



AGENDA STAFF MEMO

TO: Honorable Mayor and City Council Members
FROM: Matt Marietta, Human Resources Director
DATE: Submitted on March 25, 2025, for the April 14, 2025, Regular City Council Meeting

Signed by:

Matthew Marietta

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AGENDA ITEM: Approval of an Agreement by and between the City of Milton and Relation Insurance, Inc. dba Relation Insurance Services of Georgia to Provide Mutual Compliance with the Health Insurance Portability and Accountability Act Requirements

SUMMARY:

The City contracts with Relation Insurance, Inc. dba Relation Insurance Services of Georgia to provide human resources benefits administration, including health care, vision, dental, and other employee benefits. The agreement proffered by Relation Insurance Services and reviewed/approved by Milton's legal counsel covers legal and best-practice privacy-related issues, including maintaining privacy of employees' healthcare information in accordance with the Health Insurance Portability and Accountability Act (HIPAA). Staff recommends passage of the agreement.

FUNDING AND FINANCIAL IMPACT:

There is no fiscal impact from this agreement.

ALTERNATIVES:

This agreement is a best practice with a 3rd party vendor with whom we share privacy compliance responsibility. There is no alternative to compliance with HIPAA (singularly and jointly with the 3rd party).

REVIEW & APPROVALS:

Financial Review: None

Legal Review: Greg Mayfield, Jarrard & Davis, LLP – July 10, 2024

Concurrent Review: Steven Krokoff, City Manager

DocuSigned by:

Steven Krokoff

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ATTACHMENT(S):

Agreement

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Business Associate Agreement

This Business Associate Agreement (this “Agreement”) by and between **the City of Milton** (“Employer” or “Covered Entity”), and Relation Insurance, Inc. dba Relation Insurance Services of Georgia (“Relation” or “Business Associate”), is for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, including the administrative requirements and HIPAA Privacy and Security Rules and regulations and other applicable laws as promulgated. Covered Entities (as defined below) and Business Associates are required to regulate the use and disclosure of certain individually identifiable information. This Agreement is limited to the extent that (i) Employer is a “Covered Entity” as defined below; and (ii) Relation is acting as a Business Associate, as defined below, on behalf of Employer as a Covered Entity. Now therefore, the parties hereby agree as follows:

- 1. Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Rules, and its applicable regulations.
- 1.1 “Breach”** means the acquisition, access, use, or disclosure of Protected Health Information not permitted by HIPAA which compromises the security or privacy of Protected Health Information as stated in 45 C.F.R. §164.402.
- 1.2 “Business Associate”** means a person or entity that performs functions on behalf of the Covered Entity, including Business Associate subcontractors, which meet the definition of “Business Associate” in 45 C.F.R. §160.103.
- 1.3 “Covered Entity”** shall have the same meaning provided for in 45 C.F.R. 160.103.
- 1.4 “Designated Record Set”** means any item, collection, or grouping of information that includes Protected Health Information as defined in 45 C.F.R. §164.501.
- 1.5 “HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules in 45 CFR Part 160 and Part 164.
- 1.6 “Individual”** means “individual” in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- 1.7 “Protected Health Information” or “PHI”** means Individually Identifiable Health Information that is (a) transmitted by electronic media; (b) maintained in any medium constituting electronic media, or (c) transmitted or maintained in any other form or medium.
- 1.8 [INTENTIONALLY REMOVED]**
- 1.9 “Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. §164.103.
- 1.10 “Secretary”** means the Secretary of the U.S. Department of Health and Human Services or his/her designee.
- 1.11 “Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system containing Protected Health Information, pursuant to 45 C.F.R. §164.304.
- 1.12 “Unsecured Protected Health Information”** means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary, as stated in 45 C.F.R. §164.402, or in any annual guidance published the Secretary pursuant to HITECH.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1** Business Associate agrees not to use or disclose PHI other than as permitted in this Agreement or as Required by Law.
- 2.2** Business Associate agrees to use reasonable and appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent the use or disclosure of the PHI other than as provided for in this Agreement. Business Associate covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with the HIPAA Rules.
- 2.3** Business Associate agrees to mitigate, to the extent practicable any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or applicable law.

- 2.4** Business Associate agrees to report promptly and no later than ten (10) business days to the Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410;
- 2.5** Business Associate, in accordance with 45 CFR 164.502(e) (1)(ii) and 164.308(b)(2), agrees to ensure that any agent to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply throughout this Agreement to the Business Associate with respect to such information.
- 2.6** Business Associate agrees to make its internal practices, books, and records including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary in a prompt and timely manner as designated by the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA Rules and its applicable regulations.
- 2.7** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an Accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 2.8** To the extent that Business Associate maintains a Designated Record Set, Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner reasonably designated by Covered Entity, information collected in accordance with Section 1.4 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an Accounting of Disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.
- 2.9** To the extent that Business Associate maintains a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- 2.10** Business Associate agrees to the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

3. HIPAA SECURITY RULE REQUIREMENTS.

- 3.1** Business Associate agrees to implement and document, as set forth in 45 C.F.R. § 164.316. Administrative safeguards, physical safeguards and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by 46 C.F.R. Part 164, Subpart C, and specifically, but not exclusively, including the following: (a) Ensure the confidentiality, integrity, and availability of all electronic Protected Health Information the Business Associate creates, receives, maintains, or transmits on behalf of Business Associate; (b) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information; (c) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under the HIPAA Rules and its applicable regulations; and (d) Ensure compliance with these sections by its workforce.
- 3.2** Business Associate agrees to ensure that any agent to whom it provides this information, agrees to implement and document reasonable and appropriate administrative safeguards and technical safeguards, including at least the requirements set forth in this section for the Business Associate.
- 3.3** Business Associate agrees to report to the Covered within fifteen (15) business days of becoming aware of or discovering any of the following and in order to be in compliance with 45 C.F.R. §164.410 beginning as of the effective date of 45 C.F.R. Part 164, Subpart D: any Security Incident, any Breach, any use or disclosure of PHI not permitted by this Agreement by the Business Associate, its contractors and agents and the content of such a report of the Business Associate to the Covered Entity shall include, but is not limited to: (a) A brief description of what happened, including date of Breach or Security Incident or other inappropriate or impermissible or unlawful use or disclosure of PHI, if known; and (b) A description of the types of PHI that were involved (e.g. SSN, name, DOB, home address, account number or disability code).
- 3.4** Business Associate agrees to assist the Covered Entity to mitigate potential or actual harms or losses and to assist and protect PHI, if appropriate, further Breaches, Security Incidents, or known inappropriate or unlawful use or disclosure of PHI.
- 3.5** Business Associate agrees to makes its policies and procedures, and documentation required by this section relating to such safeguards, available to the Secretary with a copy provided to Covered Entity for purposes of determining Covered Entity's compliance with this section.

- 3.6** Covered Entity may terminate the relationship and this agreement if it notifies the Business Associate of a pattern of an activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligation under this Agreement and the Business Associate has failed to cure the breach or end the violation in accordance with this Agreement.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1** Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement between the parties, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.
- 4.2** Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth herein.
- 4.3** Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 4.4** Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.5** Business Associate shall limit its uses and disclosures of, and requests for, PHI subject to the requirements of 45 C.F.R. §164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.
- 4.6** Without limiting any uses or disclosures expressly permitted in the Agreement, Business Associate will not sell PHI created or received for or from Covered Entity or use or disclose PHI for purposes of marketing or fundraising.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1** Covered Entity shall make available to Business Associate any Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, as well as any changes to such notice, to the extent that such notice may affect Business Associate's use or disclosure of PHI.
- 5.2** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Covered Entity to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- 5.3** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to if such restriction affects Business Associate's permitted or required uses and disclosures in accordance with 45 C.F.R. §164.522.
- 5.4** Covered Entity shall obtain any consent, authorization, or permission that may be required by the HIPAA Rules or applicable state laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to the Individual.

6. TERM AND TERMINATION

- 6.1** The Term of this Agreement shall be effective as of date this agreement is signed by both parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with Subpart C of 45 CFR Part 164 and the termination provisions of this Section.
- 6.2** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, which shall be not less than thirty (30) days.
- 6.3** Except as provided in Section 6.4, within 120 days of termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate

determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible.

- 6.4** Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
- 6.5** In the event Business Associate breaches the Agreement and termination of any Underlying Agreement (as defined herein) between the parties is not feasible, Covered Entity may report the breach to the Secretary.

7. INDEMNIFICATION

Business Associate agrees to defend, indemnify and hold Covered Entity and its affiliates and each of their elected officials, partners, officers, managers, representatives, employees and agents (each an "Indemnitee") harmless from and against any and all claims, losses, damages, judgments, liabilities, costs, fees and expenses (including reasonable attorney's fees and expenses) of any kind or nature that any Indemnitee incurs or that are asserted against any Indemnitee arising in any way directly or indirectly from (i) Business Associate's negligence or breach of its obligations under this Agreement or HIPAA, or (ii) Business Associate's subcontractor's breach of its obligations under HIPAA.

8. MISCELLANEOUS

- 8.1** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- 8.2** The parties agree to enter into good faith negotiations to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules, and its applicable regulations.
- 8.3** The respective rights and obligations of the parties under Section 6.4 of this Agreement shall survive the termination of this Agreement until all PHI received from Business Associate has been returned or destroyed.
- 8.4** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA Rules and its applicable regulations from time to time. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and its applicable regulations.
- 8.5** Any provision of any underlying services agreement entered into between the parties ("Underlying Agreement") that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the HIPAA Rules and its applicable regulations and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.
- 8.6** The Protected Health Information to which Business Associate, or any agent or subcontractor of Business Associate has access under this Agreement shall be and remain the property of Covered Entity.
- 8.7** Nothing in the Agreement shall be construed to create an agency relationship between the parties. No provision of this Agreement is intended, nor shall it be interpreted, to provide or create any third party beneficiary rights.
- 8.8** Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and will be deemed to have been given when actually delivered (by whatever means) to the party designated to receive such notice, no later than two (2) business days after the same is sent, directed to the addresses noted below, or to such other or additional address as any party might designate by written notice to the other party.

Notice shall be given to Covered Entity as follows:

Human Resources Director
2006 Heritage Walk
Milton, Georgia, 30004

Notice shall be given to Business Associate as follows:

Relation Insurance Services of Georgia
9225 Indian Creek Parkway, Suite 700
Overland Park, KS 66210
Attention: General Counsel

With a copy to:

Relation Insurance Services of Georgia
300 S. Wacker Drive, Suite 1250
Chicago, IL 60606
Attention: President

- 8.9** If any provision of this Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that invalid or unenforceable provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect if it can reasonably be done in conjunction with the original intent of this Agreement.
- 8.10** No assignment of the rights or obligations of either party under this Agreement shall be made without the express written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a party may assign this Agreement to a party taking assignment of any Underlying Agreement in accordance with its terms. This Agreement shall be binding upon, and shall inure to the benefit of, the parties, their respective successors and permitted assignees.
- 8.11** Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.
- 8.12** This Agreement may be amended only by the mutual written consent of the parties. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including without limitation regulations promulgated pursuant to HIPAA Rules and its applicable regulations. This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia in addition to any governing federal law.

Employer:

Sign: _____ Date: _____

Print Name and Title: _____

Relation:

Sign: _____ Date: _____

Print Name and Title: _____