upon receipt of such request from the individual, direct the individual to the County for an accounting of the disclosures of the individual's PHI or EPHI. Kaminsky agrees to make available upon request the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. Pursuant to 45 C.F.R. § 164.528(a), an individual has a right to receive an accounting of certain disclosures of PHI or EPHI in the six (6) years prior to the date on which the accounting is requested.

- xiii) HHS Inspection. Upon written request, Kaminsky agrees to make available to HHS or its designee, Kaminsky's internal practices, books, and records relating to the use and disclosure of PHI and EPHI received from, or created or received on behalf of, the County, in a time or manner designated by HHS for purposes of HHS determining the County's compliance with the Privacy and Security Requirements.
- xiv) County Inspection. Upon written request, Kaminsky agrees to make available to the County and its duly authorized representatives, during normal business hours, Kaminsky's internal practices, books, records and documents relating to the use and disclosure of confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the County in a time and manner designated by the County for the purposes of the County determining compliance with the Privacy and Security Requirements. Kaminsky agrees to allow such access until the expiration of six (6) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is later. Kaminsky agrees to allow similar access to books, records, and documents related to contracts between Kaminsky and organizations related to or subcontracted by Kaminsky to whom Kaminsky provides confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the County.
- xv) PHI or EPHI Amendment. Kaminsky agrees to incorporate any amendments, corrections, or additions to the PHI or EPHI received from or created, compiled, or used by the County pursuant to this Agreement when notified by the County that the PHI or EPHI is inaccurate or incomplete, or that other documents are to be added as required or allowed by the Privacy and Security Requirements.
- xvi) Documentation of Disclosures. Kaminsky agrees to document disclosure of PHI or EPHI and information related to such disclosures as is necessary for the County to respond to a request by an individual for an accounting of disclosures of PHI or EPHI in accordance with 45 C.F.R. § 164.528, as amended.
- xvii) Termination Procedures. Upon termination of this Agreement for any reason, Kaminsky agrees to deliver all PHI or EPHI received from the County or created, compiled, or used by Kaminsky pursuant to this Agreement within thirty (30) days from the date of termination, or, if specially requested to do so by the County in writing, to destroy all PHI or EPHI within the time frame determined by the County, which will be no less than thirty (30) days from the date of the notice of termination. This provision applies when Kaminsky maintains PHI or EPHI from the



County in any form. If Kaminsky determines that transferring or destroying the PHI or EPHI is infeasible, Kaminsky agrees:

- a) to notify the County of the conditions that make transfer or destruction infeasible;
- b) to extend the protections of this Article to such PHI or EPHI; and
- c) to limit any further uses and disclosures of such PHI or EPHI to those purposes that make the return, or transfer to the County, or destruction infeasible.

xviii) Notice-Termination. Upon written notice to Kaminsky, the County may terminate any portion of the Agreement under which Kaminsky maintains, compiles, or has access to PHI or EPHI. Additionally, upon written notice to Kaminsky, the County may terminate the entire Agreement if the County determines, at its sole discretion, that Kaminsky has repeatedly violated a Privacy or Security Requirement.

- E) Survival of Privacy Provisions. Kaminsky's obligations with regard to PHI and EPHI shall survive termination of this Agreement.
- F) Amendment Related to Privacy and Security Requirements. The Parties agree to take such action as is necessary to amend this Agreement if the County, in its reasonable discretion, determines that amendment is necessary for the County to comply with the Privacy and Security Requirements or any other law or regulation affecting the use or disclosure of PHI or EPHI. Any ambiguity in this Article shall be resolved to permit the County to comply with the Privacy and Security Requirements.
- G) Indemnification. Kaminsky agrees to indemnify and hold harmless, to the extent allowed by law, the County and its Commissioners' Court, officers, employees, and agents (individually and collectively "Indemnitees") against any and all losses, liabilities, judgments, penalties, awards, and costs (including costs of investigations, legal fees, and expenses) arising out of or related to:
  - i) a breach of this Agreement relating to the Privacy and Security Requirements by Kaminsky; or
  - ii) any negligent or wrongful acts or omissions of Kaminsky or its employees, directors, officers, subcontractors, or agents, relating to the Privacy and Security Requirements, including failure to perform their obligations under the Privacy and Security Requirements.
- H) This Article survives the termination of the Agreement and expires six (6) years after its termination.

**13) NO FEDERAL EXCLUSION**

- A) Kaminsky warrants that neither Kaminsky nor any Radiologist is an "Ineligible Person." An "Ineligible Person" is an individual or entity who:
- i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in federal and/or state health care programs or in federal and/or state procurement or nonprocurement programs. This includes persons who are on the List of Excluded Individuals or Entities of the Inspector General, List of Parties excluded from Federal Programs by the General Services Administration or the Medicaid Sanction List; or,
  - ii) has been convicted of a criminal offense related to the provision of health care items or services [within the rules and regulations of 42 USC §1320a-7(a)], but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- B) Kaminsky agrees to report immediately to the County if Kaminsky or any Radiologist becomes an "Ineligible Person" during the term of this Agreement.

**14) SUCCESSORS AND ASSIGNS**

- A) The County and Kaminsky 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 such other party, in respect to all covenants of this Agreement.
- B) Neither the County nor Kaminsky shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld.

**15) MODIFICATIONS**

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect.

**16) APPLICABLE LAW AND VENUE**

- A) The Agreement is subject to the state and federal laws, orders, rules, and regulations relating to the Agreement and funded by state or federal funds or of applicable conditions of participation in Medicaid or Medicare program(s). Each Party shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations concerning the performance

of this Agreement or the use of the System.

- B) This Agreement is governed by the laws of the State of Texas.
- C) The forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas.
- D) The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- E) The Parties agree that no provision of the Agreement or this Addendum extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- F) Neither the execution of the Agreement nor any other conduct of either Party relating to the Agreement shall be considered a waiver by County of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.
- G) The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- H) Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a Party hereto.

## 17) PUBLIC INFORMATION ACT

- A) The Parties expressly acknowledge that the Agreement is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended (the "Act"). Kaminsky agrees that to the extent, if any, that any provision of the Agreement is in conflict with the Act, the same shall be of no force and effect. Therefore, any provisions in the Agreement which provide that any information, including the terms of the Agreement, is confidential are hereby stricken and excluded from the terms of the Agreement. Kaminsky expressly understands and agrees that the County shall release any and all information necessary to comply with Texas law without the prior written consent of Kaminsky.
- B) It is expressly understood and agreed that the County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, whether or not the same are available to the public. It is further understood that the County, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the County, its officers and employees shall have no liability or obligations to Kaminsky for the disclosure to the public, or to any

person or persons, of any software, or a part thereof, or other information or data furnished to the County in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

- C) In the event the County receives a written request for information pursuant to the Act that affects Kaminsky's rights, title to, or interest in any information or data or a part thereof, furnished to the County by Kaminsky under the Agreement, then the County will promptly notify Kaminsky of such request. Kaminsky may, at its own option and expense, prepare comments and submit information directly to the Attorney General of Texas stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. Kaminsky is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. Kaminsky is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.
- D) Electronic Mail Addresses. Kaminsky affirmatively consents to the disclosure of its e-mail addresses that are provided to the County, including any agency or department of the County. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV'T CODE ANN. §552.137 *et seq.*, as amended, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Kaminsky and Personnel and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

#### 18) **WAIVER**

Waiver by either Party of a breach or violation of any provision of the Agreement is not a waiver of any subsequent breach.

Waiver of a right or power to be effective, it must be in writing and signed by the waiving Party. An effective waiver of a right or power shall not be construed as either:

- i) a future or continuing waiver of that same right or power; or
- ii) the waiver of any other right or power.

#### 19) **SEVERABILITY**

If any provision or part of the Agreement or its application to any person, entity, or circumstance is ever held by any court of competent jurisdiction to be invalid for any reason, the remainder of the Agreement and the application of such provision or part of the Agreement to other persons, entities, or circumstances are not affected.

**20) HEADINGS AND LANGUAGE**

The numbering and other headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter; and the number of all words shall include the singular and plural.

**21) ENTIRE AGREEMENT**

This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.

Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

**22) SURVIVAL OF TERMS**

Any provision of this Agreement that by its plain meaning is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

**23) NO THIRD-PARTY BENEFICIARIES**

The County is not obligated or liable to any party other than Kaminsky for the performance of this Agreement.

Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies in any third party.

Nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

**24) FOREIGN TERRORISTS ORGANIZATIONS**

In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Contractor warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Contractor does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

**25) ANTI-BOYCOTT**

Contractor warrants and represents, in accordance with Tex. Gov't Code Ann. § 2270.002, that unless Contractor meets an exemption under subsection (a), then, as required by subsection (b), Contractor's signature on this Agreement constitutes Contractor's written verification that it does not boycott Israel and will not boycott Israel during the term of the contract.

**24) EXECUTION**

Multiple Counterparts: The Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

STEPHEN KAMINSKY M.D., P.A.

By:   
STEPHEN KAMINSKY M.D., P.A.

Date: 04/01/2021

HARRIS COUNTY

By: \_\_\_\_\_  
LINA HIDALGO  
COUNTY JUDGE

APPROVED AS TO FORM:  
CHRISTIAN D. MENEFE  
COUNTY ATTORNEY

By: DeAnne A. Lin  
DeAnne A. Lin  
Assistant County Attorney  
C.A.O. File No.: 21GEN0841

## ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on \_\_\_\_\_, with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

### ORDER AUTHORIZING THE COUNTY JUDGE TO EXECUTE AN AGREEMENT BETWEEN HARRIS COUNTY AND STEPHEN KAMINSKY, M.D., P.A.

Commissioner \_\_\_\_\_ introduced an order and made a motion that the same be adopted. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

#### IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Agreement between Harris County and Stephen Kaminsky, M.D., P.A. to allow Stephen Kaminsky, M.D., P.A. to provide radiographic interpretations for inmates located in Harris County detention facilities. The Master Agreement is incorporated herein as though fully set forth word for word.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.