

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date:	December 17, 2019	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Fire-Rescue		


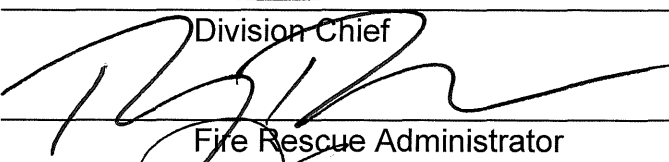

**I. EXECUTIVE BRIEF**

**Motion and Title:** **Staff recommends motion to receive and file:** a Business Associate Agreement (BAA) with First Arriving LLC, effective retroactively on October 23, 2018.

**Summary:** Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its regulations, Business Associate Agreements must be entered into between a HIPAA covered entity and its HIPAA business associates which create, receive, maintain or transmit Protected Health Information on the HIPAA covered entity’s behalf. Fire Rescue is a HIPAA covered entity. On May 17, 2016, the Board adopted Resolution Number R2016-0589 authorizing the County Administrator or designee (County HIPAA Privacy Officer or other designee), to execute standard BAAs. This standard BAA has been fully executed by the County HIPAA Privacy Officer, and is now being submitted to the Board as a receive and file agenda item in accordance with Countywide PPM CW-O-051 for the Clerk and Comptroller’s Office to receive and file. Countywide (SB)

**Background and Justification:** First Arriving LLC produces a sole source digital dashboard product that provides unique comprehensive solutions for information sharing. A BAA between the County and First Arriving LLC was required to award a contract.

**Attachment:** Business Associate Agreement with First Arriving LLC

Recommended by:		11/20/19
	Division Chief	Date
Approved by:		11/20/19
	Fire Rescue Administrator	Date
Approved by:		12-3-19
	County Administrator	Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**


Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____*	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____0_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes \_\_\_\_\_ No X  
Does this item include the use of federal funds? Yes \_\_\_\_\_ No X

Budget Account No.: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Rev Source \_\_\_\_\_


**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

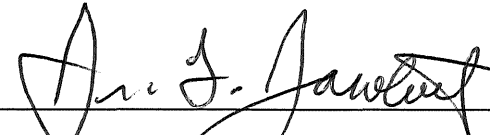
\* There is no fiscal impact associated with the receipt and filing of this Business Associate Agreement.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 11/25/19  
OFMB  
BR 11/22

 12/2/19  
Contract Development and Control  
12/2/19 JW

**B. Legal Sufficiency**

 12/3/19  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

REVISED 9/03  
ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

**Business Associate Agreement  
Between Covered Entity and Business Associate**

This Business Associate Agreement (“Agreement”) between Palm Beach County, hereinafter referred to as “Covered Entity,” and First Arriving LLC, hereinafter referred to as “Business Associate,” is executed to ensure that Business Associate will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of the Covered Entity in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended and any related regulations (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology for Economic and Clinical Health Act, as amended and any related regulations (the “HITECH Act”).

**A. General Provisions**

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

**B. Obligations of Business Associate**

Business Associate agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report in writing to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breach of unsecured PHI (as defined in the HIPAA Breach Notification Rule) within three (3) business days of Business Associate’s discovery of the security incident or breach. Business Associate will comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.* when making breach notification to the Covered Entity. The Covered Entity shall have sole control over the timing and method of breach

notification to affected individual(s), the Department of Health and Human Services, and, if applicable, the media. Business Associate agrees that, if requested by the Covered Entity to do so, it will provide breach notification to affected individuals of any breach of unsecured PHI discovered by Business Associate. If requested by the Covered Entity to make breach notification to affected individuals, Business Associate shall comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.*, and any direction from the Covered Entity;

4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information by requiring such subcontractors to sign an agreement with Business Associate that contains, at a minimum, the same provisions as this Agreement;
5. Make PHI in a designated record set available to the Covered Entity and to an individual who has a right of access in a manner that satisfies the Covered Entity's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by the Covered Entity, or take other measures necessary to satisfy the Covered Entity's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to the Covered Entity or an individual who has a right to an accounting within 60 days and as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528;
8. To the extent that Business Associate is to carry out any of the Covered Entity's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of the Department of Health and Human Services for purposes of determining Business Associate's and the Covered Entity's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if the Covered Entity notifies Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR §164.522; and
11. If the Covered Entity is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Business Associate agrees to assist the Covered Entity in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red

Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of the Covered Entity's Identity Theft Prevention Program(if the Covered Entity is required to have a Program); (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the Covered Entity agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the Covered Entity of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the Covered Entity of any threat of identity theft as a result of the incident.

12. If Palm Beach County is the Covered Entity, then Business Associate shall protect, defend, reimburse, indemnify and hold harmless the Covered Entity, its agents, employees and elected officers from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of a breach of unsecured PHI caused by any act or omission of Business Associate or arising from any other violation of HIPAA or the HITECH Act caused by any act or omission of Business Associate.

#### **C. Permitted Uses and Disclosures by Business Associate**

The specific uses and disclosures of PHI that may be made by Business Associate on behalf of the Covered Entity include any uses or disclosures of PHI permitted by HIPAA that are necessary to perform the services that Business Associate has been engaged to perform on behalf of the Covered Entity.

#### **D. Termination**

1. The Covered Entity may terminate this Agreement if the Covered Entity determines that Business Associate has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Business Associate shall return to the Covered Entity all PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of the Covered Entity that Business Associate still maintains in any form. To the extent permitted by law, Business Associate shall retain no copies of the PHI. If return is infeasible, the protections of this Agreement will extend to such PHI.

This Business Associate Agreement is effective retroactively to October 23, 2018.

Agreed to this 30<sup>th</sup> day of September, 2019

COVERED ENTITY

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

WITNESS:

\_\_\_\_\_  
Signature

By: Nancy L. Bolton  
Nancy Bolton, County HIPAA Privacy  
Officer/Assistant County Administrator,  
Through Verdenia C. Baker, County Administrator

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]

WITNESS:

[Signature]  
Signature

Ross Hopkins  
Name

BUSINESS ASSOCIATE

By: [Signature]  
Signature

By: DAVID IANNONE, CEO  
Name and Title

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_