



Travis County Commissioners Court Agenda Request

Meeting Date: December 17, 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 BUSINESS ASSOCIATE AGREEMENT BETWEEN TRAVIS COUNTY AND SOUTHWEST TEXAS REGIONAL ADVISORY COUNCIL.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Travis County ("County") and Southwest Texas Regional Advisory Council ("STRAC") have entered into the STRAC FireRMS (Record Management System) Project Interlocal Cooperation Agreement so that County may participate in the FireRMS Project which is an enterprise record management system designed specifically for the unique needs of fire departments and medical first responders and other public safety organizations. FireRMS Software Service includes components of the ZOLL RescueNet FireRMS Suite. This Suite provides record management that may include protected health information.

This request will allow Travis County to have a Business Associate Agreement with STRAC that will provide County satisfactory assurances that STRAC and its subcontractor ZOLL will appropriately safeguard any electronic protected health information that STRAC or ZOLL creates, receives, maintains or transmits on County's behalf and on behalf of its sublicensees.

STAFF RECOMMENDATIONS:

Emergency Services recommends the approval of this request.

ISSUES AND OPPORTUNITIES:

This request will provide County assurances and safeguard protected health information in the STRAC FireRMS Software Service.

FISCAL IMPACT AND SOURCE OF FUNDING:

There is no fiscal impact with this request.

REQUIRED AUTHORIZATIONS:

Cyd Grimes, C.P.M., Purchasing Agent

Scott Wilson, Purchasing Office

Marvin Brice, Purchasing Office

Bonnie Floyd, Purchasing Office

Barbara Wilson, County Attorney's Office

William Derryberry, PBO

Kapp Schwebke, Auditor's Office

Toby Fariss, Emergency Services

BUSINESS ASSOCIATE AGREEMENT
BETWEEN TRAVIS COUNTY AND
SOUTHWEST TEXAS REGIONAL ADVISORY COUNCIL (STRAC)

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

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

Southwest Texas Regional Advisory Council ("STRAC"), a Texas non-profit corporation created by Texas law and regulations.

RECITALS

County and STRAC have entered into the STRAC FireRMS (Record Management System) Project Interlocal Cooperation Agreement ("FireRMS Agreement") so that County may participate in the FireRMS Project which is an enterprise record management system designed specifically for the unique needs of fire departments and medical first responders and other public safety organizations. FireRMS Software Service includes components of the ZOLL RescueNet FireRMS Suite. This Suite provides record management that may include protected health information.

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

AGREEMENT

NOW, THEREFORE, County and STRAC 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. STRAC RESPONSIBILITIES AND AUTHORITY

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

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

2.5. Policies and Training STRAC shall implement, maintain and enforce procedures and policies consistent with the applicable requirements of HIPAA, HITECH and Part 164. STRAC 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. STRAC shall ensure that its directors, employees, volunteers and subcontractors comply with these procedures and policies.

2.6. Notice of Breach. Following the discovery of a breach of unsecured protected health information, STRAC 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 STRAC 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 STRAC as of the first day on which that breach is known to STRAC or, by exercising reasonable diligence, would have been known to STRAC. STRAC 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 STRAC. 45 CFR 164.410.

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

2.7.1. Records management of protected health information

2.7.2. Proper management and administration of STRAC,

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

2.7.4. Making the information required to provide an accounting of disclosures available in accordance with § 164.528.

2.8. Required Uses and Disclosures STRAC 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 STRAC available to the Secretary of the Department of Health and Human Services for purposes of determining STRAC's or County's compliance with Part 164. STRAC 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.

2.9. Prohibited Uses and Disclosures STRAC 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 STRAC where STRAC 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, STRAC 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).

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

III. LIABILITY

3.1. County is not liable for and STRAC 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 STRAC under this BAA.

3.2. STRAC 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.

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

IV. LIMIT ON AGENTS

4.1. 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 STRAC has the authority to amend or assign this BAA or waive violations of it unless expressly granted this specific authority by the STRAC.

V. BREACH

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

VI. MEDIATION

6.1. 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.

VII. 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 STRAC fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

7.1.2 STRAC 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 STRAC has failed to comply with any term or condition of this BAA, or

7.1.4 STRAC 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 STRAC 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. STRAC may avoid termination of this BAA pursuant to 7.1.1, 7.1.2, and 7.1.3 if STRAC 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 STRAC 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 STRAC is in default and the participation of the STRAC is automatically terminated on that date.

7.3 STRAC For Cause Termination. STRAC 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, STRAC must notify County in compliance with Article XII 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 11.3.1 or 11.3.2 or 11.3.3 if County corrects the causes of the reasons for termination stated in the notice to the satisfaction of the STRAC 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.

VIII. NON-WAIVER AND RESERVATION OF REMEDIES

8.1. 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 STRAC 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.

8.2. 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.

IX. ENTIRE AGREEMENT

9.1. 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.

X. ASSIGNABILITY

10.1. 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 STRAC 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.

XI. AMENDMENTS

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

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

11.3. County Request. County must submit all requests for changes to this BAA to the Executive Director of STRAC.

XII. NOTICES

12.1. 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.

12.2. 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

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

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

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

STRAC
Attention: Executive Director
7500 Highway 90 West
AT&T Building, Suite 200
San Antonio, Texas 78227

12.5. 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.

12.6 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.

XIII. INTERPRETATION OF CONTRACT

13.1. 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 STRAC is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

13.2. 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.

13.3. 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.

13.4. 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

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

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

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

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

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

13.4.6. 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.

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

13.5. 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.

13.6. 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.

13.7. 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.

XIV. LEGAL AUTHORITY

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

14.2. 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.

XV. DUPLICATE ORIGINALS

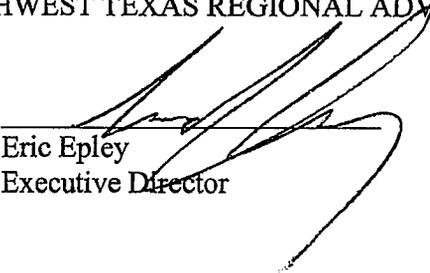
15.1. This document is executed in duplicate originals.

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge

Date: _____

SOUTHWEST TEXAS REGIONAL ADVISORY COUNCIL

By: 
Eric Epley
Executive Director

Date: 11-22-2013