

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Public Health

**AGENDA DATE:** CCA 02/09/16

**CONTACT PERSON NAME AND PHONE NUMBER:** Robert Resendes, 212-6500

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** Goal 8: Nurture and Promote a Healthy, Sustainable Community

**SUBJECT:**

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso (the "City") and the Texas Tech University Health Sciences Center at El Paso ("TTUHSC-EP"), for the period of February 9, 2016 through January 31, 2018, pursuant to which TTUHSC-EP researchers shall develop a regional human dental tissue and fluid bank, analyze said tissue and fluid samples for factors which may contribute to dental disease and chronic health conditions, and disseminate results to City Council and other stakeholders to improve the health status of underserved populations in El Paso, and for which the City shall pay TTUHSC-EP up to \$958,058.00 with funding from the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support Medicaid Waiver projects.

**BACKGROUND / DISCUSSION:**

The City of El Paso Department of Public Health has received funding through the 1115 Texas Healthcare and Quality Improvement Program to support Medicaid Waiver projects. Projects include the Community Health Atlas and Border Public Health Interest Group comprised of community partners and researchers from area universities. Purpose of the collaborative projects with the University of Texas at El Paso, University of Texas Health Science Center at Houston, and Texas Tech University Health Sciences Center El Paso is to conduct research on innovative health screening/health promotion methodology, improve access to preventive health services, and advance health status. Research findings from this collaborative will be translated into public policy and programs to improve the quality and costs of healthcare for the El Paso border community.

**PRIOR COUNCIL ACTION:**

City Council action of May 28, 2013 for authorization to make intergovernmental transfer of City of El Paso public funds to the State of Texas Health and Human Services Commission to be able to draw down Medicaid match money over a four-year period through the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support the City's Medicaid Waiver projects.

Documentation: PL Matter #13-1052-187; PL Doc # 179509v2 – RESO – 1115 Waiver & TXNET Authorization

**AMOUNT AND SOURCE OF FUNDING:**

Amount available for this project is \$958,058; the funds are Medicaid match revenue earned from the Delivery System Reform Incentive Payment pool. The funding is part of the Texas Health and Human Services Commission program titled "Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver" as approved by the Centers for Medicare and Medicaid Services.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_

*Information copy to appropriate Deputy City Manager*

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Interlocal Agreement between the City of El Paso (the “City”) and the Texas Tech University Health Sciences Center at El Paso (“TTUHSC-EP”), for the period of February 9, 2016 through January 31, 2018, pursuant to which TTUHSC-EP researchers shall develop a regional human dental tissue and fluid bank, analyze said tissue and fluid samples for factors which may contribute to dental disease and chronic health conditions, and disseminate results to City Council and other stakeholders to improve the health status of underserved populations in El Paso, and for which the City shall pay TTUHSC-EP up to \$958,058.00 with funding from the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support Medicaid Waiver projects.

Dated this 9<sup>th</sup> day of February 2016.

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser, Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT

\_\_\_\_\_  
Robert Resendes, MBA, MT (ASCP)  
Department of Public Health, Director

**THE STATE OF TEXAS**

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**INTERLOCAL AGREEMENT**

**COUNTY OF EL PASO**

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On this \_\_\_\_ day of February, 2016, this Interlocal Agreement (the "Agreement") is made on behalf of the **CITY OF EL PASO**, a Texas municipal corporation (the "City") and **TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO**, ("TTUHSC EP"), collectively the "Parties," witnesseth:

**WHEREAS**, the Texas Interlocal Cooperation Act, V.T.C.A., Government Code, §791.001, *et seq.* allows local governments and political subdivisions of the state to contract among each other for governmental functions and services, including all or part of a function in the area of public health and welfare; and,

**WHEREAS**, the City has received funding through the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support Medicaid Waiver projects, as approved by the Centers for Medicare and Medicaid Services (CMS); and

**WHEREAS**, Medicaid Waiver funding presents an opportunity for the City's Department of Public Health to advance community health through collaborative relationships; and

**WHEREAS**, the City, in conjunction with the Border Public Health Interest Group, has developed collaborative research projects with area universities, including (a) TTUHSC EP, (b) the University of Texas at El Paso ("UTEP"), and (c) University of Texas at Houston School of Public Health ("UTH-SPH") to advance border health issues and to make recommendations for policy and programs to improve the health status of underserved populations in El Paso; and

**WHEREAS**, TTUHSC EP is qualified to perform the oral health research and related services and the CITY seeks to engage TTUHSC EP for said services;

**NOW, THEREFORE**, the City and TTUHSC EP do mutually agree as follows:

**ARTICLE I**

**SERVICES**

TTUHSC EP shall provide professional research services, specifically development of a regional human dental tissue and fluid bank (450 salivary/tissue samples) provided by the City Department of Public Health for (a) storage and classification using National Cancer Institute (NCI)-developed software and methodologies, (b) DNA/RNA extraction and storage, and (c) salivary cytokine determination using a panel, after testing the saliva samples for Human Immunodeficiency Virus infection (HIV), Hepatitis C Virus infection (HCV) and Human Papilloma Virus infection (HPV).

Oral fluid and tissue samples shall be collected from select patients receiving care at the

City's fixed site Dental Clinic or Mobile Dental Clinic. Saliva and tissue specimens shall be collected, prepared and stored by the TTUHSC EP Core Laboratories on behalf of the City's Department of Public Health located at 5115 El Paso Drive, El Paso, Texas ("DPH").

The following services (the "Services") will be provided by TTUHSC EP researchers who are qualified to conduct the project entitled "Oral Health El Paso 1115 Waiver Program Project":

1. Conduct an inventory of sample collection policies and procedures;
2. Obtain Institutional Biohazard Committee and Institutional Review Board (IRB) approval;
3. Collect and store data only from subjects who have provided an informed consent and a HIPAA-appropriate medical authorization;
4. Complete REAL data surveys on all research participants and communicate results to El Paso Community Health Atlas;
5. Collaborate with City of El Paso fixed site Dental Clinic and Mobile Dental Clinic staff to perform requested oral health testing on those individuals who have signed an informed consent and a HIPAA-appropriate patient consent authorization;
6. Create a reliable coded data base for patient medical information (PMI) collected and corresponding test results obtained on the oral health profile samples from the population covered by the City Dental Clinics;
7. Submit progress reports and integrated final reports to DPH;
8. Disseminate de-identified results to stakeholders, including, but not limited to the El Paso City Council, Centers for Medicare and Medicaid Services, US Department of Health and Human Services, Texas Health and Human Services Commission, the Border Public Health Interest Group, and other scientific professional organizations; and
9. Actively participate in Border Public Health Interest Group activities.

These Services will be performed through the following three (3) subprojects of the "Oral Health El Paso 1115 Waiver Program Project." DPH will receive interpreted and integrated data resulting from each project through the UTEP "El Paso Integrated Oral Health Atlas", as described:

(Subproject 1.) **"Inflammatory, Microbiological, Genetic, Epigenetic and Environmental Factors Involved in Dental Caries and Periodontal Disease in El Paso Del Norte Region"** (*"El Paso Saliva and Dental Tissues Bio-Repository"*):

- TTUHSC EP will collect and store saliva, dental materials and oral tissues from uninsured and Medicaid-covered populations who have provided an informed consent and a HIPAA-appropriate medical authorization. Saliva collected in Oragene™ collection kits from the City Dental Clinic and the Mobile Dental Clinic will be cataloged, processed, and made available to the other subprojects after testing for types of oral bacteria, HCV, HIV and HPV.
- Extraction, quantification, and storage of DNA and RNA using standard genomics methodologies.

- Selective release of saliva and oral tissue specimens from the bank to state and federal agencies for advancement of scientific knowledge in oral health and disease as well as use of saliva for the development of biomarkers for systemic, localized and chronic diseases, e.g., cancer and diabetes.
- Use of NCI-developed open source software to facilitate designation/inclusion as a regional repository under the direction of a board-certified pathologist.
- Cost of collection, preparation, storage, retrieval and analysis services including bacterial and viral analysis shall be no more than \$126,931.00 in year one; \$116,036.00 in year two; and \$115,091.00 in year three for three-year total of \$358,058.00.

(Subproject 2.) **“Role of Inflammation and Obesity in Chronic Disease in Hispanics in El Paso, TX”** (*“levels of Cytokines in Inflammatory Chronic Disease”*):

- Test saliva from obese (higher secretors of cytokines) and lean Hispanic dental patients, who have provided an informed consent and a HIPAA-appropriate medical authorization, for levels of 25 pro-inflammatory cytokines (HCYTMAG-60K-PX29 magnetic immune-bead Millipore kit). Two hundred twenty-five (225) obese and two hundred twenty-five (225) lean patients will be tested for a total of 450 patients.
- Share data through the El Paso Community Health Atlas with CMS and CDC, as pertinent.
- Cost of specimen testing, data analysis, including complete uni-variant and multi-variant analysis, and interpretation/reporting of findings shall be no more than \$100,000.00 per year for a three-year total of \$300,000.00

(Subproject 3.) **“Bacterial Cariogenic Salivary Profiles in El Paso TX”** (*“Oral Bacterial Genomics”*)

- Conduct multi-parametric molecular diagnostics tests for the detection of oral pathogens.
- Share data through the El Paso Community Health Atlas with CMS and CDC, as pertinent.
- Cost of specimen testing, data analysis, and interpretation/reporting of findings shall be no more than \$100,000.00 per year for a three year total of \$300,000.00

All Services are to be performed by TTUHSC EP in accordance with the deliverables described in this Agreement and Exhibit “A”, and in accordance with the Provisions of the Delivery System Reform Incentive Payment (“DSRIP”) guidelines. TTUHSC EP shall perform the aforementioned Services in a timely manner according to the Deliverables and Reporting Requirements attached hereto as Exhibit “A”.

## ARTICLE II

### COMPENSATION

The City agrees to pay TTUHSC EP for the aforementioned Services THREE

HUNDRED TWENTY-SIX THOUSAND NINE HUNDRED THIRTY-ONE DOLLARS (\$326,931) on or before the 1<sup>st</sup> of March 2016, with the condition precedent of completion of deliverables for the 1<sup>st</sup> payment, as described in Exhibit "A"; THREE HUNDRED SIXTEEN THOUSAND THIRTY-SIX DOLLARS (\$316,036) on the 31<sup>st</sup> of March 2017, with the condition precedent of completion of deliverables for the 2<sup>nd</sup> payment, as described in Exhibit "A"; THREE HUNDRED FIFTEEN THOUSAND NINETY-ONE DOLLARS (\$315,091) on or after the 31<sup>st</sup> of January 2018, with the condition precedent of completion of deliverables for the 3<sup>rd</sup> payment, as described in Exhibit "A". Total compensation from the City to TTUHSC shall not exceed NINE HUNDRED FIFTY-EIGHT THOUSAND FIFTY-EIGHT DOLLARS (\$958,058) during the term of this Agreement. The parties agree that the indirect cost for this project shall not exceed 10%. Indirect cost shall be included in, not in addition to, the above amounts.

Payments are based upon TTUHSC EP meeting each and every one of the deliverables and reporting requirements described on Exhibit "A", with the City's DPH Director, or designee, determining whether said deliverables are met. The City may withhold or delay payments until the deliverables appearing on Exhibit "A" are met by TTUHSC EP.

In the event that the Medicaid match revenue is withheld, reduced or cancelled by the Centers for Medicare and Medicaid Services, the City's funding obligation will cease. The City is not required to pay out of City resources any amount that is not covered by Medicaid match revenue. The City shall notify in writing the TTUHSC EP Principal Investigator for this project within 5 business days of the City being informed by the Centers for Medicare and Medicaid Services that the Medicaid match revenue is being withheld, reduced or cancelled.

After receiving a reduction notice from the City, TTUHSC EP Services obligation shall be reduced in an amount commensurate with the Medicaid match revenue reduction after the parties meet to confer the level of the funding and Services reduction. If, after 10 days of discussion following the written notice to the City, the parties are unable to agree upon a service reduction, this Agreement shall terminate.

### **ARTICLE III**

#### **NO EMPLOYMENT RELATIONSHIP**

Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and TTUHSC EP. TTUHSC EP shall be deemed at all times to be an independent contractor.

### **ARTICLE IV**

#### **NO INDEMNIFICATION**

The parties expressly agree that no party shall have the right to seek indemnification or contribution from any other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or in part, from this Agreement.

**ARTICLE V**

**GOVERNMENTAL LIABILITY**

The Texas Tort Claims Act, Chapter 101, Section 101.021, V.T.C.A., Civil Practice and Remedies Code provide the protection for Texas Tech University System and components for personal injury and property damage.

**ARTICLE VI**

**TERM/TERMINATION**

This Agreement shall become effective February 9<sup>th</sup>, 2016, and continue in full force until January 31st, 2018, subject to any limitations set forth herein, except that the final payment from the City shall be released within thirty (30) days of completion of the deliverables.

Either party may terminate this Agreement by giving the other party thirty (30) days written notice. Should the City or TTUHSC EP have cause to terminate this Agreement, the Agreement may be terminated immediately upon notification to respective parties of the cause for termination. Should early termination occur for any reason, TTUHSC EP shall accurately reflect such early termination and partial service in its claim for payment. Should any overpayment be made by the City, the City shall notify TTUHSC EP and TTUHSC EP shall return said overpayment to the City within five (5) days of written notice by the City.

**ARTICLE VII**

**NOTICES**

Notices required herein shall be sent, postage prepaid, to the following:

**CITY OF EL PASO:** City Manager  
PO Box 1890  
El Paso, TX 79950-1890

**Copy to:** City of El Paso  
Department of Public Health  
Attn: Director  
5115 El Paso Drive  
El Paso, Texas 79905

**TTUHSC EP:** Texas Tech University Health Sciences Center at El Paso  
Office of the Assistant Vice President for Research  
Attention: Dr. Peter Rotwein  
5001 El Paso Drive  
El Paso, Texas 79905

Copy to:

Texas Tech University Health Sciences Center at El Paso  
Attn: Contracting Department  
5001 El Paso Drive  
El Paso, Texas 79905  
[ElpContractDept@ttuhsc.edu](mailto:ElpContractDept@ttuhsc.edu)

## **ARTICLE VIII**

### LAW GOVERNING CONTRACT

For the purpose of determining the place of contract and law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

## **ARTICLE IX**

### GOVERNMENTAL FUNCTION

The parties expressly agree that, in all things relating to this Agreement, the City and TTUHSC EP are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City or of TTUHSC EP that, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

## **ARTICLE X**

### COMPLIANCE WITH LAWS

The parties acknowledge that each is subject to applicable federal and state laws and regulations, and policies and requirements of various accrediting organizations. Accordingly, each party affirms its own compliance with all applicable laws, regulations, and requirement, including, but not limited to, those necessary to maintain all applicable licensing and professional credentials relevant to this Agreement. Further, the parties will make available such information and records as may be reasonably requested in writing by the other party to facilitate compliance with law, except for records that are confidential and privileged by law.

## **ARTICLE XI**

### ASSIGNMENT

Neither Party shall have the right to assign or transfer their right to any third parties under this Agreement without prior written consent of the non-transferring party.



## **ARTICLE XII**

### SEVERABILITY

If any term or provision of this Agreement is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this Agreement, provided that any invalid portions are not material to the overall purpose and operation of this Agreement. The remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

## **ARTICLE XIII**

### MEDICAL RECORDS & CONFIDENTIALITY

For those patients who have executed an informed consent and a HIPAA-appropriate medical authorization, TTUHSC EP shall have access to the complete de-identified data of all subjects and control subjects at the time of sample collection.

The parties agree there shall be no protected health information provided to TTUHSC EP by the City, unless the patient, parents or legal guardians voluntarily waive that right, and such release of protected health information is compliant with Health Insurance Portability and Accountability Act (HIPAA). All data not collected by TTUHSC EP that is provided by the City to TTUHSC EP shall consist of data provided under a pre-agreed common code that will protect the Patient Identifiable Information (PII). In the event that Patient Identifiable Information is compromised by a breach in security, either or both parties shall immediately report the incident with specifics to TTUHSC EP Institutional Review Board (IRB) and other required entities.

In order to cover those instances where TTUHSC EP researchers require access to select-patients' dental record data possessed by the City, TTUHSC EP agrees to sign the attached Business Associate Agreement, attached hereto as Exhibit "B".

## **ARTICLE XIV**

### NO WAIVER

Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

## **ARTICLE XV**

### CAPTIONS

The captions of the various sections of this Agreement are for convenience of reference

only and shall not alter the terms and conditions of this Agreement.

**ARTICLE XVI**

ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by both parties.

**ARTICLE XVII**

AUTHORITY TO CONTRACT

The person signing this document on behalf of TTUHSC EP warrants that he or she has been duly authorized to sign this Agreement on behalf of TTUHSC EP and to bind the organization, its officers, agents and employees.

*(Signatures to follow on next page)*

**THE STATE OF TEXAS**  
**COUNTY OF EL PASO**

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**INTERLOCAL AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have duly executed Agreement as of the 9<sup>h</sup> day of February, 2016.

**CITY OF EL PASO:**

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Oscar Leeser  
Mayor

**ATTEST:**

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Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

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Josette Flores  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

---

Robert Resendes, MBA, MT (ASCP)  
Department of Public Health, Director

**TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO:**

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Richard A. Lange, M.D., M.B.A.  
President

**EXHIBIT “A”**  
**Texas Tech University Health Sciences Center at El Paso**  
**Deliverables and Reporting Requirements**

**Study Title: Oral Health El Paso 1115 Waiver Program Project**

	<b>Deliverable/Requirement</b>	<b>Due Date</b>
<b>Initial Required for 1<sup>st</sup> payment</b>	Study protocol and data collection instrument for each study	February 28, 2016
	Inventory data collection policies and procedures	February 28, 2016
	Institutional Review Board (IRB) approval	March 1, 2016
<b>On-going Required for 2<sup>nd</sup> and 3<sup>rd</sup> payment</b>	Active participation in Border Public Health Interest Group, monthly	ongoing
	Progress Report to be submitted by end of each March, September and December	March 31, 2016 September 30, 2016 December 31, 2016 March 31, 2017 September 30, 2017 December 31, 2017
	Annual Institutional Review Board (IRB) Review	
	Documentation of data collection for the development and implementation of the El Paso saliva and oral tissues bio-repository (goal will be to collect 450 individual samples by the end of project period)	December 31, 2017
<b>Final Required for 3<sup>rd</sup> payment</b>	Final Report Data reported through El Paso Healthcare Atlas database	January 31, 2018
	Disseminate results at BPHIG meeting and other avenues, including peer-reviewed research publications.	ongoing

**EXHIBIT "B"**  
**BUSINESS ASSOCIATE AGREEMENT**

STATE OF TEXAS

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**HIPAA BUSINESS ASSOCIATE AGREEMENT**

COUNTY OF EL PASO

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**THIS AGREEMENT** is entered into on February 9, 2016 by and between the CITY OF EL PASO, TEXAS ("CITY"), as the Covered Entity, and Texas Tech University Health Sciences Center at El Paso ("BUSINESS ASSOCIATE") by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information ("PHI") and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as "HIPAA"). Covered Entity and Business Associate may be referred to herein individually as a "Party" or collectively as the "Parties".

**RECITALS**

**WHEREAS**, CITY has engaged BUSINESS ASSOCIATE to perform services or provide goods, or both;

**WHEREAS**, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

**WHEREAS**, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

**WHEREAS**, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

**NOW THEREFORE**, CITY and BUSINESS ASSOCIATE agree as follows:

**A. HIPAA Terms**

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1)(h) to this Section.
  - a. **Agreement** shall refer to this document.
  - b. **Business Associate** means Texas Tech University Health Sciences Center at El Paso.
  - c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164, in effect, or as amended.
  - d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" is defined in 45 C.F.R. 164.501.
  - e. **Information** shall mean any "health information" provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.102.

- f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
- g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.

2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
3. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes:  
To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)
4. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
- a. The disclosure is required by law; or
- b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by

45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

7. **BUSINESS ASSOCIATE OBLIGATIONS:**

- a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
- b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
- c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
- d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
  - (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.
- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).



- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F).
- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words “COVERED ENTITY” with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary’s designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
- m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY’S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).
- n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
- o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the

BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.

- p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
- 8. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
- 9. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the "Privacy Rule" and Subparts A and C the "Security Rule") of the Code of Federal Regulations.
- 10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

**B. Term and Termination**

- 1. **Term.** The Term of this Agreement shall be effective as of February 09, 2016, and shall terminate on January 31, 2018 or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
- 2. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:
  - a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the CITY.
  - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
  - c. Notify the Secretary of HHS if termination is not possible.
- 3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:
  - a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;

- b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
- c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
- d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
- e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
- f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

**C. Remedies.** If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:

- 1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
- 2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- 3. Terminate this Agreement immediately.
- 4. Injunction. CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.

**D. Miscellaneous**

1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.
2. **Amendment.** CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.
4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso  
 Attn: City Manager  
 P. O. Box 1890  
 El Paso, Texas 79950-1890

COPY TO: City of El Paso  
 Department of Public Health  
 Attention: Director  
 5115 El Paso Drive  
 El Paso, Texas 79905

BUSINESS ASSOCIATE: Texas Tech University Health Sciences Center at El Paso  
 Office of the Assistant Vice President for Research  
 ATTN: Dr. Peter Rotwein  
 5001 El Paso Drive  
 El Paso, Texas 79905

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

*(Signatures follow on next page)*

STATE OF TEXAS

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**HIPAA BUSINESS ASSOCIATE AGREEMENT**

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COUNTY OF EL PASO

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*Signature Page*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the 9<sup>th</sup> day of February, 2016.

CITY OF EL PASO

\_\_\_\_\_  
Tomás González  
City Manager

BUSINESS ASSOCIATES

Signature: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

\_\_\_\_\_  
Robert Resendes, MBA, MT(ASCP)  
Department Head