



## **Travis County Commissioners Court Agenda Request**

**Meeting Date:** November 12, 2013

**Prepared By/Phone Number:** Danny Hobby/854-4416

**Elected/Appointed Official/Dept. Head:** Danny Hobby

**Commissioners Court Sponsors:** Judge Samuel T. Biscoe

### **AGENDA LANGUAGE:**

CONSIDER AND TAKE APPROPRIATE ACTION REGARDING A STRAC FIRERMS (RECORD MANAGEMENT SYSTEM) PROJECT INTERLOCAL AGREEMENT BETWEEN TRAVIS COUNTY AND EMERGENCY SERVICE DISTRICT NO.2 AND A MUTUAL BUSINESS ASSOCIATE AGREEMENT BETWEEN TRAVIS COUNTY AND EMERGENCY SERVICES DISTRICT NO.2.

### **BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**

Travis County Emergency Service Districts provide fire and first responder emergency medical services in various parts of Travis County. Currently they have separate record management systems and have difficulty coordinating data and measurements together, as well difficulty in sharing information with other response agencies. This request will allow the establishment of a cooperative and mutually beneficial relationship between Emergency Services District No.2, other ESDs, Travis County, and other public safety agencies as they relate to the utilization of a FireRMS Project through a regional provider of data services. This Agreement was approved as a Form Contract by the Court on August 27, 2013. On October 29, 2013 seven ESDs were approved by Court. We anticipate other ESDs coming forward with their Agreements in the coming weeks.

The FireRMS project will provide software and services that will function as a record management and central repository system for the agencies involved (medical first responders, firefighters, hazmat responders, and interfaces with the Fire Marshal's Office, EMS, AFD, STAR Flight, and the

Office of the Medical Director). This system would allow agencies to participate in a unified data system that captures incident and patient data, supports performance improvement and assist with strategic planning. A unified data system will be the foundation on which we can evaluate and improve performance and make efficient and effective strategic decisions. See sample Agreements attached.

This request will also allow Travis County to have a Business Associate Agreement with Emergency Services District No.2 that will provide assurances to both the County and the District in safeguarding any electronic health information that either the County or the District creates, receives, maintains or transmits on each other's behalf in compliance with HIPAA.

**STAFF RECOMMENDATIONS:**

Emergency Services recommends the approval of this request.

**ISSUES AND OPPORTUNITIES:**

This request will allow Emergency Services No.2 to be a part of a unified data system that includes all the stakeholders involved in day to day Fire and EMS response.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

The necessary funding or costs for Emergency Services District No.2 is outlined in "Attachment A" of the Agreement, along with some monies moved to the County from the District regarding their current software costs. Annual County costs have already been approved by the Court on an August 27, 2013 agenda item with an Agreement between Travis County and Southwest Texas Regional Advisory Council.

**REQUIRED AUTHORIZATIONS:**

**Cyd Grimes, C.P.M., Purchasing Agent**  
**Scott Wilson, Purchasing Office**  
**Barbara Wilson, County Attorney's Office**  
**William Derryberry, PBO**  
**Kapp Schwebke, Auditor's Office**  
**Toby Fariss, Emergency Services**



# EMERGENCY SERVICES

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*Emergency Management  
Pete Baldwin, Emergency Mgmt.  
Coordinator*

*Fire Marshal  
Hershel Lee, Fire Marshal*

*Medical Examiner  
Dr. David Dolinak*

*STAR Flight  
Casey Ping, Program Director*

## MEMORANDUM

**To:** Travis County Commissioners Court

**From:** Danny Hobby, County Executive, Emergency Services *D. Hobby*

**Date:** November 4, 2013

**Subject:** Fire RMS Project Interlocal Agreements with Emergency Services Districts and Mutual Business Associate Agreements with Districts

This memorandum is to request approval of an interlocal agreement called "STRAC FireRMS (Record Management System) Project Interlocal Agreement Between Travis County and Emergency Services District No. 2" for the purpose of establishing a cooperative and mutually beneficial relationship between the parties as they relate to the utilization of the FireRMS Project for public safety agencies in Travis County. This Agreement was approved by the Court as a From Contract on August 27, 2013. This request is to approve an agreement for ESDs No.2. Along with the Agreement is a business associate agreement called "Mutual Business Associate Agreement Between Travis County the Emergency Services District No. 2". The Business Associate Agreement provides assurances that the County will appropriately safeguard any electronic protected health information that the County creates, receives, maintains or transmits on District's behalf, and to provide County with assurances that District will appropriately safeguard any electronic protected health information that District creates, receives, maintains or transmits on County's behalf in compliance with HIPAA. See Agreements attached.

During the FY13 budget process Emergency Services requested \$250,000 to fund and implement a data entry and central repository system for public safety agencies (medical first responders, firefighters, hazmat responders, and interfaces with the Fire Marshal's Office, EMS, AFD, **STAR Flight**, and the Office of the Medical Director). This system would allow agencies to participate in a unified data system that captures incident and patient data, supports performance improvement and assist with strategic planning. A unified data system will be the foundation on which we can evaluate and improve performance and make efficient and effective strategic decisions. A Quality Improvement program can only be successful when such a system in place.

Emergency Services has been working with the Emergency Services Districts (ESDs) and Travis County staff to identify a cost effective data collection system. As a result, the best path for everyone was to develop an interlocal cooperation agreement with the Southwest Texas Regional Advisory Council (STRAC), located in San Antonio, Texas. STRAC has been providing hosted

medical data systems for regional EMS and Hospital agencies since 2002. The STRAC region includes urban, rural and frontier EMS and Hospitals agencies from San Antonio to Del Rio. This system has significant advantageous over other systems including;

- **Capability:** STRAC had selected Zoll's TabletPCR and FireRMS systems. Both systems are used globally and are well recognized for their robust capturing of medical/fire data.
- **Reduced cost:** Cost is spread over all the participants and includes training, system maintenance and upgrades.
- **Timeline:** The STRAC system is immediately deployable using the ESD technology.
- **Access/Security:** Web based access allows all participants to access the system. This would be a major hurdle in a Travis County hosted solution.
- **Data:** STRAC has over one million patient records in their system. As a result of EMS/Hospital integration, number and type of agencies and number of patient records STRAC is regularly requested to participate in research projects
- **Multiple Agencies:** With multiple participating agencies it allows opportunities for comparative analysis. See attached listing of participating agencies.
- **STAR Flight:** The *STAR Flight* Program has been using this system since 2004.
- **Austin-Travis County EMS:** While not a member of the STRAC system, ATCEMS utilizes the same electronic charting system.
- **Office of the Medical Director:** Has web access to ESD medical records.
- **Hospitals:** Hospital staff can access first responder medical care records.

The data system allows all ESD's, the Fire Marshal's Office and *STAR Flight* access to a system that would otherwise be beyond the reach with the available dollars.

Regarding implementation steps, the project would phase in ESD's as appropriate, along with moving their current software monies over to Travis County. Annual Travis County ESD pricing by district total \$249,200, along with one-time license costs of \$62,000. A total first year cost is \$311,200. There is funding available within Emergency Services to cover these costs.

In conclusion, moving into a data entry and central repository system sets in place a major foundation piece in in the establishment of an operational and performance driven unified fire system.

Thank you for your consideration in this matter.

Cc: Cyd Grimes, C.P.M., Purchasing Agent  
Barbara Wilson, County Attorney's Office  
Scott Wilson, Purchasing Office  
William Derryberry, PBO  
Kapp Schwebke, Auditor's Office  
Toby Fariss, Emergency Services

**STRAC FireRMS (RECORD MANAGEMENT SYSTEM) PROJECT**  
**INTERLOCAL AGREEMENT**  
**BETWEEN TRAVIS COUNTY AND**  
**EMERGENCY SERVICES DISTRICT NO. 2**

This STRAC FireRMS (Record Management System) Project Interlocal Cooperation Agreement ("Agreement") is executed by the following parties:

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

Travis County Emergency Services District No. 2, a political subdivision of Texas created under TEX. HEALTH & SAFETY CODE ANN., CH. 775 ("District").

**RECITALS**

The FireRMS Project is an enterprise record management system designed specifically for the unique needs of fire departments and other public safety organizations. FireRMS Software Service streamlines day to day scheduling, inventory, equipment management, and reporting. IT also integrates completely with RescueNet ePCR to eliminate redundant data entry increasing the overall efficiency and capability of the public safety system. FireRMS Software Service also satisfies all requirements with regard to National Fire Incident Reporting System. The FireRMS Software Service supports day to day operations of agencies in TSA-P and TSA-O, while also increasing efficiencies with regard to manpower, physical resources, and planning.

STRAC is the Regional EMS/Trauma Advisory Council designated by the Texas Department of State Health Services ("DSHS") in the Trauma Service Area – P, TSA-P to design, implement, and maintain the Regional EMS/Trauma, Disaster, and Emergency Healthcare System for Trauma Service Area – P, TSA-P. STRAC provides overall coordination and management to the FireRMS Project and as such has an interest to provide cost effective software solutions to member agencies. STRAC also has the licensing authority from ZOLL for the Capitol Area Trauma Region (Trauma Service Area – O, TSA-O).

County is a party to the STRAC FireRMS Project Interlocal Cooperation Agreement ("FireRMS Agreement") which authorizes County to use the Project Components of the ZOLL RescueNet FireRMS Suite and specifically listed additional Optional Components for County operations and to further sublicense their use to the Emergency Services Districts in Travis County that are licensed through the DSHS or the Texas Commission on Fire Protection under the terms and conditions applicable to County.

The purpose of this Agreement is to provide the District use of the Project Components of the ZOLL RescueNet FireRMS Suite and the option to acquire access to use of the Optional Components of the ZOLL RescueNet FireRMS Suite.

County has complied with the requirements of the FireRMS Agreement.

Both County and District are authorized pursuant to TEX. GOV'T CODE ANN., ch. 791, to enter into an Interlocal Cooperation Agreement for the purpose described in this Agreement.

## AGREEMENT

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

### **I. TERM.**

1.1. Contingent Term. This Agreement is contingent upon both the continuation of the FireRMS Agreement and County's continued right to use the Project Components of the ZOLL RescueNet FireRMS Suite and the additional Optional Components under that agreement. If County is no longer eligible to use the Project Components of the ZOLL RescueNet FireRMS Suite and the additional Optional Components for any reason, this Agreement is automatically terminated.

1.2. Initial Term. This Agreement commences on the date on which it is signed by the last party to sign it. This Agreement continues in force until the earlier of August 31, 2014 or the occurrence of one of the contingencies that automatically terminate this Agreement.

1.3. Automatic Renewal Terms. This Agreement automatically renews on September 1, 2014, for a term of one (1) year unless either this Agreement is terminated sooner pursuant to 10.0 or one of the contingencies in 1.1 occurs. If neither of the contingencies in 1.1 has occurred, this Agreement automatically renews each year for terms of one (1) year for four consecutive (4) years unless either this Agreement is terminated sooner pursuant to 10.0 or one of the contingencies in 1.1 occurs. This Agreement terminates no later than August 31, 2019.

### **II. DISTRICT RESPONSIBILITIES**

2.1. Access Authorization. District is authorized to access and use the Project Components of the ZOLL RescueNet FireRMS Suite at the number of stations that is stated in the invoice in the Attachment A applicable to the then current term of this Agreement.

2.2. Purchase of Optional Components. District has the option to purchase and use the Optional Components of the ZOLL RescueNet FireRMS Suite. The acquisition of these additional Optional Components must be coordinated with the County Executive so that the FireRMS Agreement pricing is available to District. If an Optional Component of the ZOLL RescueNet FireRMS Suite is shown on the invoice, District is authorized to access and use that Optional Component of the ZOLL RescueNet FireRMS at the number of stations or for the number of users stated as applicable to that Optional Component in the invoice in the Attachment A applicable to the then current term of this Agreement.

2.3. Annual Payment. On or before October 30 of each year, District shall pay County the amount due for the current County Fiscal Year based on the amount invoiced in the Attachment A for that Agreement term.

2.4. Mid-Year Addition of Optional Components. District may request an amendment to Attachment A during a County Fiscal Year to reduce or add additional types and quantities of Optional Components of the ZOLL RescueNet FireRMS Suite if these are available through STRAC. District shall pay County the amount due for the remainder of that County Fiscal Year for the addition or reduction of Components authorized by the mid-year amendment of Attachment A based on the rates in Attachment A applicable to the then current term of this Agreement.

2.5. Training. District shall ensure that the persons it authorizes to use its Components of the ZOLL RescueNet FireRMS Suite are trained in the proper use of the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite sublicensed to the District.

2.6. Compliance with License Agreement. District shall use the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite in a manner consistent with the terms and conditions of the STRAC-ZOLL License.

2.7. Compliance with Agreement. When using its Components of the ZOLL RescueNet FireRMS Suite, District shall abide by the terms and conditions of this Agreement and abide by all policies, procedures, and guidelines established by STRAC and County, within 10 days after copies of these are provided to District.

2.8. Limit on Use. District is subject to any limitations or restraints on its usage of its Components of the ZOLL RescueNet FireRMS Suite that apply to County.

2.9. Recording Data District shall use its Components of the ZOLL RescueNet FireRMS Suite to record data related to fires and emergency medical incidents to which it responds both within District and assisting others.

2.10. Programming. District shall ensure that programming for any Optional Components of the ZOLL RescueNet FireRMS Suite is consistent with the policies and procedures established by STRAC and County.

2.11. Liability for License Violations. If there is any actual or alleged violation of the STRAC-ZOLL License or this Agreement as a result of any access or use of any Component by District or any person associated with District, District shall reimburse STRAC and County for all costs to either of them arising from the actual or alleged violation, including costs and attorneys fees for defense against the allegation..\_District is not liable to reimburse STRAC or County for any costs arising from any actual or alleged violation as a result of the acts or omissions of STRAC or the County.

2.12. Point of Contact. District shall work with the County Executive in a good faith effort to help resolve any problems. District shall use County Executive as its primary point of contact for the following:

2.12.1 requests for improvements to the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite

2.12.2. requests for additional Project Components of the ZOLL RescueNet FireRMS Suite and Optional Components of the ZOLL RescueNet FireRMS Suite

2.12.3. addressing problems and seeking answers to operations questions,

2.13. System Development. District is encouraged to use and improve the interoperations capabilities of the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite and to provide input to the County Executive on the day-to-day operations of the ZOLL RescueNet FireRMS Suite and on the development of Travis County policies and procedures for the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite.

2.14. Current Revenue Payments. District shall pay for all costs incurred by it pursuant to this Agreement from current revenue funds.

2.15. IRS Form W-9. Before any funds are payable by County to District, District shall provide County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations.

2.16. Access to Reports and Records District shall provide County with full access to all records and reports within the Project Components of the ZOLL RescueNet FireRMS Suite that are in its possession or control, subject to applicable law.

2.17. Compliance with Laws District shall comply with all applicable laws, rules and regulations in the performance of this Agreement.

### **III. COUNTY RESPONSIBILITIES**

3.1. Notice of Limitations. County shall provide District with a statement by telephone, radio or facsimile communication of any limitations or restraints on the County's, and therefore District's, usage of Components of the ZOLL RescueNet FireRMS Suite as soon as reasonably practicable after the County receives notice that such limitations or restraints are imposed on County. County shall provide this statement no later than within one Business Day after these limitations or restraints are imposed. In addition, County shall notify District in compliance with Article XVI of any limitations or restraints on the County's, and therefore District's, usage of Components of the ZOLL RescueNet FireRMS Suite as soon as practicable after that.

3.2. Copies of Procedures. County shall provide District with copies of all policies, procedures, and guidelines established by STRAC or County or both.

3.3. Notice of Violation. County shall notify District if it becomes aware of any actual or alleged violation of the STRAC-ZOLL License as a result of any access or use of any Component by District or by any person associated with District .

3.4. Amendment Requests. County shall not unreasonably withhold approval of a request to amend Attachment A of this Agreement to add any Project Component of the ZOLL RescueNet FireRMS Suite or Optional Component of the ZOLL RescueNet FireRMS Suite if County has authority within its sublicense from STRAC to grant the request and that Component is available through STRAC.

3.5. Improvement and Operations Requests. County shall assist District in relation to any reasonable requests for improvements to the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite. County shall help District to resolve problems with the Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite.

3.6. Rates. County shall set the rates to be stated in Attachment A based upon two factors:

3.6.1. The amount that District reported to County that it has paid for information technology to perform this purpose and function during its Fiscal Year ending in 2013, which will remain constant for the duration of this Agreement, and



3.6.2. The amount due for Optional Components of the ZOLL RescueNet FireRMS Suite that District has purchased through this Agreement, including one time license fees, installation or purchase costs, and annual maintenance or subscription rates at the rate at which these are invoiced to County by STRAC. County shall provide District with a copy of these proposed rates in a new Attachment A for the next County fiscal year by June 1 of each year.

3.7. Annual Invoice. County shall invoice District for the amount due for each County Fiscal Year based on the rates described in 3.6.1 for the Project Components of the ZOLL RescueNet FireRMS Suite and in 3.6.2 for the number and type of Optional Components of the ZOLL RescueNet FireRMS Suite purchased by District and stated in the Attachment A applicable to that agreement term. The invoice shall include a copy of the Attachment A, applicable to the County Fiscal Year covered by the invoice, a description of the rate, the type and number of Components, the amount to be paid for each Optional Component, and the total amount to be paid.

3.8. Payments Under FireRMS Agreement. For any portion of a County Fiscal Year for which County has invoiced District for services under this Agreement and District has paid the invoice in full, County shall pay all amounts due by it under the FireRMS Agreement.

3.9. Current Revenue Payments. County shall pay for all costs incurred pursuant to this Agreement from current revenue funds.

3.10. IRS Form W-9. Before any funds are payable by District to County, County shall provide District with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations.

3.11. Access to Reports and Records. County shall provide District with full access to all records and reports about the District's Project Components and Optional Components of the ZOLL RescueNet FireRMS Suite that are in its possession or are available to County under the FireRMS Agreement unless the law or the FireRMS Agreement specifically prohibits disclosure.

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

#### **IV. GRANT OF SUBLICENSE**

4.1. County grants District a sublicense and all other necessary legal authority to use the Project Components of the ZOLL RescueNet FireRMS Suite for the number of stations stated in the Attachment A applicable to that agreement term. This sublicense includes access to technical support and assistance, education and training, and quarterly newsletters from ZOLL.

4.2. County grants District a sublicense and all other necessary legal authority to use type and number of Optional Components of the ZOLL RescueNet FireRMS Suite that are listed in the Attachment A applicable to that agreement term.. County grants District a sublicense and all other necessary legal authority to use the other Components listed and invoiced in Attachment A. This sublicense includes access to technical support and assistance, education and training, and quarterly newsletters from ZOLL.

## **V. LIABILITY**

5.1. County is not liable for and District 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 District under this Agreement.

5.2. District 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 Agreement.

5.3. By entering into this Agreement, neither party waives, nor shall be deemed to waive, any right, defense, or immunity that party may have.

## **VI. RETENTION, ACCESSIBILITY AND AUDIT OF RECORDS.**

6.1. District Retention. District shall maintain all records and documentation for all Components of the ZOLL RescueNet FireRMS Suite to be accessed or used by District in a readily available state and location for at least three (3) years after the Agreement term in which District stopped using that Component of the ZOLL RescueNet FireRMS Suite.

6.2. County Access. Subject to applicable law, District shall give County, or its duly authorized representatives, access to and the right to examine all records, papers, and other information related to Components of the ZOLL RescueNet FireRMS Suite accessed or used by District, at reasonable times and for reasonable periods. These rights to access continue as long as this information is retained by District .

6.3. District Access. Subject to applicable law, County shall give District, or its duly authorized representatives, access to and the right to examine all records, papers, and other information related to the Components of the ZOLL RescueNet FireRMS Suite accessed or used by the District, at reasonable times and for reasonable periods. These rights to access continue as long as this information is retained by the County.

## **VII. LIMIT ON AGENTS**

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

## **VIII. COUNTY RIGHT TO CONTRACT WITH OTHER ENTITIES**

8.1. County may contract with other entities to provide access to and use of Components of the ZOLL RescueNet FireRMS Suite throughout Travis County if these contracts do not reduce the level of access provided to District under this Agreement if it is in effect when County enters

into the contract with the other entity. All proceeds to County that may arise from other agreements inure to the benefit of County.

8.2. If County contracts with other entities to provide access to and use of Components of the ZOLL RescueNet FireRMS Suite, County shall protect District's rights under this Agreement to access to or use of its Components of the ZOLL RescueNet FireRMS Suite by County's enforcing compliance by the other entities with any requirements of the Agreement, the breach of which would constitute a breach by County under the FireRMS Agreement.

## **IX. BREACH**

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

## **X. MEDIATION**

10.1. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, 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.

## **XI. SUSPENSION AND TERMINATION**

11.1 Suspension. District is subject to immediate suspension of this Agreement for any of the following:

11.1.1 Violations of this Agreement or the STRAC-ZOLL License, or

11.1.2 Individual or repeated violations of the policies and procedures of STRAC or County or both.

11.2 E-Mail Notice of Suspension Within two hours of suspension, County shall send the District notice of the suspension by electronic mail at the address provided in Article XVI.

11.3 County For Cause Termination. County has the right to terminate this Agreement, in whole or in part, for one or more of the following reasons at any time in compliance with 11.4:

11.3.1 District fails to cease violations of this Agreement or the STRAC-ZOLL License,

11.3.2 District has violated the policies and procedures of STRAC or County or both one or more times,

11.3.3 District has failed to comply with any term or condition of this Agreement,

11.3.4 District is unable to conform to changes required by federal, state or local laws or regulations related to performance under this Agreement, or

11.3.5 County has failed to appropriate sufficient funds to continue to provide its participation in the ZOLL RescueNet FireRMS Suite.

11.4 Procedure. Within one Business Day after suspension, County must provide the District with a statement of the grounds for suspension in writing. District may resume access to and use of its Components of the ZOLL RescueNet FireRMS Suite if District cures the breach and establishes procedures to prevent a recurrence to the satisfaction of County within thirty (30) days after receipt of this statement. At least thirty (30) days before the effective date of termination, County must notify District in compliance with Article XVI of the decision to terminate this Agreement, the existence and nature of the breach, the effective date of termination and, in the case of a partial termination, the portion of the Agreement to be terminated. District may avoid termination of this Agreement pursuant to 11.3.1, 11.3.2, and 11.3.3 if District cures the breach to the satisfaction of County within thirty (30) days of receipt of notice of breach. This time to cure may be extended, at the sole discretion of County, as long as the District 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 District is in default and the participation of the District is automatically terminated on that date.

11.5 District For Cause Termination. District may terminate this Agreement, in whole or in part, at any time for any of the following reasons in compliance with 11.6:

11.5.1 County has failed to comply with any term or condition of this Agreement,

11.5.2 County is unable to conform to changes required by federal, state or local laws or regulations related to performance under this Agreement, or

11.5.3 District has failed to appropriate sufficient funds to pay the amounts due under this Agreement for any fiscal year.

11.6 Procedure. At least thirty (30) days before the date of termination, District must notify County in compliance with Article XVI of the decision to terminate this Agreement, the reasons for termination, the effective date of termination and in the case of a partial termination, the portion of the Agreement to be terminated. County may avoid termination of this Agreement pursuant to 11.5.1 or 11.5.2 if County corrects the causes of the reasons for termination stated in the notice to the satisfaction of the District prior to the effective date of termination.

11.7 Unilateral Without Cause Termination. Either party has the right to terminate this Agreement, in whole or in part, on the annual renewal date if that party provides written notice of the intention to terminate to the other party at least 180 days before the renewal date.

11.8 Mutual Termination. Either party has the right to terminate this Agreement, in whole or in part, when both parties agree, in writing, that the continuation of the activities under this Agreement would not produce beneficial results commensurate with the further expenditure of funds and what conditions of termination will apply, including the effective date of termination and, in case of partial termination, the portion of the Agreement to be terminated.

11.9 Right Surviving Termination. If either party terminates this Agreement, District shall pay the amounts outstanding to County in compliance with this Agreement within thirty (30) days after the effective date of termination and County shall reimburse District for any prepaid amounts that are reimbursed to County by STRAC due to any mid-year termination within thirty (30) days of receipt from STRAC.

11.10 Survival of Provisions. If this Agreement is terminated, the terms about payments survive the termination until each amount due is paid.

## **XII. NON-WAIVER AND RESERVATION OF REMEDIES**

12.1. Non-Waiver. Any act of forbearance by either party to enforce any provision of this Agreement shall not be interpreted as a modification of this Agreement 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 Agreement shall not be interpreted as a waiver of that right or privilege. In this Agreement, County and District 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.

12.2. Reservation of Rights and Remedies. All rights of both parties under this Agreement 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 Agreement. Any right or remedy stated in this Agreement must not preclude the exercise of any other right or remedy under this Agreement, 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.

## **XIII. ENTIRE AGREEMENT**

13.1. Attachment. Attachment A- Licensed Components and Rate Schedule is made a part of this Agreement and constitute promised performances by District under this Agreement.

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

## **XIV. ASSIGNABILITY**

14.1. Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party. It is acknowledged by District 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.

## **XV. AMENDMENTS**

15.1. Amendment of Agreement. Any change to the provisions of this Agreement except for changes to Attachment A must be made in writing and signed by both parties: County and District. It is acknowledged by District that no officer, agency, employee or representative of County has any authority to change the provisions of this Agreement unless expressly granted that authority by Commissioners Court.

15.2. Amendment of Attachment A. County may amend the rates stated in Attachment A by sending a notice of rate change in compliance with Article XVI to District at least sixty (60) days before the beginning of the next County Fiscal Year. If District does not send a notice in compliance with Article XVI stating that the change is unacceptable before its effective date,

District shall accept the rates stated in the notice of rate change and shall pay those rates for the next County Fiscal Year. If District sends a notice that the change is unacceptable, District shall not use any Components of the ZOLL RescueNet FireRMS Suite after the beginning of the next County Fiscal Year unless County and District have agreed in writing to the rates applicable to it for the next County Fiscal Year. County may amend the type and quantity of Components stated in Attachment A if District has requested a change in writing and that change is acceptable to County.

15.3. District Request. District must submit all requests for changes to this Agreement to County Executive. The County Executive must present the District's requests to Commissioners Court for consideration.

15.4. County Request. County must submit all requests for changes to this Agreement to the Board President. The Board President must present County's requests to the District Board for consideration.

## XVI. NOTICES

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

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

County Executive  
Emergency Services  
5501 Airport Boulevard, Suite 203B  
Austin, Texas 78751

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

County Executive  
Emergency Services  
P.O. Box 1748  
Austin, Texas 78767

16.4. District Addresses. Paper Notices sent pursuant to this Agreement shall be delivered or mailed to District at the addresses shown in Attachment "A" to the Interlocal Cooperation Agreement Related to Relationship Among Organizing Government Units unless notice of change has been provided.

16.5. E-Mail Address. The electronic address for notice of suspension is the following electronic mail address:

[rmoellenberg@pflugervillefire.org](mailto:rmoellenberg@pflugervillefire.org)  
with copy to [john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)

16.6. 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.

16.6 Change of Address. District may change its address for notice under this contract by providing a notice of the change to County in compliance with this Article XVI.

## **XVII. INTERPRETATION OF CONTRACT**

17.1. Third Party Rights Not Created. This Agreement is not intended and shall not be interpreted to create any rights or remedies in any person or legal entity that is not a party to it and neither County nor District is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

17.2. Law. This Agreement is governed by the laws of Texas and is performable in Travis County, Texas.

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

17.4. Definitions. In this Agreement,

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

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

17.4.3. Components. "Components" means the services, devices and subscriptions sublicensed to and accessed and used by District that are part of the ZOLL RescueNet FireRMS Suite.

17.4.4. County Executive. "County Executive" means the individual designated by the Commissioners Court to perform the management and administrative duties of the County under this Agreement or his designee.

17.4.5. County Fiscal Year. "County Fiscal Year" means the Travis County fiscal year which commences October 1 and ends September 30 of the following calendar year.

17.4.6. Day. "Day" means calendar day.

17.4.7. District Board. "District Board" means the Board of Emergency Services Commissioners of this District.

17.4.8. FireRMS Agreement. "FireRMS Agreement" means the STRAC FireRMS Project Interlocal Cooperation Agreement between STRAC and County that is effective September 1, 2013.

17.4.9. Project Components of the ZOLL RescueNet FireRMS Suite. "Project Components of the ZOLL RescueNet FireRMS Suite" means the software and the intellectual property of the following two Components:

17.4.9.1 FireRMS Software Service for use at a single station which is a Project Component and includes:

Hosted FireRMS  
FireRMS Mobile  
Hosted FireRMS Maintenance and Work Orders  
Hosted FireRMS Supplies and Inventory  
FireRMS Deployment  
FireRMS Training  
Computer Aided Dispatch (CAD) integration (TriTech only)  
FireHouse to FireRMS data migration (if needed)

17.4.9.2 RescueNet ePCR Software Service for use at a single station which is a Project Component and includes:

Hosted RescueNet ePCR  
RescueNet ePCR deployment  
RescueNet ePCR training  
FireRMS to ePCR integration

17.4.10. Optional Components of the ZOLL RescueNet FireRMS Suite. “Optional Components of the ZOLL RescueNet FireRMS Suite” means the software and the intellectual property of the following three Components:

17.4.10.1 Apex drawing tool which is available directly from STRAC as part of the deployment with payment to STRAC of additional fees per station for purchase and maintenance.

17.4.10.2 Apex mobile device which is available directly from STRAC as part of the deployment with payment to STRAC of additional fees per device for purchase and maintenance.

17.4.10.3 VineLight Fire Intelligence which is a Web based reporting and business intelligence subscription which is available directly from STRAC as part of the deployment with payment to STRAC of additional fees per user and concurrent user.

17.4.11. Relationship Interlocal. “Relationship Interlocal” means the “Interlocal Cooperation Agreement Related to Relationship Among Organizing Government Units” approved by Travis County on October 28, 2008.

17.4.12. Station. “Station” means any location at which District installs and uses Project Components.

17.4.13. STRAC “STRAC” means the Southwest Texas Regional Advisory Council which is a Texas non-profit corporation created by Texas law and regulations.

17.4.14. STRAC-ZOLL License. “STRAC-ZOLL License” means the license agreement between STRAC and ZOLL Medical Corporation for data management software for emergency services related to fire and medical assistance that includes the Project Components and the Optional Components.

17.4.15. ZOLL “ZOLL” means ZOLL Medical Corporation.



17.5. Computation of Time. When any period of time is stated in this Agreement, 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.

17.6. Number and Gender. Words of any gender in this Agreement 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 Agreement clearly requires otherwise.

17.7. Headings. The headings at the beginning of the various provisions of this Agreement 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 Agreement.

### **XVIII. LEGAL AUTHORITY**

18.1. District Signors. The person or persons signing this Agreement on behalf of District , or representing themselves as signing this Agreement on behalf of District , do hereby warrant and guarantee that he, she or they have been duly authorized by District to sign this Agreement on behalf of District and to bind District validly and legally to all terms, performances, and provisions in this Agreement.

18.2. County Signors. The person or persons signing this Agreement on behalf of County, or representing themselves as signing this Agreement on behalf of County, do hereby warrant and guarantee that he, she or they have been duly authorized by County to sign this Agreement on behalf of County and to bind County validly and legally to all terms, performances, and provisions in this Agreement.

### **XIX. DUPLICATE ORIGINALS**

19.1. This document is executed in duplicate originals.

TRAVIS COUNTY

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge  
Travis County, Texas

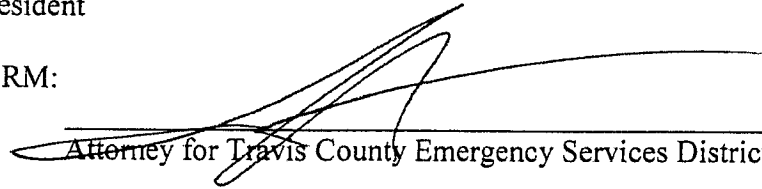
Date: \_\_\_\_\_

TRAVIS COUNTY EMERGENCY SERVICES DISTRICT NO. 2

By:   
Terry Strable, President

Date: 10/31/13

APPROVED AS TO FORM:

  
Attorney for Travis County Emergency Services District No. 2

**District  
Interlocal Cooperation Agreement**

**Attachment A – Components and Rate Schedule**

The Project Components of the ZOLL RescueNet FireRMS Suite authorized under this Agreement includes the following:

Stations with FireRMS Software Service Quantity 5

Stations with RescueNet ePCR Software Service: Quantity 5

The Optional Components of the ZOLL RescueNet FireRMS Suite purchased and authorized under this Agreement includes the following:

Stations with Apex drawing tool Quantity 1

Apex mobile devices Quantity 1

Stations with VineLight Fire Intelligence Quantity 3

Concurrent Users with VineLight Fire Intelligence Quantity 3

The per location per year rate for each type of fee and each type of Component is as follows:

Cost Category	Number of Stations/ Users	Cost-Initial Installation	Annual Cost Per Station/ User	Total Annual Cost
<b>Project Components</b>				
FireRMS Software Service	<u>5</u>	Not applicable	Not applicable	<b>4,090</b>
RescueNet ePCR Software Service	<u>5</u>	Not applicable	applicable	
<b>Optional Components</b>				
Apex drawing tool				
1 <sup>st</sup> Fire station	<u>1</u>	\$895		<b>895</b>
Each additional station		\$170		
Maintenance/station	<u>1</u>		\$170	<b>170</b>
Apex mobile device				
Each mobile device		\$525		
Maintenance/device			\$135	
VineLight Fire Intelligence (Web based reporting and business intelligence subscription)				
Each station	<u>3</u>		\$100	<b>300</b>
Each concurrent user	<u>3</u>		\$500	<b>1500</b>
<b>Total Billed This Contract Period:</b> September 1, 2013 through August 31, 2014				<b>\$6,955</b>

**MUTUAL BUSINESS ASSOCIATE AGREEMENT**  
**BETWEEN TRAVIS COUNTY AND**  
**EMERGENCY SERVICES DISTRICT NO. 2**

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

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

Travis County Emergency Services District No. 2, a political subdivision of Texas created under TEX. HEALTH & SAFETY CODE ANN., CH. 775 ("District").

**RECITALS**

County and District are entering into the STRAC FireRMS (Record Management System) Project Interlocal Cooperation Agreement ("FireRMS Agreement") so that District may manage its records, including those involving ePHI with more overall efficiency.

They are entering into this BAA to provide District with satisfactory assurances, in accordance with 45 C.F.R. § 164.314(a), that County will appropriately safeguard any electronic protected health information that County creates, receives, maintains or transmits on District's behalf and to provide County with satisfactory assurances, in accordance with 45 C.F.R. § 164.314(a), that District will appropriately safeguard any electronic protected health information that District creates, receives, maintains or transmits on County's behalf. 45 CFR 164.308 (b).

**AGREEMENT**

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

**I. TERM.**

1.1. This BAA commences on the date on which it is signed by the last party to sign it. This BAA continues in force until it is terminated by one of the parties.

**II. COUNTY RESPONSIBILITIES AND AUTHORITY**

2.1. Directly Regulated County acknowledges that it is directly regulated by HIPAA and HITECH and Part 164.

2.2. County Compliance with Part 164. County shall comply with the applicable requirements of Part 164. 45 CFR 164.314 (a)(2)(A). County 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).

2.3. Subcontractor Compliance with Part 164. County shall ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of County 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 County 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, County 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).

2.4. Notice of Breach to District County shall report to District any security incident of which it becomes aware, including breaches of District's unsecured protected health information as required by 45 CFR § 164.410. County shall report to District any successful security incident in detail as promptly as possible and no later than 2 business days after County becomes aware of it. County may report to District unsuccessful security incidents in the aggregate at least once each quarter. County determines if there has been a data breach for data that initiated with County and whether data that initiated with County has been compromised. 45 CFR 164.314 (a)(2)(C).

2.5. Policies and Training County shall implement, maintain and enforce procedures and policies consistent with the applicable requirements of HIPAA, HITECH and Part 164. County shall provide its employees working in areas treated as a covered entity with appropriate regular training in these policies and procedures and compliance with the applicable requirements of HIPAA, HITECH and Part 164. County shall ensure that these employees comply with these procedures and policies.

2.6. Notice of Breach. Following the discovery of a breach of unsecured protected health information, County shall notify District of the breach without unreasonable delay and no later than 60 calendar days after discovery of a breach. This notice shall include, to the extent possible, the identity of each individual whose unsecured protected health information has been, or is reasonably believed by County to have been accessed, acquired, used, or disclosed during the breach and any other available information that District is required to include in its notice to the individual under 45 CFR § 164.404(c). For purposes of this paragraph, a breach shall be treated as discovered by County as of the first day on which that breach is known to County or, by exercising reasonable diligence, would have been known to County. County shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of County. 45 CFR 164.410.

2.7. Permitted Uses and Disclosures County may use protected health information provided to County by District data for the following activities:

2.7.1. Treatment of patients,

2.7.2. Payment,

2.7.3. Healthcare operations including quality assessment and improvement activities, competence or qualifications of health care professionals, conducting or arranging for medical review business planning and development, business management and general administrative activities of County,

2.7.4. proper management and administration of County,

2.7.5. Making protected health information available for amendment and incorporating any amendments to protected health information in accordance with Part 164, and

2.7.6. Making the information required to provide an accounting of disclosures available in accordance with Part 164.

2.8. Required Uses and Disclosures County 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 County available to the Secretary of the Department of Health and Human Services for purposes of determining District's or County's compliance with Part 164. County shall also disclose protected health information to District when requested by an individual or the individual's designee, as necessary to satisfy District'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.

2.9. Prohibited Uses and Disclosures County 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 as required by law. For purposes of this paragraph, sale of protected health information means a disclosure of protected health information by County where County 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).

2.10. Accounting of Disclosures Except as otherwise permitted or required by this BAA, County shall report to District 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).

2.11. Return or Destruction of Data At termination of the BAA, if feasible, County shall return or destroy all protected health information received from, or created or received by County on behalf of District that County still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, County 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.

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

### **III. DISTRICT RESPONSIBILITIES AND AUTHORITY**

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

3.2. District Compliance with Part 164. District shall comply with the applicable requirements of Part 164. 45 CFR 164.314 (a)(2)(A). District 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. District shall ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of District 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 District 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, District 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 Breach to County District 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. District shall report to County any successful security incident in detail as promptly as possible and no later than 2 business days after District becomes aware of it. District may report to County unsuccessful security incidents in the aggregate at least once each quarter. District determines if there has been a data breach for data that initiated with District and whether data that initiated with District has been compromised. 45 CFR 164.314 (a)(2)(C).

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

3.6. Notice of Breach. Following the discovery of a breach of unsecured protected health information, District shall notify County of the breach without unreasonable delay and no later than 60 calendar days after discovery of a breach. This notice shall include, to the extent possible, the identity of each individual whose unsecured protected health information has been, or is reasonably believed by District to have been accessed, acquired, used, or disclosed during the breach and any other available information that County is required to include in its notice to the individual under 45 CFR § 164.404(c). For purposes of this paragraph, a breach shall be treated as discovered by District as of the first day on which that breach is known to District or, by exercising reasonable diligence, would have been known to District. District shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of District. 45 CFR 164.410.

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

- 3.7.1. Treatment of patients,
- 3.7.2. Payment,
- 3.7.3. Healthcare operations including quality assessment and improvement activities, competence or qualifications of health care professionals, conducting or arranging for medical review business planning and development, business management and general administrative activities of District,
- 3.7.4. proper management and administration of District,
- 3.7.5. Making protected health information available for amendment and incorporating any amendments to protected health information in accordance with Part 164, and
- 3.7.6. Making the information required to provide an accounting of disclosures available in accordance with § 164.528.

3.8. Required Uses and Disclosures District 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 District available to the Secretary of the Department of Health and Human Services for purposes of determining District's or County's compliance with Part 164. District 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 District 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 as required by law. For purposes of this paragraph, sale of protected health information means a disclosure of protected health information by District where District 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, District 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, District shall return or destroy all protected health information received from, or created or received by District on behalf of County that District still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, District 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 District shall comply with all applicable laws, rules and regulations in the performance of this BAA.

#### **IV. LIABILITY**

4.1. County is not liable for and District 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 District under this BAA.

4.2. District 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.

4.3. By entering into this BAA, neither party waives, nor shall be deemed to waive, any right, defense, or immunity that party may have.



## V. LIMIT ON AGENTS

5.1. 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. No agent, official, employee or representative of District has the authority to amend or assign this BAA or waive violations of it unless expressly granted this specific authority by the District Board.

## VI. BREACH

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

## VII. MEDIATION

7.1. 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.

## VIII. TERMINATION

7.1 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 7.2:

7.1.1 District fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

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

7.1.3 District has failed to comply with any term or condition of this BAA, or

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

7.2 Procedure. At least thirty (30) days before the effective date of termination, County must notify District in compliance with Article XIII 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. District may avoid termination of this BAA pursuant to 7.1.1, 7.1.2, and 7.1.3 if District 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 District 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 District is in default and the participation of the District is automatically terminated on that date.

7.3 District For Cause Termination. District may terminate this BAA, in whole or in part, at any time for any of the following reasons in compliance with 7.4:

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

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

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

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

7.4 Procedure. At least thirty (30) days before the date of termination, District must notify County in compliance with Article XIII 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 7.3.1 or 7.3.2 or 7.3.3 if County corrects the causes of the reasons for termination stated in the notice to the satisfaction of the District prior to the effective date of termination.

7.5 Mutual Termination. Either party has the right to terminate this BAA, in whole or in part, when both parties agree, in writing, that the continuation of the activities under this BAA would not produce beneficial results commensurate with the further expenditure of funds and what conditions of termination will apply, including the effective date of termination and, in case of partial termination, the portion of the BAA to be terminated.

## **IX. NON-WAIVER AND RESERVATION OF REMEDIES**

9.1. 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 District 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.

9.2. 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.

## **X. ENTIRE AGREEMENT**

10.1. 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.

## **XI. ASSIGNABILITY**

11.1. 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 District 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.

## **XII. AMENDMENTS**

12.1. Amendment of BAA. Any change to the provisions of this BAA must be made in writing and signed by both parties: County and District. It is acknowledged by District 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.

12.2. District Request. District must submit all requests for changes to this BAA to County Executive. The County Executive must present the District 's requests to Commissioners Court for consideration.

12.3. County Request. County must submit all requests for changes to this BAA to the Board President. The Board President must present County's requests to the District Board for consideration.

## **XIII. NOTICES**

13.1. 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.

13.2. 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:

County Executive  
Emergency Services  
5501 Airport Boulevard, Suite 203B  
Austin, Texas 78751

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

County Executive  
Emergency Services  
P.O. Box 1748  
Austin, Texas 78767

13.4. District Addresses. Paper Notices sent pursuant to this BAA shall be delivered or mailed to District at the addresses shown in Attachment "A" to the Interlocal Cooperation Agreement Related to Relationship Among Organizing Government Units unless notice of change has been provided.

13.5. 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.

13.6 Change of Address. District may change its address for notice under this contract by providing a notice of the change to County in compliance with this Article XIII.

#### XIV. INTERPRETATION OF CONTRACT

14.1. Third Party Rights Not Created. This BAA is not intended and shall not be interpreted to create any rights or remedies in any person or legal entity that is not a party to it and neither County nor District is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

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

14.3. 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.

14.4. 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

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

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

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

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

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

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

14.4.7. District Board. "District Board" means the Board of Emergency Services Commissioners of this District.

14.4.8. FireRMS Agreement. "FireRMS Agreement" means the STRAC FireRMS Project Interlocal Cooperation Agreement between STRAC and County that is effective September 1, 2013.

14.4.9. Relationship Interlocal. "Relationship Interlocal" means the "Interlocal Cooperation Agreement Related to Relationship Among Organizing Government Units" approved by Travis County on October 28, 2008.

14.5. 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.

14.6. 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.

14.7. 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.

#### **XV. LEGAL AUTHORITY**

15.1. District Signors. The person or persons signing this BAA on behalf of District , or representing themselves as signing this BAA on behalf of District , do hereby warrant and guarantee that he, she or they have been duly authorized by District to sign this BAA on behalf of District and to bind District validly and legally to all terms, performances, and provisions in this BAA.

15.2. County Signors. The person or persons signing this BAA on behalf of County, or representing themselves as signing this BAA on behalf of County, do hereby warrant and guarantee that he, she or they have been duly authorized by County to sign this BAA on behalf of County and to bind County validly and legally to all terms, performances, and provisions in this BAA.

#### **XVI. DUPLICATE ORIGINALS**

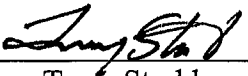
16.1. This document is executed in duplicate originals.

TRAVIS COUNTY

By: \_\_\_\_\_  
Samuel T. Biscoe, County Judge  
Travis County, Texas

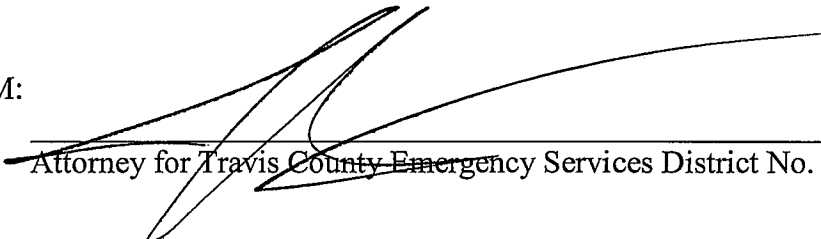
Date: \_\_\_\_\_

TRAVIS COUNTY EMERGENCY SERVICES DISTRICT NO. 2

By:   
Name: Terry Struble  
Board President

Date: 10/31/13

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Attorney for Travis County Emergency Services District No. 2