



City of Grand Island

Tuesday, March 09, 2010

Council Session

Item G10

#2010-68 - Approving Broker Contract Contract and Business Associate Agreement with Cal Strong to Provide Broker Services for Health and Dental Plan

Staff Contact: Brenda Sutherland

Council Agenda Memo

From: Brenda Sutherland, Human Resources Director

Meeting: March 9, 2010

Subject: Business Associate Agreement with Strong Financial

Item #'s: G-10

Presenter(s): Brenda Sutherland, Human Resources Director

Background

Last August the City Council approved a new contract for the City's health and dental insurance which was to take effect on October 1, 2009. The memo to the City Council referred to Strong Financial Services as the broker for the insurance package. The business associate agreement and broker contract was not included with the other contracts on file at the Clerk's office and the price was not on RCI's Administrative Service Agreement. The original resolution approving the health and dental package is attached.

Discussion

Cal Strong, with Strong Financial Services was the broker for the package that the Health Insurance committee recommended be brought forward for approval by the City Council. While Strong Financial Services was listed in the memo for approval, the business associate agreement and broker contract was not on file at the Clerk's office and the amount for the broker's fee was not listed on RCI's Administrative Service Agreement. The amount that was proposed through the RFP process was \$18,000 per year paid at the rate of \$1,500 per month, billed through RCI. The City has been paying Strong Financial Services through RCI. The omission was caught when reviewing the business associate agreements that needed to be updated due to the change in HIPAA known as the HITECH Act.

The intent was indeed to have Strong Financial Services represent the City as its broker. It is therefore appropriate for the business associate agreement and broker contract to be signed. The business associate agreement that is being presented is updated to reflect HIPAA compliance with the language being added to reflect the HITECH Act.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Business Associate Agreement and Broker Contract with Strong Financial Services.

Sample Motion

Move to approve the Business Associate Agreement and Broker Contract with Strong Financial Services.

RESOLUTION 2009-200

Whereas, the City subscribes to health and dental insurance for its employees and other eligible participants, as authorized by the City of Grand Island Personnel Rules and federal regulation; and

WHEREAS, the City of Grand Island invited proposals for a Health and Dental Plan, according to the City's Request for Proposal on file with the City Clerk; and

WHEREAS, an Insurance Committee consisting of union and non-union, management, and non-management employees, along with the Human Resources Director, the Finance Director, and the Attorney/Purchasing Agent to review and evaluate the proposals, interview vendors and select the most favorable vendor; and

WHEREAS, Phares Financial Services, Inc. of North Platte was retained by the City in a consulting capacity to assist City staff with specialized knowledge in this area; and

WHEREAS, Regional Care, Inc. of Scottsbluff, Nebraska submitted a proposal for Administration of the Health and Dental Insurance Coverage in accordance with the terms of the advertisement for proposals and the plans and specifications and all other statutory requirements contained therein, such proposals being in the amount of \$21.65 per employee per month from October 1, 2009 through September 30, 2012 or administrative fees; and

WHEREAS, The reinsurance coverage is provided under a contract with American National Life Insurance Company of Texas and the transplant coverage is provided under a contract with National Union Fire Insurance Company of Pittsburgh, PA, and the broker is Strong Financial Services, however all contracts would be administered by Regional Care, Inc; and

WHEREAS, contracts necessary for the provision of such services and associated stop loss and transplant coverage; and

WHEREAS, a Business Associate Agreement and a Administrative Service Agreement will be entered into with Regional Care, Inc. in addition to the aforementioned contracts for other insurance services; and

WHEREAS, such contracts also require the City of Grand Island to designate a plan administrator to provide routine administration of the plan documents; and

WHEREAS, it is recommended that the Human Resources Director be designated as such plan administrator; and

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Regional Care, Inc. for the administration of health and dental insurance as set out by the contracts is hereby approved.

**HEALTH INSURANCE
BROKER CONTRACT**

This agreement is entered into between Strong Financial Resources, Inc. and Cal Strong, the Broker, and the City of Grand Island, NE, the Client. The effective date of this agreement is October 1, 2009.

The Client hereby engages the Broker for the following Health Insurance consulting services:

1. To provide ongoing medical benefit education, visit with and assisting Employees in understanding their insurance benefits. (The Broker will do this on a as requested basis by the City)
2. The Broker on a regular basis will discuss with client market trends, plan compliance, plan results and review overall plan management.
3. The Broker will, on at least a quarterly basis, assist client in analyzing claims data and claims trends within their medical plan.
4. The Broker will offer client benefit strategies to control and monitor health care costs and proactively address the options available to increase consumer awareness.
5. The Broker will assist the client in maintaining and designing an excellent benefit package.
6. Broker will attend quarterly the Clients Insurance committee meetings.

The Client agrees to provide all policies, records and information necessary for the Broker to perform the above services, and to make a proper evaluation of the Client's insurance program or needs. The Broker warrants that the Broker is duly licensed as a consultant for Life and Health, under the authority of the State of Nebraska Department of Insurance, and Broker agrees to comply with all duties described in the Business Associate Agreement.

Accordingly, the fee amount and basis of these consulting services will be \$18,000 per year, paid in equal monthly installments of \$1,500.00, through the Third Party Administrator of Record, beginning 10-1-2009 under this agreement. This is an annual contract and will renew annually on October 1. This contract may be terminated by either party, by providing written notice cancelling the contract via certified mail 30 days prior to the annual renewal date.

Broker Contract between Strong Financial Resources, Inc. and Cal Strong and the City of Grand Island, NE, effective 10-1-2009.

The Broker and Client hereby agree to the terms of this Contract by signing below.

Broker/Consultant

Date: _____

Client

Date: _____

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into as of that date set forth on the signature page hereto (the "Effective Date"), by and between City of Grand Island, NE ("Covered Entity") and Strong Financial Group ("Business Associate"). Covered Entity and Business Associate are sometimes hereinafter referred to individually as "Party" and collectively as "Parties."

RECITALS:

A. Covered Entity and Business Associate have an existing relationship. Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information (defined below), in conjunction with the performance of a function or activity that is being provided by Business Associate to Covered Entity, which is confidential and must be afforded special treatment and protection under the Privacy Rule (defined below) and the Security Rule (defined below), including the amendments to such rules contained in the HITECH Act (defined below).

B. Business Associate will have access to and/or receive from Covered Entity certain Protected Health Information that can be used or disclosed only in accordance with this Agreement, the Privacy Rule and the Security Rule.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement have the same meaning as those ascribed to the terms in the Health Insurance Portability and Accountability Act of 1996 (as amended by the Health Information Technology for Economic and Clinical Health Act, Subtitle D of Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act")), and the regulations promulgated thereunder as set forth in the Code of Federal Regulations ("C.F.R.") at Title 45, Part 160, Part 162 and Part 164, and other applicable laws (collectively, "HIPAA"). In addition, the following terms shall have the following meanings:

1.1. "Breach" means the unauthorized acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the Privacy Rule which compromises the security or privacy of the Protected Health Information, as described in 45 C.F.R. 164.402.

1.2. "Compliance Date" means, in each case, the date by which compliance is required under the referenced provision of the HITECH Act and/or its implementing regulations, as applicable; provided that, in any case where the Compliance Date occurs prior to the Effective Date of this Agreement, the Compliance Date shall mean the Effective Date.

1.3. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.4. "Electronic Protected Health Information" shall mean individually identifiable health information that is transmitted or maintained by electronic media as described in HIPAA.

1.5. "HHS" shall mean the U.S. Department of Health and Human Services.

1.6. "Individual" shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term "individual" is defined by HIPAA, and shall include a personal representative in accordance with 45 C.F.R. 164.502(g).

1.7. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164.

1.8. "Protected Health Information" shall have the same meaning as the term "protected health information" as described in HIPAA, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.

1.9. "Required By Law" shall have the same meaning as the term "required by law" in HIPAA.

1.10. "Secretary" shall mean the Secretary of HHS or his or her designee.

1.11. "Security Rule" shall mean the Standards for the Security of Electronic Protected Health Information, C.F.R. at Title 45, Parts 160, 162 and 164.

1.12. "Unsecured Protected Health Information" has the same meaning as the term "Unsecured protected health information" as defined in Section 13402 of the HITECH Act and 45 C.F.R. 164.402.

2. **Permitted Uses and Disclosures by Business Associate.**

2.1. **General Uses and Disclosures.** 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 if such use or disclosure by Business Associate complies with the Privacy Rule's minimum necessary policies and procedures required of Covered Entity (and/or Business Associate as of February 17, 2010), and if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Security Rule if done by Covered Entity (and/or Business Associate as of February 17, 2010).

2.2. **Limits on Uses and Disclosures.** Business Associate hereby agrees that Business Associate shall be prohibited from using or disclosing the Protected Health

Information provided or made available by Covered Entity for any purpose other than as expressly permitted, or required by this Agreement, or Required by Law.

2.3. Use for Management, Administration, and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.

2.4. Disclosure for Management, Administration, and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that:

- (a) The disclosure is Required by Law; or
- (b) Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that (i) the Protected Health Information will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (ii) the person to whom the Protected Health Information is disclosed agrees to notify Business Associate within twenty-four (24) hours of the date of any Breach with respect to Unsecured Protected Health Information such person received from Business Associate.

3. Prohibited Uses and Disclosures. Business Associate shall not:

- (a) Make or cause to be made any marketing communication about a product or service that is prohibited by Section 13406(a) of the HITECH Act as of its Compliance Date;
- (b) Make or cause to be made any written fundraising communication that is prohibited by Section 13406(b) of the HITECH Act as of its Compliance Date;
- (c) Disclose Protected Health Information to a health plan for payment or health care operations (as defined under the Privacy Rule) purposes if Covered Entity has advised Business Associate (or the Individual has notified Business Associate directly) that the Individual has (i) requested this special restriction, and (ii) paid out-of-pocket in full for the health care item or service to which the Protected Health Information solely relates, in accordance with Section 13405(a) of the HITECH Act as of its Compliance Date; or
- (d) Directly or indirectly receive remuneration in exchange for Protected Health Information created, received, or maintained in connection with Business Associate's relationship with Covered Entity in accordance with Section 13405(d) of the HITECH Act as of its Compliance Date, except as otherwise permitted by the HITECH Act; provided, however, that this prohibition shall not affect payment by Covered Entity to Business Associate.

4. **Business Associate Obligations.**

4.1. **Appropriate Safeguards.** Business Associate will establish and maintain reasonable and appropriate administrative, physical and technical safeguards to:

(a) Prevent the use or disclosure of the Protected Health Information, other than as such use or disclosure is permitted by this Agreement; and

(b) Protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

4.2. **Security Rule.** Business Associate shall comply with the policies and procedures and documentation requirements of the Security Rule set forth in 45 C.F.R. 164.308, 45 C.F.R 164.310, 45 C.F.R 164.312 and 45 C.F.R 164.316 as required by Section 13401(a) of the HITECH Act as of its Compliance Date.

4.3. **Limited Data Set or Minimum Necessary.** Business Associate (and Business Associate's subcontractors or agents) shall request, use, and disclose only a limited data set (as defined in 45 C.F.R. 164.514(e)(2)), or, if needed, the minimum necessary amount of Protected Health Information necessary to accomplish the purpose of the request, use, or disclosure, as required by Section 13405(b) of the HITECH Act as of its Compliance Date.

4.4. **Reports of Improper Use, Disclosure or Security Incidents.** Business Associate hereby agrees that it shall report, to Covered Entity any:

(a) Use or disclosure of Protected Health Information not provided for or allowed by this Agreement; or

(b) Security incidents in regard to the Electronic Protected Health Information of which Business Associate becomes aware.

4.5. **Subcontractors and Agents.** Business Associate will use commercially reasonable efforts to ensure that any agent, including a subcontractor, to whom Business Associate provides Protected Health Information, created or received by Business Associate on behalf of Covered Entity, agrees (or has agreed) to:

(a) The same restrictions and conditions that apply to Business Associate in this Agreement to such Protected Health Information; and

(b) Implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information.

4.6. **Right of Access to Protected Health Information.** Except as otherwise limited in this Agreement, Business Associate hereby agrees to provide access to Protected Health Information in a Designated Record Set (if applicable and as defined in HIPAA) to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. 164.524, at the written request of Covered Entity. If Business

Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill Covered Entity's obligations under the HITECH Act.

4.7. Amendments to Protected Health Information. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if applicable, that Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526, at the request of Covered Entity or an Individual, and in a reasonable time and manner. If any Individual requests an amendment of Protected Health Information directly from Business Associate (or Business Associate's subcontractors or agents), Business Associate will notify Covered Entity following the request. Any approval or denial of amendment of Protected Health Information maintained by Business Associate (or Business Associate's subcontractors or agents) shall be the responsibility of Covered Entity.

4.8. Access to Books and Records. Except as otherwise limited in this Agreement, Business Associate agrees to make its internal policies, procedures, practices, books and records relating to the use, disclosure and safeguarding of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary or Covered Entity, in a reasonable time and manner, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

4.9. Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information 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.

4.10. Provide Accounting. Except as otherwise limited in this Agreement, Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Section 4.9 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 and Section 13405(c) of the HITECH Act as of its Compliance Date. In the event that the request for an accounting is delivered directly to Business Associate (or Business Associate's subcontractors or agents), Business Associate shall forward a copy of the request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

4.11. Mitigation Procedures. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

4.12. Notification of Breach. Except as otherwise provided under the HITECH Act, Business Associate agrees to notify Covered Entity not later than sixty (60) days following the date of discovery of a Breach of Unsecured Protected Health Information as follows:

(a) A Breach shall be deemed discovered by Business Associate when Business Associate actually knows of the Breach or, by exercising reasonable diligence, would have known of the Breach; and

(b) The notification required by this Section 4.12 shall be made in accordance with Section 15 and shall include, to the extent possible, (i) the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach, (ii) a brief description of what happened, including the date of the Breach and the date of the Business Associate's discovery of the Breach, if known, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach, (v) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches, and (vi) contact procedures for affected Individuals, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

5. Covered Entity Obligations.

5.1. Provide Notice. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice, in a reasonable time and manner, when such copy of the notice or amended notice is required for compliance with the Privacy Rule.

5.2. Provide Changes of Authorization or Permission. Covered Entity shall provide, in writing and in a reasonable time and manner, Business Associate with any changes in, or revocation of, authorization or permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

5.3. Provide Restrictions. Covered Entity shall notify Business Associate, in writing and in a reasonable time and manner, of any restrictions to the use or disclosure of Protected Health Information changing Business Associate's obligations that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522.

5.4. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule, or this Agreement if done by Covered Entity.

6. Term. The term of this Agreement shall commence as of the Effective Date, 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 in compliance with Section 9 of this Agreement.

7. **Termination for Cause.**

7.1. **By Covered Entity.** Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide written notice of such breach to Business Associate and provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within thirty (30) business days from the date Business Associate receives the written notice referred to above from Covered Entity, Covered Entity may immediately terminate this Agreement. Covered Entity may terminate this Agreement immediately without opportunity for cure if Business Associate and Covered Entity agree that cure is not reasonably possible or if Covered Entity deems such immediate termination to be appropriate under the circumstances.

7.2. **By Business Associate.** In accordance with Section 13404 of the HITECH Act as of its Compliance Date, if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Business Associate must take reasonable steps to cure the breach or end the violation. If Business Associate is unsuccessful, Business Associate shall terminate this Agreement, if feasible, or if termination is not feasible, Business Associate will report the problem to the Secretary. Business Associate shall provide notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity's obligations under this Agreement following discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

8. **Special Termination.** In the event that any federal, state, or local law or regulation currently existing or hereinafter enacted, or any final or non-appealable construction or interpretation of such law or regulation (whether federal, state, or local) or enforcement of such laws or regulations hereinafter occurs that makes performance of this Agreement impossible or illegal, the Parties mutually agree to enter into a modification of this Agreement to make substantial performance of this Agreement possible. However, should the Parties be unable to agree upon an appropriate modification to comply with such requirements following thirty (30) days of good faith negotiations, either Party may give written notice to immediately terminate this Agreement.

9. **Effect of Termination.**

9.1. Except as otherwise limited in this Agreement, and except as provided in Section 9.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate hereby agrees to return all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or, to the extent authorized by Covered Entity, destroy such Protected Health Information. 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.

9.2. Except as otherwise limited in this Agreement, in the event that Business Associate determines that returning or as authorized by Covered Entity destroying the

Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of the Protected Health Information not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not feasible, 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 not feasible, for so long as Business Associate maintains such Protected Health Information.

10. **Indemnification.**

10.1. **Indemnification by Business Associate.** Except as otherwise limited in this Agreement, Business Associate shall indemnify and hold harmless Covered Entity against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by Covered Entity in defending or compromising actions brought against Covered Entity arising out of or related to the acts or omissions of Business Associate or its employees in connection with Business Associate's negligent or fraudulent performance of Business Associate's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to Business Associate.

10.2. **Indemnification by Covered Entity.** Except as otherwise limited in this Agreement, Covered Entity shall indemnify and hold harmless Business Associate against any claims, liabilities, damages, and expenses, including reasonable attorneys' fees, incurred by Business Associate in defending or compromising actions brought against Business Associate arising out of or related to the acts or omissions of Covered Entity or its employees in connection with Covered Entity's negligent or fraudulent performance of Covered Entity's applicable duties under this Agreement. This indemnity shall be in proportion to the amount of responsibility found attributable to Covered Entity.

11. **Survival of Obligations.** Except as otherwise limited in this Agreement, termination of this Agreement shall not relieve either Party from fulfilling any obligation under this Agreement, including, but not limited to, Sections 9 and 10 hereof, or any other agreement between the Parties that, at the time of termination, has already accrued to the other Party or which thereafter may accrue with respect to any act or omission that occurred prior to such termination.

12. **Disputes.** The Parties shall endeavor in good faith to resolve among themselves any dispute that may arise regarding this Agreement or any other agreement between them. If not so resolved, then the Parties may mutually decide to resolve the specific dispute or specific category of disputes by the use of a mediator which will be selected by the mutual agreement of the Parties; or, if the Parties mutually agree after the specific dispute or specific category of disputes are identified, the dispute(s) shall be settled pursuant to arbitration as provided by the Nebraska Uniform Arbitration Act; or either Party independently shall have the right to litigate any dispute(s) in any appropriate court in the State of Nebraska as described below in Section 13 if a mutual agreement to mediate or submit the dispute(s) to arbitration is not entered into after the dispute(s) is/are identified.

Agreement; therefore, it will be the duty of both Parties to make all good faith efforts to fully cooperate in the execution of this Agreement.

17. **Headings**. The headings of this Agreement are inserted for convenience only and are not to be considered in the interpretation of this Agreement. They shall not in any way limit the scope or modify the substance or context of any sections of this Agreement.

18. **Force Majeure**. Neither Party shall be liable or be deemed in breach of this Agreement for any failure or delay of performance, which results, directly or indirectly, from acts of God, civil, or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of either Party, and such nonperformance shall not be grounds for termination.

19. **Attorneys' Fees**. Except as otherwise limited in this Agreement, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action in connection with any of the provisions of this Agreement, each Party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

20. **Regulatory References**. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.

21. **Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person or entity.

22. **Counterparts**. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed copies of manually executed signature pages to this Agreement shall be fully binding and enforceable without the need for delivery of the original manually executed signature page.

23. **Severability**. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

24. **Waivers**. The failure of a Party at any time or times to require performance of any provision of this Agreement shall in no manner affect such Party's right at a later time to enforce such provision. No waiver by a Party of any provision or breach of this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver in other any instance.

25. **Relationship.** Business Associate is acting as an independent contractor of Covered Entity with respect to this Agreement. Nothing in this Agreement shall create or be deemed to create the relationship of employer/employee, partners, joint ventures, or principal-agent between the Parties. Except as otherwise set forth in this Agreement, (i) no Party shall have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party or to bind the other Party in any manner whatsoever and (ii) no Party shall make any representation, warranty, covenant, agreement, or commitment on behalf of the other Party.

26. **Amendment.** Except as otherwise limited in this Agreement, the Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA and the HITECH Act. No changes in or additions to this Agreement shall be recognized unless incorporated herein by written amendment by the Parties, such amendment(s) to become effective on the date stipulated in such amendment(s). No discharge of obligations arising under this Agreement shall be valid unless in writing and executed by the Party against whom such discharge is sought to be enforced.

27. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the Privacy Rule and the Security Rule.

(Signatures begin on following page)

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, effective as of the _____ day of _____, 20__.

COVERED ENTITY:

By: _____
Title: _____
Print Name: _____

BUSINESS ASSOCIATE:

By: _____
Title: _____
Print Name: _____

STRONG FINANCIAL RESOURCES, Inc
ASST. Principal
COLIN STRONG

RESOLUTION 2010-68

WHEREAS, the City of Grand Island has an administrative service and business associate agreement with Regional Care, Inc. (RCI) to provide TPA services for the City's health and dental plan; and

WHEREAS, the City of Grand intended to have a business associate agreement and broker contract with Strong Financial Services; and

WHEREAS, Strong Financial Services will be compensated at a rate of \$18,000 per year, paid in equal monthly installments of \$1,500 paid through the Third Party Administrator, RCI, to provide insurance broker services for the City's health and dental plan; and

WHEREAS, Congress enacted the Health Information Technology for Economic and Clinical Health ("HITECH") Act in 2009 which amended the HIPAA provisions of 1996; and

WHEREAS, the business associate agreement with Strong Financial Services complies with HIPPA;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to enter into a business associate agreement and broker contract with Strong Financial to act as the broker for the City's health and dental plan.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 9, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 5, 2010	☐ City Attorney