ITEM # 18-0353

Business Associate Agreement

This Business Associate Agreement ("Agreement") is made as of the date of the first signature below (the "Effective Date"), by and between the City of Santa Fe, a New Mexico municipal corporation, which is a "Hybrid Entity" under HIPAA and herein referred to as "Covered Entity," and Therapeutic Solutions Consulting, LLC herein referred to as the "Business Associate," (collectively, the "Parties") is executed to ensure that the Business Associate will appropriately safeguard protected health information ("PHI") that is created, received, maintained, or transmitted on behalf of 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 the Privacy, Security, Breach Notification, and Enforcement Rules promulgated thereunder at 45 CFR parts 160, 162, and 164 ("HIPAA Rules"), 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 and Clinical Health (HITECH) Act, as amended.

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 to:

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 to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410, and any security incident of which it becomes aware. Breaches of unsecured PHI shall be reported to Covered Entity without unreasonable delay but in no case later than 15 days after discovery of the breach;

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;

5. Make PHI in a designated record set available to Covered Entity and to an individual who has a right of access in a manner that satisfies 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 or agreed to by Covered Entity, or take other measures necessary to satisfy Covered Entity's obligations under 45 CFR §164.526;

7. Maintain and make available information required to provide an accounting of disclosures to Covered Entity or an individual who has a right to an accounting within 60 days and as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528;

8. To the extent that Business Associate is to carry out any of Covered Entity's obligations under the HIPAA Privacy Rule (Subpart E of 45 CFR Part 164), Business Associate shall comply with the requirements of the Privacy Rule that apply to 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, created, or received by Business Associate on behalf of Covered Entity, available to the Secretary of the Department of Health and Human Services for purposes of determining Business Associate and Covered Entity's compliance with HIPAA and the HITECH Act;

10. Restrict the use or disclosure of PHI if Covered Entity notifies Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522; and

11. If Covered Entity is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Business Associate agrees to assist 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 Covered Entity's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Covered Entity agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting 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 Covered Entity of any threat of identity theft as a result of the incident.

C. Permitted Uses and Disclosures by Business Associate

1. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the underlying professional service agreement.2. Business Associate may use or disclose PHI as required by law.

2. Business Associate agrees to make uses and disclosures and requests for PHI consistent with covered entity's minimum necessary policies and procedures.

3. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

D. Termination

1. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

2. Covered Entity may terminate this Agreement if Covered Entity determines that Business Associate has violated a material term of the Agreement.

3. 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.

4. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. If return or destruction is unfeasible, the protections of this Agreement will extend to such PHI.

5. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

Agreed to by:

COVERED ENTITY:
CITY OF SANTA FE
Signature: _____
Title: MAYOR
Date: April 10, 2018

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK
CC mtg. 3/28/18

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

FINANCE DIRECTOR

Agreed to by:
BUSINESS ASSOCIATE:

Signature: _____
Title: LCSW / Partner
Date: 3/5/18