

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

**DEPARTMENT:** DEPARTMENT OF PUBLIC HEALTH

**AGENDA DATE:** JUNE 3, 2008

**CONTACT PERSON/PHONE:** ANGELA MORA/771-5706

**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

**THAT** the Mayor be authorized to sign an Interlocal Agreement by and between the City of El Paso and the Canutillo Independent School District (the "District"), for the District's referral of eligible children in need of dental services and administrative coordination of said referral system in exchange for the City conducting a comprehensive intervention dental program for District students and their families, for a term of May 26, 2008 through August 31, 2008, in accordance with the fee and payment schedule described in the Interlocal Agreement in an amount not to exceed EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) and with services from the City contingent upon the availability of funds.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

**WHAT:** This is a renewal of the CANUTILLO INDEPENDENT SCHOOL DISTRICT contract; it is used to provide dental services to the Migrant Worker's kids. The agency agrees to pay \$8,000 for services provided to approximately 150 students.

**WHY:** The Canutillo Independent District wants to provide the dental services to migrant worker's children and families which include preventive, treatment and Oral Health Instruction.

**WHERE:** The Mobile Dental Unit parks outside the Canutillo Elementary School and starts giving the consent paperwork to the School Nurse to distribute to qualifying children to take to parents and fill out. This project happens once the regular school activities are out in vacation. Although the Dental Program concentrates on the Migrant workers we do not deny services to children that do not qualify under the contract.

**WHEN:** Once a year during the months of May 2008 through August 2008.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

No, previously approved by the El Paso City-County Board of Health

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

N/A

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**BOARD / COMMISSION ACTION:**

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Enter appropriate comments or N/A

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

**LEGAL:** (if required)   Josette Flores        **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**        Michael Hill, Director, Department of Public Health    
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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**RESOLUTION**

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

**THAT** the Mayor be authorized to sign an Interlocal Agreement by and between the City of El Paso and the Canutillo Independent School District (the "District"), for the District's referral of eligible children in need of dental services and administrative coordination of said referral system in exchange for the City conducting a comprehensive intervention dental program for District students and their families, for a term of May 26, 2008 through August 31, 2008, in accordance with the fee and payment schedule described in the Interlocal Agreement in an amount not to exceed EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) and with services from the City contingent upon the availability of funds.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2008.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

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

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APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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

  
\_\_\_\_\_  
Michael Hill, Director  
Public Health Department

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

**INTERLOCAL AGREEMENT**

This Interlocal Agreement (“Agreement”), made and entered into on this \_\_\_\_\_ day of May, 2008 between the CITY OF EL PASO, hereinafter referred to as (the “City”), and the CANUTILLO INDEPENDENT SCHOOL DISTRICT, hereinafter referred to as (the “District”),

**WITNESSETH**

WHEREAS, the parties desire to make on-site dental care services and dental care information available to students enrolled with the District, and

WHEREAS, the City, by and through its Department of Public Health (the “Department”), is able to provide the services described herein, 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, in consideration of the mutual promises, covenants and conditions expressed hereinafter, the “City” and “District” agree as follows:

1.     **CITY OBLIGATIONS.**     The City shall perform the following:
  - A.     Conduct a Dental Program for District students and their families, which will be a family oriented, comprehensive intervention program for improvement of oral health.
  - B.     Screen and prioritize students for treatment and comprehensive direct care services (not including orthodontia) based on student diagnosis as a Level I (minimal need), II (moderate need) or III (high level of need).
  - C.     Perform an exam, provide personal preventive education, take appropriate x-rays, perform prophylaxis (as necessary) and apply sealants (as necessary) for all available students.
  - D.     Prophylaxis and treatment will be provided through the Dental Mobile Unit as time permits.
  - E.     Referrals and transfer of the results of examination will be made to a preferred dental provider.

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- F. A plan will be submitted by the City to the District, outlining the procedure to be followed for referral and appointments of children with dental emergencies and of children who are uncooperative.
- G. The City will complete the Child Health Record Dental Exam form for each child examined and/or treated.
- H. The City shall obtain written approval from the District before performing dental surgery.
- I. The parties expressly agree that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City, which in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

2. **DISTRICT OBLIGATIONS.** The District shall furnish the following services, data, and information to the City:

- A. Provide a list of children enrolled at the District to the City at the time of initial dental exams.
- B. Identify all children who are recipients of services provided by Texas Health Steps (Medicaid) and provide a copy of the child's Medicaid letter. The District will not absorb past due payment not paid by Medicaid.
- C. Provide a list of sites and names of contact persons at assigned sites to the City.
- D. Provide necessary Dental Exam forms for all children.
- E. Contact the City two days prior to the scheduled exams to give a final count.
- F. Provide all necessary consents and health history.

3. **TERM.** This agreement shall be in effect from May 26, 2008 through August 31, 2008, regardless of the date of execution.

4. **FEE SCHEDULE & PAYMENT FOR SERVICES.**

A. <u>Level 1 (minimal need)</u>		
D0150 Screening Examination	\$	36.04
D1110 Dental Prophylaxis as needed/Adult	\$	56.00

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D1120 Dental Prophylaxis as needed/Child	\$	37.50
D0272 Dental x-rays as needed	\$	35.32/Bitewings
B. <u>Level II (moderate need)</u>		
D1351 Dental sealants as needed	\$	28.82/tooth
D2140 One surface filling	\$	61.98/filling
C. <u>Level III (high level need)</u>		
D2150 Two surface filling	\$	82.90/filling
D2160 Three surface filling	\$	90.01/filling
D7140 Extraction	\$	67.04/tooth
D3220 Pulpotomy	\$	87.96/tooth
D2930 Stainless Steel Crown	\$	156.06/tooth

The parties agree to the rates for each category of dental services shown above. The totals for each category shown are best estimates and may vary between Levels of service. The estimated total budget for services to be provided is as follows:

100 students at Level I @\$107./each	\$10,700.00
25 students at Level 2 @ \$148/each	\$ 3,700.00
25 students at Level 3 @ \$166/each	\$ 4,150.00
<b>Total 150 Students</b>	<b>\$18,550.00</b>
City share	\$ 8,000.00
District share	\$10,550.00
<b>Total reimbursements to City will not exceed</b>	<b>\$ 8,000.00</b>

5. **IN-KIND SERVICES BY CITY.** The “City” will provide the “District” with a monthly listing of in-kind services.

- A. The in-kind contribution will be calculated by deducting the Medicaid reimbursement fee from the actual Department fee for services schedule.
- B. In-kind services will be provided on an in-kind contribution from the “City” to the District. All arrangements for facilities, audiovisual equipment, and staff and parent notification will be arranged by District.

6. **TERMS OF PAYMENT.**

- A. Services from “City” may be terminated contingent on the availability of funds.

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- B. The "City" must bill the "District" by the 5<sup>th</sup> day of each month. The "District" will pay within 30 days from the date the invoice is received.
- C. Billing reports will include the following information:
  - 1. Names of children.
  - 2. Listing of specific services provided for each child.
  - 3. Completed memorandum invoice.
- D. For all children with Medicaid and C.H.I.P., "City assumes responsibility for billing to the Texas Health Steps. Children that are non-Medicaid will be billed separately to the District at current Medicaid rates, absolutely no later than the 31st day of August, 2008.
- E. The total amount payable to City by District pursuant to this contract shall not exceed the sum of EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00).

7. **TERMINATION AND NOTICE.** This agreement is terminable by either party after thirty (30) days written notice to the other party, via certified mail, return receipt requested. All other notices, communications, and reports under this Agreement shall be either hand delivered, faxed or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

DISTRICT:	Canutillo Independent School District Attn: Superintendent P.O. Box 100 Canutillo, Texas 79835
CITY:	City of El Paso Attn: Department of Public Health, Director 5115 El Paso Drive El Paso, Texas 79905
COPY TO:	City of El Paso Attn: City Manager 2 Civic Center Plaza El Paso, Texas 79901

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8. **HHS PRIVACY REGULATIONS.** The Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule). See 45 CFR Part 160 and Subparts A and E of Part 164, requires that the City offer assurances to the District that the City will safeguard any protected health information received or created on behalf of the District. Pursuant to this requirement, the following is set forth:

The parties agree to abide by the terms of the HIPAA Business Associate Contract, attached hereto as Exhibit "A".

9. **LIABILITY FOR CITY AND DISTRICT.** This Agreement is not intended to alter or reallocate any defense or immunity presently authorized by law, or to create or transfer any liability arising under law. The City and District shall each bear any liability or risk of loss for claims arising from the acts or omissions of their respective agents or employees. Each party agrees that it shall be responsible for its own officers, agents and employees who are performing duties under this Agreement, and neither shall be liable or responsible for the acts or omissions of the other's officers, agents or employees. The City and District expressly maintain all rights of governmental immunity or sovereign immunity from litigation or liability, to the extent provided by applicable law.

10. **MISCELLANEOUS PROVISIONS.** This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas.

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.

All agreements, covenants, or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any court of competent jurisdiction, this shall be interpreted as though such invalid agreement, covenant, or provision were not contained herein.

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.

The parties may not assign the obligations or rights under this Agreement to any person or entity without the prior written consent of the other party.

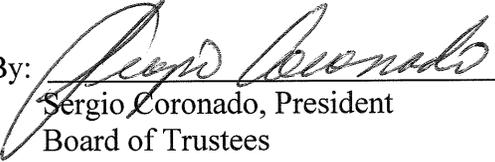
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11. **MERGER CLAUSE.** This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written agreement of the parties.

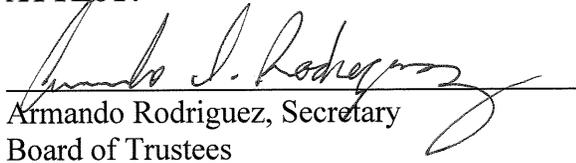
(signatures to follow on next page)

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**CANUTILLO INDEPENDENT  
SCHOOL DISTRICT**

By:   
Sergio Coronado, President  
Board of Trustees

**ATTEST:**

  
Armando Rodriguez, Secretary  
Board of Trustees

**APPROVED AS TO FORM:**

  
Larry A. Baskind, General Counsel  
Canutillo ISD

**CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Michael Hill, Director  
Public Health Department

**APPROVED AS TO FORM:**

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

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## EXHIBIT "A"

### HIPAA BUSINESS ASSOCIATE CONTRACT

(a) **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.

1. **Contract** shall refer to this document.
2. **Business Associate** means the District.
3. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164.
4. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" as defined by 45 C.F.R. 164.501.
5. **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.
6. **Parties** shall mean BUSINESS ASSOCIATE and the CITY.
7. **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.

(b) **Limits on Use And Disclosure Established by Terms of Contract.** 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 Contract (ref. 164.504(e)(2)(i).)

(c) **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 services to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

(d) **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper

## EXHIBIT "A"

management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 164.504(e)(4)(i)(A-B)).

(e) **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:

1. The disclosure is required by law; or
2. 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. 164.504(e)(4)(ii)).

(f) **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. 164.504(e)(2)(i)(B)).

### (g) BUSINESS ASSOCIATE OBLIGATIONS:

1. **Limits on Use and Further Disclosure Established by Contract 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 Contract or as required by law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
2. **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 Contract. (ref. 164.504(e)(2)(ii)(B)).
3. **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

## EXHIBIT "A"

disclosure of Information not provided for or allowed by this Contract. (ref. 164.504(e)(2)(ii)(C)).

4. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that anytime 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 Contract. (ref. 164.504(e)(2)(ii)(D)).
5. **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 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E)).
6. **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.
7. **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)).
8. **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. 164.504(e)(2)(ii)(G)).
9. **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. 164.504(e)(2)(ii)(H)).

## EXHIBIT "A"

10. **Return or Destruction of Information.** At the termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use of disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to the CITY that the Information has been destroyed. (ref.164.504(e)(2)(ii)(I)).
11. **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 Contract or the HHS Privacy Regulations. (ref. 164.530(f)).
12. **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 or the HHS Privacy Regulations. (ref. 164.530(e)(1)).

(h) **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 Contract.

(i) **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Contract, if and as needed 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.

(j) **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Contract shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

**EXHIBIT "A"**

(k) **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:

1. 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.
2. Immediately terminate the Business Associate Contract if BUSINESS ASSOCIATE has breached a material term of this Business Associate Contract and cure is not possible.
3. Notify the Secretary of HHS if termination is not possible.

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## EXHIBIT "A"

### HIPAA BUSINESS ASSOCIATE CONTRACT

(a) **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.

1. **Contract** shall refer to this document.
2. **Business Associate** means the City.
3. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164.
4. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" as defined by 45 C.F.R. 164.501.
5. **Information** shall mean any "health information" provided and/or made available by the DISTRICT to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.102.
6. **Parties** shall mean BUSINESS ASSOCIATE and the DISTRICT.
7. **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.

(b) **Limits on Use And Disclosure Established by Terms of Contract.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the DISTRICT for any other purpose other than as expressly permitted or required by this Contract (ref. 164.504(e)(2)(i).)

(c) **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 DISTRICT for the following stated purposes:

To provide public health services to the community of the DISTRICT for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the DISTRICT (ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

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(d) **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. 164.504(e)(4)(i)(A-B)).

(e) **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from DISTRICT for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

1. The disclosure is required by law; or
2. 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. 164.504(e)(4)(ii)).

(f) **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 DISTRICT. (ref. 164.504(e)(2)(i)(B)).

### (g) BUSINESS ASSOCIATE OBLIGATIONS:

1. **Limits on Use and Further Disclosure Established by Contract and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the DISTRICT shall not be further used or disclosed other than as permitted or required by the Contract or as required by law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
2. **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 Contract. (ref. 164.504(e)(2)(ii)(B)).

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## EXHIBIT "A"

3. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to DISTRICT **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Contract. (ref. 164.504(e)(2)(ii)(C)).
4. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that anytime 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 Contract. (ref. 164.504(e)(2)(ii)(D)).
5. **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 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E)).
6. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the DISTRICT, amend or correct protected health information (PHI) in its possession or under its control.
7. **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)).
8. **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. 164.504(e)(2)(ii)(G)).
9. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure

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of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the DISTRICT, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H)).

10. **Return or Destruction of Information.** At the termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the DISTRICT. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use or disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to the DISTRICT that the Information has been destroyed. (ref.164.504(e)(2)(ii)(I)).

11. **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 Contract or the HHS Privacy Regulations. (ref. 164.530(f)).

12. **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 or the HHS Privacy Regulations. (ref. 164.530(e)(1)).

(h) **Property Rights.** The Information shall be and remain the property of the DISTRICT. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.

(i) **Modifications.** The DISTRICT and BUSINESS ASSOCIATE agree to modify this Business Associate Contract, if and as needed 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.

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## EXHIBIT "A"

(j) **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Contract shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

(k) **Termination for Cause.** Upon the DISTRICT's knowledge of a material breach by BUSINESS ASSOCIATE, the DISTRICT shall:

1. 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 DISTRICT.
2. Immediately terminate the Business Associate Contract if BUSINESS ASSOCIATE has breached a material term of this Business Associate Contract and cure is not possible.
3. Notify the Secretary of HHS if termination is not possible.

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