



Travis County Commissioners Court Agenda Request

Meeting Date: November 25, 2014

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

Elected/Appointed Official/Dept. Head: Danny Hobby

[Handwritten signature]

Commissioners Court Sponsors: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

CONSIDER AND TAKE APPROPRIATE ACTION REGARDING A BUSINESS ASSOCIATE AGREEMENT BETWEEN TRAVIS COUNTY AND EMERGENCY SERVICES DISTRICT NO. 8 AND FIRE RECOVERY USA, LLC.

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.

Travis County and Emergency Services District No. 8 ("ESD No. 8") have entered into an agreement for ESD No. 8 to access and participate in the STRAC FireRMS Project.

This request will allow Travis County to have a Business Associate Agreement with ESD No. 8 and Fire Recovery to comply with the requirements of HIPAA, HITECH and the regulations under them. Fire Recovery has entered into an agreement with ESD No. 8 to bill and collect fees and expenses from patients served in the ESD's first responder services. To comply with the HIPAA and HITECH requirements related to

confidentiality, security and integrity of protected health information (PHI) and assure Travis County that Fire Recovery will comply with those requirements in its use and distribution of the PHI it obtains from the STRAC FireRMS in order to bill and collect these fees, ESD No. 8 and Fire Recovery have asked Travis County to enter into this Business Associate Agreement. See attached Agreement and also a letter from Assistant County Attorney Barbara Wilson explaining that this Agreement complies with the requirements of HIPAA and HITECH.

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 from Fire Recovery in their use of protected health information (PHI) from ESD No. 8 data information.

FISCAL IMPACT AND SOURCE OF FUNDING:

There is no fiscal impact with this request.

REQUIRED AUTHORIZATIONS:

Barbara Wilson, County Attorney's Office

Bonnie Floyd, Purchasing Office

Alan Miller, PBO

Kapp Schwebke, Auditor's Office

Toby Fariss, Emergency Services

DAVID A. ESCAMILLA
COUNTY ATTORNEY

STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., SUITE 420
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78787

(512) 854-9513
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TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

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MARY ETTA GERHARDT

TENLEY A. ALDREDGE

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DANIEL BRADFORD

† Member of the College
of the State Bar of Texas

October 31, 2014

Travis County Commissioners Court
P. O. Box 1478
Austin, Texas 78767

Re: Business Associate Agreement between Travis County and Emergency Services
District Number 8 (ESD 8) and Fire Recovery

Dear Judge and Commissioners:

I have prepared the form Business Associate Agreement upon which the above agreement was based. This agreement is necessary to comply with the requirements of HIPAA, HITECH and the regulations under them.

Travis County and ESD 8 have entered into an agreement for ESD 8 to access and participation in the STRAC FireRMS (Record Management System). The STRAC RMS is a data management, storage and retrieval system that includes information about ESD 8's activities, including its first responses to medical emergencies. These responses result in the storage of protected health information (PHI). Fire Recovery has entered into an agreement with ESD 8 to bill and collect fees and expenses from patients served in the ESD's first responses. To comply with the HIPAA requirements related to confidentiality, security and integrity of PHI and assure Travis County that Fire Recovery will comply with those requirements in its use and distribution of the PHI it obtains from the STRAC FireRMS (Record Management System) Project in order to bill and collect these fees, ESD 8 and Fire Recovery have asked Travis County to enter into this Business Associate Agreement.

This Business Associate Agreement complies with the requirements of HIPAA, HITECH and the Final Rule promulgated in January, 2013. There are no legal issues associated with approval of this agreement.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Wilson".

Barbara Wilson

Assistant County Attorney

BUSINESS ASSOCIATE AGREEMENT
BETWEEN TRAVIS COUNTY AND
EMERGENCY SERVICES DISTRICT NO. 8 AND
FIRE RECOVERY USA, LLC

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. 8, a political subdivision of Texas created under TEX. HEALTH & SAFETY CODE ANN., CH. 775 ("District") and Fire Recovery USA, LLC, a California limited liability company. ("Company"). *pu*

RECITALS

County and District have entered 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.

District and Company have entered into a Services Agreement to provide District assistance with the administration of its services in particular, the billing and collection for services District has provided.

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

AGREEMENT

NOW, THEREFORE, County and District and Company 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. COMPANY RESPONSIBILITIES AND AUTHORITY

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

2.2. Company Compliance with Part 164. Company shall comply with the applicable requirements of Part 164. 45 CFR 164.314 (a)(2)(A). Company 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. Company shall ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of Company 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 Company 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, Company 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 and District Company shall report to County and District any security incident of which it becomes aware, including breaches of the unsecured protected health information of County or District as required by 45 CFR § 164.410. Company shall report to County and District any successful security incident in detail as promptly as possible and no later than 2 business days after Company becomes aware of it. STRAC may report to County and District 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 Company shall implement, maintain and enforce procedures and policies consistent with the applicable requirements of HIPAA, HITECH and Part 164. Company 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. Company 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, Company shall notify County and 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 Company to have been accessed, acquired, used, or disclosed during the breach and any other available information that County and District are 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 Company as of the first day on which that breach is known to Company or, by exercising reasonable diligence, would have been known to Company. Company 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 Company. 45 CFR 164.410.

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

2.7.1. Billing and collection for services provided by District,

2.7.2. Proper management and administration of Company, and

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

2.8. Required Uses and Disclosures Company 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 Company available to the Secretary of the Department of Health and Human Services for purposes of determining Company's or County's or District's compliance with Part 164. Company also shall disclose protected health information to County and 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 Company 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 Company where Company 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, Company shall report to County and 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, Company shall return or destroy all protected health information received from, or created or received by Company on behalf of County and District that Company still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Company 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 Company 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 Company assumes full risk of and indemnifies County for 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 Company under this BAA.

3.2. District is not liable for and Company assumes full risk of and indemnifies District for 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 Company under this BAA.

3.3. Company 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.

3.4. Company is not liable for and District 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 District under this BAA.

3.5. 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 District has the authority to amend or assign this BAA or waive violations of it unless expressly granted this specific authority by the Company.

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 and District For Cause Termination. County and District have 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 Company fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

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

7.1.4 Company 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 or District must notify Company 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. Company may avoid termination of this BAA pursuant to 7.1.1, 7.1.2, and 7.1.3 if Company cures the breach to the satisfaction of County and District within thirty (30) days of receipt of notice of breach. The time to cure may be extended, at the sole discretion of County and District, as long as the Company diligently continues to work toward completion of the cure. If the breach is not cured to the satisfaction of County and District prior to the effective date of termination or any extension of the date allowed by County and District in writing, the Company is in default and the participation of the Company is automatically terminated on that date.

7.3 Company For Cause Termination. Company 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 or District fails to cease violations of this BAA or HIPAA or HITECH or Part 164,

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

7.3.4 County or District 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, Company must notify County and District 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 or District may avoid termination of this BAA pursuant to 11.3.1 or 11.3.2 or 11.3.3 if County or District corrects the causes of the reasons for termination stated in the notice to the satisfaction of the Company 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 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. 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. District Address. Notice sent pursuant to this BAA may be delivered or mailed to County. If delivered, notice shall be delivered at the following address:

Board President
Emergency Services District No. 8
801Bee Creek Road
Spicewood TX 78669

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

Board President
Emergency Services District No. 8
801Bee Creek Road
Spicewood TX 78669

12.6. Company Addresses. Notice sent pursuant to this BAA may be delivered or mailed to County and District. If delivered, notice shall be delivered at the following address:

Fire Recovery USA, LLC
2271 Lava Ridge Court, Suite 120
Roseville, CA 95661

12.7. 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 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.

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. Company Signors. The person or persons signing this BAA on behalf of Company , or representing themselves as signing this BAA on behalf of Company, do hereby warrant and

guarantee that he, she or they have been duly authorized by Company to sign this BAA on behalf of Company and to bind Company 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.

14.3. 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.

XV. DUPLICATE ORIGINALS

15.1. This document is executed in duplicate originals.

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge

Date: _____

TRAVIS COUNTY EMERGENCY SERVICES DISTRICT NO. 8

By: _____
Name: RUSSELL L. MUNSETH
Board President

Date: 11-3-14

APPROVED AS TO FORM:

Attorney for Travis County Emergency Services District No. 8

Fire Recovery USA, LLC

By: _____
Printed Name: M. Craig Nagler
Title: CEO
Company's Duly Authorized Agent

Date: 10/27/14