



Travis County Commissioners Court Agenda Request

Meeting Date: October 8, 2013

Prepared By/Phone Number: Mike Long, 854-4850; Marvin Brice, 854-9765

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve Business Associate Agreement with Atchley and Associates, L.L.P., to provide satisfactory assurances, per 45 C.F.R. § 164.314(a), of appropriate safeguarding of electronic protected health information.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

Effective July 1, 2009, county and contractor entered into a contract entitled External Auditing Contract between Lockart, Atchley & Associates so that county could obtain external auditing services related to all county operations including health related activities. These services would include the audit of the operation of the county employee benefit health plans, the wellness Clinics, aeromedical emergency medical transport services, medical services provided in correctional facilities and counseling services.

This agreement will serve to provide the county with satisfactory assurances, in accordance with 45 C.F.R. § 164.314(a), that contractor and its subcontractors will appropriately safeguard any electronic protected health information that may be created, received, maintained or transmitted by contractor or its subcontractors on the county's behalf. 45 CFR 164.308 (b).

- **Contract Expenditures:** N/A

- **Contract-Related Information:**

Award Amount: N/A

Contract Type: Business Associate Agreement

Contract Period: October 8, 2014 through June 30, 2014

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

➤ **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

➤ **Solicitation-Related Information: N/A**

Solicitations Sent:

Responses Received:

HUB Information:

% HUB Subcontractor:

➤ **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments: The contract is being routed for signatures and a draft is attached for Court review. The original will be provided in time for Court approval.

➤ **Funding Information: N/A**

SAP Shopping Cart #:

Funding Account(s):

Comments:

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN ATCHLEY & ASSOCIATES, L.L.P. AND
TRAVIS COUNTY, AND
TRAVIS COUNTY COMMUNITY SUPERVISION
AND CORRECTIONS DEPARTMENT AND
TRAVIS COUNTY JUVENILE PROBATION DEPARTMENT**

This Business Associate Agreement ("BAA") is executed by the following parties:

Travis County, a political subdivision of Texas ("County") and

Travis County Community Supervision and Corrections Department ("CSCD"), and

Travis County Juvenile Probation Department, ("Juvenile Probation"), and

Atchley & Associates, L.L.P., formerly known as Lockart, Atchley & Associates, L.L.P., a firm of certified public accountants, which is a registered limited liability partnership under the laws of the State of Texas ("Contractor").

RECITALS

Effective July 1, 2009, County and Contractor entered into a contract entitled External Auditing Contract Between Lockart, Atchley & Associates, L.L.P. and Travis County, Travis County Community Supervision and Corrections Department and Travis County Juvenile Probation Department For Fiscal Years 2009-2013 ("External Audit Contract") so that County may obtain external auditing services related to all County operations including it health related activities. These services include the audit of the operation of the County employee benefit health plans, the Wellness Clinics, aeromedical emergency medical transport services, medical services provided in correctional facilities, and counseling services (the "Services")

County and Contractor are entering into this BAA to provide County with satisfactory assurances, in accordance with 45 C.F.R. § 164.314(a), that Contractor and its subcontractors will appropriately safeguard any electronic protected health information that Contractor or its subcontractors create, receive, maintain or transmit on County's behalf. 45 CFR 164.308 (b).

AGREEMENT

NOW, THEREFORE, County and Contractor mutually agree to the following terms and conditions:

I. TERM.

This BAA commences on the date on which it is signed by the last party to sign it. This BAA continues in force until all protected health information is destroyed or returned to County.

II. COORDINATION WITH EXTERNAL AUDIT CONTRACT

2.1 Between the parties, this BAA replaces and supersedes section 5 HIPAA Business Associate Requirements of the External Audit Contract.

III. CONTRACTOR RESPONSIBILITIES AND AUTHORITY

3.1. Directly Regulated Contractor acknowledges that it is directly regulated by HIPAA and HITECH and Part 164.

3.2. Contractor Compliance with Part 164. Contractor shall comply with the applicable requirements of Part 164. 45 CFR 164.314 (a)(2)(A). Contractor shall use appropriate safeguards and comply, where applicable, with Part 164 to prevent use or disclosure of electronic protected health information other than as provided for in this BAA. 45 CFR 164.504 (e)(2)(ii)(B).

3.3. Subcontractor Compliance with Part 164. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of Contractor agree to comply with the applicable requirements of Part 164 by entering into a contract with the subcontractor that complies with 45 CFR 164.314 (a)(2)(B). If Contractor knows of a pattern of activity or practice of a subcontractor that constitutes a material breach or violation of the subcontractor's obligation under that contract, Contractor shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract, if feasible. 45 CFR 164.502(e)(1)(iii).

3.4. Notice of Security Incident to County Contractor shall report to County any security incident of which it becomes aware, including breaches of County's unsecured protected health information as required by 45 CFR § 164.410. Contractor shall report to County any successful security incident in detail as promptly as possible and no later than 2 business days after Contractor becomes aware of it. The parties acknowledge the ongoing existence and occurrence of attempted but Unsuccessful security Incidents which include pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, that do not result in unauthorized access, use or disclosure of County's electronic protected health information. Contractor may report to County unsuccessful security incidents in the aggregate at least once each quarter. County determines if there has been a data breach for County protected health information and whether County protected health information has been compromised. 45 CFR 164.314 (a)(2)(C).

3.5. Policies and Training Contractor shall implement, maintain and enforce procedures and policies consistent with the applicable requirements of HIPAA, HITECH and Part 164. Contractor shall provide its directors, partners, and employees with appropriate regular training in these policies and procedures and compliance with the applicable requirements of HIPAA, HITECH and Part 164. Contractor shall ensure that its directors, partners, employees, and subcontractors comply with these procedures and policies.

3.6. Notice of Breach. Following the discovery of a breach of unsecured protected health information, Contractor shall notify County of the breach without unreasonable delay and no later than 60 calendar days after discovery of a breach. Contractor also shall provide to Client any other available information Client is required to include in its notification to affected Individual This notice shall include, to the extent possible, a brief description of what happened, including the date of occurrence and the date of the discovery by Contractor; a description of the protected health information affected, including the identity of each individual whose unsecured protected health information has been, or is reasonably believed by Contractor to have been accessed, acquired, used, or disclosed during the breach and the types of protected health information involved (such as full name, social security number, date of birth, home address, account numbers, etc.); any other available information that County is required to include in its

notice to the individual under 45 CFR § 164.404(c) and a brief description of what Contractor has done to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches. For purposes of this paragraph, a breach shall be treated as discovered by Contractor as of the first day on which that breach is known to Contractor or would have been known to Contractor by exercising reasonable diligence. Contractor shall be deemed to have knowledge of a breach if the breach is known, or would have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is a director, partner, employee, officer, or other agent of Contractor. 45 CFR 164.410.

3.7. Permitted Uses and Disclosures Contractor may use protected health information provided to Contractor by County for the following activities:

3.7.1. Conducting external auditing functions and

3.7.2. Contractor's proper management and administration (including use and disclosure as required by Contractor to comply with applicable professional standards and obligations) or to carry out its legal responsibilities.

3.8. Required Uses and Disclosures Contractor shall disclose protected health information and make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by Contractor available to the Secretary of the Department of Health and Human Services for purposes of determining Contractor or County's compliance with Part 164. Contractor also shall disclose protected health information to County when requested by an individual or the individual's designee, as necessary to satisfy County's obligations to provide the individual with access to inspect and obtain a copy of his or her protected health information in a designated record set, subject to the exclusions in § 164.524(a)(1), in the electronic format requested if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual in compliance with Part 164.

3.9. Prohibited Uses and Disclosures Contractor shall not use or further disclose genetic information for underwriting purposes or sell protected health information or use or disclose protected health information other than as permitted or required by the BAA or the External Audit Contract or as required by law. For purposes of this paragraph, sale of protected health information means a disclosure of protected health information by Contractor where Contractor directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information but does not include disclosure of protected health information as specifically limited in 45 CFR § 164.502(5).

3.10. Accounting of Disclosures Except as otherwise permitted or required by this BAA, Contractor shall report to County any use or disclosure of the information of which it becomes aware, including breaches of unsecured protected health information. 45 CFR § 164.410 and 45 CFR 164.504 (e)(2)(ii)(C).

3.11. Return or Destruction of Data At termination of the BAA, if feasible, Contractor shall return or destroy all protected health information received from, or created or received by Contractor on behalf of County that Contractor still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Contractor shall extend the protections of the BAA to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

3.12 Compliance with Laws Contractor shall comply with all applicable laws, rules and regulations in the performance of this BAA.

IV. COUNTY RESPONSIBILITIES

4.1 County shall not request Contractor to use or disclose protected health information in any manner that would not be permissible under Part 164 if done by County.

4.2 County shall not provide Contractor with more protected health information than minimally necessary for Contractor to provide the Services and, where possible, County shall provide any protected health information needed by Contractor to perform the Services in the form of a Limited Data Set, in accordance with Part 164.

4.3 County acknowledges that neither this BAA nor the External Audit Contract requires Contractor to make any disclosure for which an accounting would be required under Part 164. County shall be solely responsible for tracking and providing individuals with an accounting of any disclosures made by County to Contractor.

V. LIABILITY

5.1. County is not liable for and Contractor assumes full risk of any claims, damages or attorney's fees of every kind for injury to or death of any person and for damages to or loss of property arising in whole or in part, directly or indirectly, as a result of the operations, including acts and omissions, of the Contractor under this BAA. County does not waive, nor shall it be deemed to waive, any right, defense, or immunity that County may have.

5.2. Contractor is not liable for and County assumes full risk of any claims, damages or attorney's fees of every kind for injury or death of any person and for damages to or loss of property arising in whole or in part, directly or indirectly, as a result of the operations, including acts or omissions, of the County under this BAA.

VI. LIMIT ON AGENTS

6.1. No agent, official, employee, or representative of County has the authority to amend or assign this BAA or waive violations of it unless expressly granted this specific authority by the Commissioners Court.

VII. BREACH

7.1. The failure of either party to comply with the terms and conditions of this BAA is a breach of this BAA.

VIII. MEDIATION

8.1. When mediation is acceptable to both parties in resolving a dispute arising under this BAA, the parties agree to use the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE ANN., §154.023.

Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in TEX. CIV. PRAC. AND REM. CODE ANN., §154.073, unless both parties agree, in writing, to waive the confidentiality.

IX. TERMINATION

9.1 County for Cause Termination. County has the right to terminate this BAA and the BAA, in whole or in part, for one or more of the following reasons at any time in compliance with 9.2:

9.1.1 Contractor fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

9.1.2 Contractor has violated its policies and procedures arising from compliance with HIPAA or HITECH or Part 164 one or more times,

9.1.3 Contractor has failed to comply with any term or condition of this BAA, or

9.1.4 Contractor is unable to conform to changes required by federal, state or local laws or regulations related to performance under this BAA.

9.2 Procedure. At least thirty (30) days before the effective date of termination, County must notify Contractor in compliance with Article XII of the decision to terminate this BAA, the existence and nature of the breach, the effective date of termination and, in the case of a partial termination, the portion of the BAA to be terminated. Contractor may avoid termination of this BAA pursuant to 9.1.1, 9.1.2, and 9.1.3 if Contractor cures the breach to the satisfaction of County within thirty (30) days of receipt of notice of breach. The time to cure may be extended, at the sole discretion of County, as long as the Contractor diligently continues to work toward completion of the cure. If the breach is not cured to the satisfaction of County prior to the effective date of termination or any extension of the date allowed by County in writing, the Contractor is in default and the participation of the Contractor is automatically terminated on that date.

9.3 Contractor for Cause Termination. Contractor may terminate this BAA, in whole or in part, at any time for any of the following reasons in compliance with 9.4:

9.3.1 County fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

9.3.2 County has violated its policies and procedures arising from compliance with HIPAA or HITECH or Part 164 or both one or more times,

9.3.3 County has failed to comply with any term or condition of this BAA, or

9.3.4 County is unable to conform to changes required by federal, state or local laws or regulations related to performance under this BAA.

9.4 Procedure. At least thirty (30) days before the date of termination, Contractor must notify County in compliance with Article XIV of the decision to terminate this BAA, the reasons for termination, the effective date of termination and in the case of a partial termination, the portion of the BAA to be terminated. County may avoid termination of this BAA pursuant to

9.3.1 or 9.3.2 or 9.3.3 if County corrects the causes of the reasons for termination stated in the notice to the satisfaction of the Contractor prior to the effective date of termination.

X. NON-WAIVER AND RESERVATION OF REMEDIES

10.1. Non-Waiver. Any act of forbearance by either party to enforce any provision of this BAA shall not be interpreted as a modification of this BAA or as a waiver of any breach or default of the other party which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this BAA shall not be interpreted as a waiver of that right or privilege. In this BAA, County and Contractor do not waive any immunity or defense that would otherwise be available to them against claims arising in the exercise of their governmental powers and functions.

10.2. Reservation of Rights and Remedies. All rights of both parties under this BAA are specifically reserved. Any payment, act or omission by a party must not impair or prejudice any remedy or right of that party under this BAA. Any right or remedy stated in this BAA must not preclude the exercise of any other right or remedy under this BAA, the law or at equity, nor must any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

XI. ENTIRE AGREEMENT

11.1. Agreement All Inclusive. All oral and written agreements between the parties to this BAA relating to the subject matter of this BAA that were made prior to the execution of this BAA have been reduced to writing and are contained in this document.

XII. ASSIGNABILITY

12.1. Neither party may assign any of the rights or duties created by this BAA without the prior written approval of the other party. It is acknowledged by Contractor that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

XIII. AMENDMENTS

13.1. Amendment of BAA. Any change to the provisions of this BAA must be made in writing and signed by both parties: County and Contractor. It is acknowledged by Contractor that no officer, agency, employee or representative of County has any authority to change the provisions of this BAA unless expressly granted that authority by Commissioners Court.

13.2. Contractor Request. Contractor must submit all requests for changes to this BAA to Benefits Manager. The Benefits Manager must present the Contractor's requests to Commissioners Court for consideration.

13.3. County Request. County must submit all requests for changes to this BAA to the Contractor's representative, the partner in charge of the account.

XIV. NOTICES

14.1. Written Notice. All notices sent pursuant to this BAA shall be in writing and either hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested.

14.2. County Address. Notice sent pursuant to this BAA may be delivered or mailed to County. If delivered, notice shall be delivered at the following address:

Benefits Manager
Human Resources Management Department
700 Lavaca, Suite 420
Austin, Texas 78701

14.3. If mailed, notice shall be mailed to the following address:

Benefits Manager
Human Resources Management Department
P. O. Box 1748,
Austin, Texas 78767

14.4. Whether hand delivered or mailed with mailed copies also to the following (registered or certified mail with return receipt is not required):

Rosie Ramon-Duran (or her successor in office)
Interim Director, CSCJ
P.O. Box 1748
Austin, Texas 78767-1748

DRAFT

and to:

Honorable Judge Lora Livingston (or her successor in office)
Presiding District Judge
P.O. Box 1748
Austin, Texas 78767-1748

and to

Estela Medina (or her successor in office)
Chief Juvenile Probation Officer
P.O. Box 1748
Austin, Texas 78767-1748

and to:

Honorable Judge Rhonda Hurley (or her successor in office)
Presiding Judge, Travis County Juvenile Board
P.O. Box 1748
Austin, Texas 78767-1748

14.5 Contractor Addresses. Notice sent pursuant to this BAA may be delivered or mailed to County. If delivered, notice shall be delivered at the following address:

Atchley & Associates, L.L.P.
6850 Austin Center Blvd, Suite 180
Austin, Texas 78731

14.6. Time of Delivery. When notices sent are hand delivered, notice is effective upon delivery. When notices are mailed by registered or certified mail, notice shall be deemed effective three days after deposit in a U.S. mail box or at a U.S. post office.

14.7 Change of Address. Both parties may change their address for notice under this contract by providing a notice of the change to the other party in compliance with this Article XII.

XV. INTERPRETATION OF CONTRACT

15.1. Independent Contractors. Contractor and County are independent contractors and this BAA will not establish any relationship of partnership, joint venture, employment, franchise or agency between Contractor and County. Neither Contractor nor County will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement.

15.2. Conflicts. If any terms of this BAA are inconsistent with the terms of the External Audit Contract, then the terms of this BAA shall control.

15.3. Law. This BAA is governed by the laws of the United States of America and the laws of Texas. This BAA is performed in Travis County, Texas.

15.4. Severability. If any portion of this BAA is ruled invalid by a court of competent jurisdiction, the remainder of it must be construed as if that portion were not included in the BAA and the remainder remains valid and binding.

15.5. Definitions. In this BAA, all words and phrases used in this BAA and defined in 45 CFR Parts 160 through 164 inclusive have the same meaning in this BAA as they have in 45 CFR Parts 160 through 164 inclusive. In addition, in this BAA

15.5.1. Business Day. "Business Day" means Monday through Friday unless County has designated one of these days as a County holiday.

15.5.2. Commissioners Court. "Commissioners Court" means the Travis County Commissioners Court.

15.5.3. HIPAA "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

15.5.4. HITECH "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009.

15.5.5. Part 164. "Part 164" means 45 Code of Federal Regulations, Part 164 which forms a portion of the regulations issued under HIPAA and HITECH.

15.5.6. Benefits Manager. "Benefits Manager " means the individual designated by the Commissioners Court to perform the management and administrative duties of the County under this BAA or his designee.

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

15.7. Number and Gender. Words of any gender in this BAA must be construed to include any other gender and words in either number must be construed to include the other unless the context in the BAA clearly requires otherwise.

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

XVI. DUPLICATE ORIGINALS

16.1. This document is executed in duplicate originals.

ATCHLEY & ASSOCIATES, LLP

TRAVIS COUNTY

By: Don Chanu **DRAFT** By: _____
Its Duly Authorized Signatory Samuel T. Biscoe
Travis County Judge

Date: 9-20-13 Date: _____

**TRAVIS COUNTY COMMUNITY
SUPERVISION AND CORRECTIONS
DEPARTMENT**

**TRAVIS COUNTY JUVENILE PROBATION
DEPARTMENT**

By: _____
Rosie Ramon-Duran
Interim Director, Travis County
Community Supervision and
Corrections Department

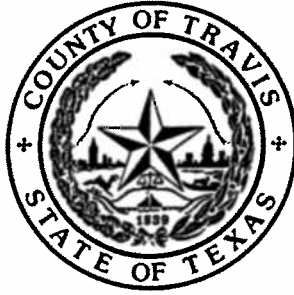
By: _____
Estela Medina
Chief Juvenile Probation Officer
Travis County Juvenile Probation Dept

Date: _____

Date: _____

TRAVIS COUNTY
AUDITOR'S OFFICE

NICKI RILEY, CPA
COUNTY AUDITOR



TRAVIS COUNTY
ADMINISTRATION BUILDING
700 LAVACA
P.O. BOX 1748
AUSTIN, TX 78767
(512) 854-9125
FAX: (512) 854-9164

Date: September 30, 2013

To: Cyd Grimes, Purchasing Agent

From:  Nicki Riley, County Auditor

Subject: Business Associate Agreement between Atchley and Associates, L.L.P. and Travis County and Travis County Community Supervision and Corrections Department and Travis County Juvenile Probation Department

This Business Associate Agreement has been prepared to comply with new federal regulations.

Over the past decade, the federal government has implemented and revised the requirements associated with the way that personally identifiable health information (PHI) may be handled and used. The first act is referred to as HIPAA, the second as HITECH. On March 23, 2013, the "Final Rule" related to these statutes became effective and requires changes to the agreements with "Business Associates". A Business Associate is any Travis County contractor that needs to have access to PHI to provide their services.

In 2009, Travis County contracted with Atchley & Associates, L.L.P. to provide external audit services. So that Travis County may obtain external auditing services related to all County operations including its health related activities which include the audit of the operation of the County employee benefit health plans, the Wellness Clinics, aeromedical emergency medical transport services, medical services provided in correctional facilities, and counseling services, Atchley & Associates, L.L.P. must have access to PHI.

The Business Associate Agreement being provided to you today tracks the requirements in the Final Rule.

Travis County and Atchley & Associates, L.L.P. are entering into this Business Associate Agreement to provide Travis County with satisfactory assurances, in accordance with 45 C.F.R. § 164.314(a), that Atchley & Associates, L.L.P. and its subcontractors will appropriately safeguard any electronic protected health information that it or its subcontractors create, receive, maintain or transmit on County's behalf.

Please call me if you have any questions or concerns. Thank you.