

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

**DEPARTMENT:** Public Health

**AGENDA DATE:** 3/17/2020

**CONTACT PERSON NAME AND PHONE NUMBER:** Robert Resendes 915-212-6500

**DISTRICT(S) AFFECTED:** All

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

**SUBJECT:**

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 University of Texas Health Science Center at Houston ("UTHSC-H"), for the period of March 1, 2020 through February 28, 2021, regarding a project through which UTHSC-H researchers shall conduct health research and make recommendations for policy and programs to improve the health status of underserved populations in El Paso, and for which the City shall pay UTHSC-H an amount not to exceed \$100,000 with funding from the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support Medicaid Waiver projects.

**BACKGROUND / DISCUSSION:**

n/a

**PRIOR COUNCIL ACTION:**

Previously approved on 7/29/14, 10/18/16, 11/15/17 (extension), 10/21/18

**AMOUNT AND SOURCE OF FUNDING:**

**BOARD/COMMISSION ACTION:**

\*\*\*\*\*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 University of Texas Health Science Center at Houston ("UTHSC-H"), for the period of March 1, 2020 through February 28, 2021, regarding a project through which UTHSC-H researchers shall conduct health research and make recommendations for policy and programs to improve the health status of underserved populations in El Paso, and for which the City shall pay UTHSC-H an amount not to exceed \$100,000.00 with funding from the Texas Healthcare and Quality Improvement Program 1115 Demonstration Waiver Program to support Medicaid Waiver projects.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF EL PASO

\_\_\_\_\_  
Dee Margo, Mayor

ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT

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

THE STATE OF TEXAS  
COUNTY OF EL PASO

§  
§  
§

## INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is entered into between the following parties:

The **CITY OF EL PASO** (the "CITY") and the **UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON**, a member institute of The University of Texas System (UTHSC-H), 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; and

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

**WHEREAS**, the City, in conjunction with the Border Public Health Interest Group, has developed a collaborative research project with area universities, including UTHSC-H, 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**, UTHSC-H is qualified to perform the research and the CITY seeks to contract with UTHSC-H for said research services; and

**WHEREAS**, it is the intent of the parties that the services and functions to be performed pursuant to this Agreement constitute solely governmental functions and services;

**NOW, THEREFORE**, for and in consideration of the following mutual promises, the parties agree to the following:

### **ARTICLE I**

UTHSC-H shall provide professional research services, specifically the services of Dr. Louis Brown, to 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 the UTHSC-H researchers who are qualified to conduct the research entitled "Reaching Medicaid and vulnerable families to transform preventive health through a community health worker outreach, health navigation, and health education integrative model":

- Provide copy of research protocol;
- Submit monthly progress reports, annual reports, and final reports to DPH;
- Obtain Institutional Review Board ("IRB") approval and ongoing approval as required by IRB and submit copies of all correspondence with IRB to DPH;
- Recruit and collect data from research subjects and acquire a HIPAA-appropriate medical authorization for each recruited subject;

- Refer to DPH for immunizations and health screenings only those individuals who have signed a HIPAA-appropriate medical authorization;
- Conduct follow-up and referrals for subjects with abnormal biometric measures as they are stated in the HHSC Cat C Measure Specifications;
- Conduct voucher redemption follow-up with all subjects on a monthly basis;
- Assist with health education activities, linkage to care, and anthropometric measures necessary to complete deliverables required by state officials;
- Disseminate de-identified aggregate results to stakeholders, including, but not limited to the Centers for Medicaid and Medicare Services, the Health and Human Services Commission, the Border Public Health Interest Group, and other scientific professionals;
- Active participation with BPHIG meetings, one journal publication, and one conference presentation;
- Conduct a collaborative project with BPHIG including but not limited to grant proposal, training, or public event;
- Disseminate results at BPHIG meetings, in journal publications, and other avenues
- Complete data analyses specific to the aforementioned research, and submit data files and source codes for a DPH database repository;
- Make available information and records as may be reasonably requested by the Health and Human Services Commission, the Centers for Medicaid and Medicare Services, and other governmental officials to demonstrate provision of health services required to earn funding. All information including research data, health and contact information shall be made available 5 days from request as required by funding agency to DPH.

All Services are to be performed by UTHSC-H in accordance with the needs of the CITY as determined by the CITY'S DPH Director and in accordance with the Provisions of the Delivery System Reform Incentive Payment ("DSRIP") guidelines. UTHSC-H shall perform the aforementioned Services in a timely manner according to the Deliverables and Reporting Requirements attached hereto as Exhibit "A".

DPH shall manage the repository of data files used for the study. DPH shall provide immunizations and/or coordinate health screenings for those individuals referred by UTHSC-H through a voucher system. The referred individuals will take the referral voucher provided to them by UTHSC-H to the health care provider assigned to them by DPH for the health screenings.

## ARTICLE II

The City agrees to pay UTHSC-H THIRTY DOLLARS AND NO/CENTS (\$30) per subject enrolled with REAL data completed, FIFTY DOLLARS AND NO/CENTS (\$50) for obtaining all biometric measures with completion of follow-up attempts per subject, and TWENTY DOLLARS AND NO/CENTS (\$20) for redemption of voucher services per subject; not to exceed ONE HUNDRED THOUSAND DOLLARS and NO/CENTS (\$100,000) for the contract period. Voucher redemptions will be confirmed by Medicaid Waiver Program staff. 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 UTHSC-H 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 UTHSC-H. The CITY will pay for the completed deliverables per enrolled subject every

quarter for the contract period, beginning March 1, 2020. The CITY shall solely make payments to UTHSC-H out of Medicaid matched revenue from the United States Federal Government. In the event that HHSC and their contract auditors request return of payment due to incompleteness of deliverables, UTHSC-H will be liable for return of payment as indicated by HHSC.

In the event that the Medicaid matched revenue is withheld, reduced or cancelled by the Centers for Medicare and Medicaid Services, the CITY'S funding obligation shall cease so that the CITY is not required to pay out of pocket any amount that is not covered by Medicaid matched revenue. The CITY shall notify the UTHSC-H Lead Researcher for this research project in writing within 10 business days if the CITY is informed by the Centers for Medicare and Medicaid Services that the Medicaid matched revenue is being withheld, reduced or cancelled.

After receiving a reduction notice from the CITY, UTHSC-H'S Services obligation shall be reduced in an amount corresponding to the Medicaid matched revenue reduction after the parties meet to confer the level of the funding and Services reduction. If, after 30 days of discussion following the written notice, the parties are unable to agree upon a Service reduction, this Agreement shall terminate. After receiving said written withholding or cancellation notice from the CITY, UTHSC-H'S Services obligation shall cease and this Agreement shall immediately terminate.

In addition, Dr. Louis Brown will be available through e-mail and telephone to provide consultation as needed with DPH staff when Dr. Louis Brown is not physically present at the DPH facility.

### **ARTICLE III**

#### **NO AGENCY RELATIONSHIP**

Nothing contained herein shall be construed as creating the relationship of employer and employee between the CITY and UTHSC-H. UTHSC-H 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**

This Agreement shall become effective March 1, 2020 and continue in full force until February 28, 2021, subject to any limitations set forth herein, except that the final payment obligation from the CITY shall continue until complete on February 28, 2021. Either party may terminate this Agreement by giving the other parties thirty (30) days written notice. UTHSC-H may immediately terminate upon the CITY'S non-payment or reduced payment as described in Article II to this Agreement.

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

CITY OF EL PASO:                      City Manager  
   P.O. 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

UTHSC-H:

The University of Texas Health Science Center at Houston  
Contracts  
7000 Fannin, UCT 1006  
Houston, 77030

Payment:

Finance and Business Services Award/Payment  
FASTeam  
P.O. Box 301418  
Dallas, Texas 75303-1418

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.

For purposes of determining the place of the contract and the law governing the same, it is agreed that 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.

This Agreement may be amended in writing and signed by authorized representatives to include such provision(s) as the Parties may agree.

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. Any attempt to assign this Agreement on the part of UTHSC-H without consulting the CITY shall be considered void and may be considered an event of default at the discretion of the CITY.

## **ARTICLE VI**

### **MEDICAL RECORDS & CONFIDENTIALITY**

Subject to IRB approval, and the Business Associates Agreement attached as Exhibit "B" and incorporated herein by reference in its entirety, UTHSC-H shall have access to the complete data of all subjects upon written request to DPH. Said request shall be sent by UTHSC-H to DPH's Director or designee and will be provided by DPH to UTHSC-H within ten (10) business days from said request.

## **ARTICLE VII**

### **COMPLIANCE**

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 will enforce compliance with all applicable laws, regulations, and requirements and will make available such information and records as may be reasonably requested in writing by the other party to facilitate its compliance, except for

records that are confidential and privileged by law.

### **ARTICLE VIII**

#### **INTERLOCAL CONTRACT PROVISION**

The CITY shall pay for services received from appropriation items or accounts of the CITY from which like expenditures would normally be paid, based upon vouchers drawn by the CITY payable to UTHSC-H.

The Parties expressly agree that, in all things relating to this Agreement, the CITY and UTHSC-H 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 UTHSC-H that, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

The undersigned contracting parties bind themselves to the faithful performance of this Agreement.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF EL PASO:

ATTEST:

\_\_\_\_\_  
Dee Margo, Mayor

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
*Roberta Brito*  
Roberta Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT HOUSTON

\_\_\_\_\_  
*Carmen Martinez*  
Carmen Martinez, Director  
Grants and Contracts

### **EXHIBIT "A"**

The University of Texas Health Sciences Center at Houston-El Paso Regional Campus Deliverables and Reporting Requirements.

Study Title: Reaching Medicaid and vulnerable families to transform preventative health through a community health worker outreach, health navigation, and health education integrative model.

<b>Deliverable/Requirement</b>	<b>Due Date</b>
<b>Institutional Review Board (IRB) Continuing Review Approval</b>	Ongoing
<b>Recruit, enroll, obtain data collection, and biometric measures on at least 1000 subjects; reported on a monthly basis</b> <ul style="list-style-type: none"><li>• socio-demographic and health status</li><li>• biometric measures (blood pressure readings, height, weight, body mass index screening)</li><li>• provide vouchers for cancer screenings: breast, cervical, and colorectal screenings</li><li>• documentation for any refused services (including reason for refusal of services)</li></ul>	Mar 2020-Feb 2021
<b>Voucher redemption follow-up to those who have not redeemed voucher</b> <ul style="list-style-type: none"><li>• follow-up calls with each participant one month after initial encounter to check if voucher was redeemed</li><li>• notes with dates &amp; times participant was contacted should be submitted</li><li>• participant must have at least one voucher redemption completed in order to receive credit/funds for redemption of voucher services.</li></ul>	Mar 2020-Feb 2021
<b>Follow-up for abnormal biometric measures</b> <ul style="list-style-type: none"><li>• follow-up calls with each participant one month after initial encounter for subjects with abnormal biometric measures (high BMI, high BP)</li><li>• notes with dates &amp; times participant was contacted should be submitted</li></ul>	Mar 2020-Feb 2021



<b>Referrals for other MW services</b>	Mar 2020-Feb 2021
<ul style="list-style-type: none"> <li>• <b>Documentation for referrals: tobacco screening and cessation, detection of obesity</b></li> </ul>	
<b>Monthly Progress Report Template</b>	Mar 2020-Feb 2021
<b>Conduct a collaborative project with BPHIG including but not limited to grant proposal, training, or public event</b>	Mar 2020-Feb 2021
<b>Monthly Report with electronic copies of documentation (electronic surveys with date of service):</b> <ul style="list-style-type: none"> <li>• <b>vouchers</b></li> <li>• <b>surveys</b></li> <li>• <b>consent forms</b></li> </ul>	Mar 2020-Feb 2021
<b>Active participation with BPHIG meetings, at least one journal manuscript submission for publication, and one conference presentation</b>	Mar 2020-Feb 2021
<b>Final Report</b>	Mar 2021

**EXHIBIT "B"**

STATE OF TEXAS            )  
                                      )  
COUNTY OF EL PASO        )

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

**THIS AGREEMENT** is entered into by and between the City of El Paso ("CITY"), as the Covered Entity, and the University of Texas Health Science Center at Houston ("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**, BUSINESS ASSOCIATE and CITY have entered into an Interlocal Agreement, to which this HIPAA Business Associate Agreement is attached and incorporated, wherein BUSINESS ASSOCIATE will conduct a research project entitled "Reaching Medicaid and vulnerable families to transform preventive health through a community health worker outreach, health navigation, and health education integrative model"; and

**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; and

**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 the University of Texas Health Science Center at Houston.
  - 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 long as the Interlocal Agreement is effective.
- 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.

5. **Indemnification.** BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BUSINESS ASSOCIATE in connection with the representations, duties and obligations of BUSINESS ASSOCIATE under this Agreement. The parties' respective rights and obligations under this Section 5 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 set forth in the Interlocal Agreement.
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, along with the Interlocal Agreement and its exhibits/attachments, constitute 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.

*(Signatures on the following page)*

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )


**HIPAA BUSINESS ASSOCIATE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF EL PASO

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


THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT HOUSTON

  
\_\_\_\_\_  
Name: Carmen Martinez  
Title: Director Grants  
Sponsored Projects Administration

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Roberta A. Brito  
Assistant City Attorney

APPROVED AS TO CONTENT:

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