



BENEFITS CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**CITY**,” and **GALLAGHER BENEFIT SERVICES, INC.** of 6399 S. Fiddler’s Green Circle, Ste. 200, Greenwood Village, Colorado 80111, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH:

WHEREAS, the **CITY** proposes to hire an benefits consultant for medical, dental, prescription drug, flexible spending accounts, life insurance, stop loss, utilization review/case management, Affordable Health Care Act guidance and bi-annual actuarial GASB 45 reporting and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. PURPOSE: **CITY** agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. TERM: This **AGREEMENT** shall be for a period of four (4) years, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for one four (4) year term by mutual agreement of both parties, in writing, ninety (90) days prior to termination of the first term.



3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT**, on an annual basis, Option 1 as outlined in the Scope of Services – No RFP services, other than stop-loss:

January – December 2014	\$52,250
January – December 2015	\$53,900
January – December 2016	\$55,600
January – December 2017	\$57,300

And, GASB 45 actuarial services, not to exceed (Base established in Fiscal Year July 1, 2006 – June 30, 2007):

Fiscal Year July 1, 2014 – June 30, 2015	
Deliverable July 1, 2015	\$11,500
Fiscal Year July 1, 2016 – June 30, 2017	
Deliverable July 1, 2017	\$12,000

It is expected that the **CONSULTANT** will provide all items in the Scope of Services outlined in Exhibit A. These fees include all costs, including miscellaneous administrative, travel, etc. In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **CONSULTANT** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

The **CITY** recognizes that at times various projects and services may develop that are not part of the proposed Scope of Services. Below are the current hourly billing rates for each level of employee that may be involved in conducting additional services for **CONSULTANT**:

Hourly Rate	Fiscal Year				
	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Managing Consultant	\$370	\$381	\$392	\$404	\$416
Client Consultant	\$300	\$309	\$318	\$327	\$337
Technical Consultant	\$288	\$296	\$305	\$314	\$324
Client Manager	\$225	\$231	\$238	\$245	\$252
Benefit Analyst	\$145	\$149	\$153	\$157	\$162
Actuary	\$425	\$437	\$450	\$464	\$478
Actuarial Analyst	\$195	\$200	\$206	\$213	\$219

4. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent Contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONSULTANT** is not subject to the terms and provisions of the **CITY**'s personnel policies handbook and may not be considered a



CITY employee for workers' compensation or any other purpose. **CONSULTANT** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

5. INDEMNITY AND INSURANCE:

- A. The **CONSULTANT** agrees to indemnify, defend and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. The **CONSULTANT** shall not indemnify, defend, save and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify, defend, save, and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the **CONSULTANT'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.
- D. Notwithstanding any other term or provision of this Agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential or punitive damages. Furthermore, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.
- E. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONSULTANT** shall provide the following insurance:

- 1. Workers' compensation and employer's liability coverage as required by Montana law.
- 2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3. Commercial automobile liability -- \$1,500,000 per accident.
- 4. Professional liability in the amount of \$1,500,000 per claim.



The **CONSULTANT** agrees that upon cancellation or non-renewal of each policy of insurance required by this Section the policy will be replaced with no gap in coverage and a current certificate of coverage will be provided.

The **CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the **CITY**.

CONSULTANT shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. **CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT's** business, except for those members who are exempted as independent **CONSULTANTS** under the provisions of §39-71-401, MCA.

CONSULTANT shall furnish **CITY** with copies showing one of the following: (1) proof of registration as a registered Contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent Contractors.

6. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.



D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. **AGREEMENTS OF CITY:**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CITY'S** portion of the project as designated in the scope of work.
- B. Name a Project Manager who shall be the liaison between the **CONSULTANT** and the **CITY**. For this project, the Project Manager for **CONSULTANT** designated is Don R. Heilman, Area Senior Vice President, and the Project Manager for **CITY** designated is Karla Stanton, Human Resources Director.

8. **NONDISCRIMINATION:**

- A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.



- D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.
- E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.
10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Section 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this **AGREEMENT**, any person having any such interest. Until the property is acquired by the **CITY** or excluded from its project by resolution of its governing body, the **CONSULTANT** and any employees of the **CONSULTANT**, so long as they are employed by the **CONSULTANT**, will not acquire any such interests and will not, for their own account or for other than the **CITY**, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.
13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated



between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.

14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
15. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.

16. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared solely and exclusively for the **CITY** under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.
18. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
19. **HIPAA HEALTH INFORMATION PRIVACY & SECURITY INFORMATION:** **CONSULTANT** agrees that it will implement policies and procedures to ensure that its creation, receipt, maintenance, or transmission of electronic protected health information (“ePHI”) on behalf of the **CITY** complies with the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 CFR Part 164. The Privacy & Security Information (Exhibit B), as well as the **CONSULTANT'S** completed Business Associate Agreement – Security Standards form (Exhibit C), are attached to and made part of this Agreement.
20. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.
21. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of



final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.

- 22. **ATTORNEY’S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney’s fees and costs.
- 23. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
- 24. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this **AGREEMENT**.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

GALLAGHER BENEFIT SERVICES

By _____
THOMAS W. HANEL, MAYOR

By _____

Print Name _____

Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, CITY Attorney



EXHIBIT A

SCOPE OF WORK

This Agreement only includes consulting services for medical, dental, prescription drug, flexible spending accounts, life insurance, stop loss and utilization review/case management. The **CONSULTANT** will also guide the **CITY** regarding the Affordable Health Care Act. The **CONSULTANT** will also provide a bi-annual actuarial report for GASB 45 implied benefits to the **CITY'S** Finance Department.

Eligible Employees

The **CITY** has approximately 839 employees with health benefits. Benefits are provided for all full and part-time employees. The **CITY** also has 119 retirees on one of the current plans for coverage.

Active Employee: (839 active employees)

- Medical
- Dental
- Flexible Spending Accounts
- Life Insurance

Seasonals: Typically average 200 seasonals in the summer months. The **CITY** will need to determine and track eligibility for insurance.

Retirees: 108 Medical- currently pre-Medicare retirees and 11 Medicare eligible retirees.

Plan Year and Re-Enrollment

Re-enrollment is traditionally held in November/December with an effective date of January 1 to coincide with the calendar year and not the **CITY'S** fiscal year.

Present Benefit Plans

The benefit plans for which services are requested are listed below. Plans indicated by asterisk (*) are incorporated into a Section 125 flexible benefits plan. In addition, the medical plans are protected from claims over \$200,000 through a Stop Loss insurance contract through Unified Life.

- **Health Plans*** (Administered by EBMS; Self-Funded, Employee/Employer Shared Cost)
- **Dental Plans*** (Administered by EBMS; Self-Funded, Employee/Employer Shared Cost for non-bargaining only). 1 Option: Basic
- **Term Life Insurance** (Employer pays Premium)
- **Supplemental Life Insurance** (Employee pays Premium)



- **Flexible Spending Accounts** (Administered by EBMS; employee contributions) Health Care and Dependent Care
- **Stop Loss Coverage**
Coverage takes effect after individual has \$200,000 of total claims in one calendar year.
- **Employee Wellness Program** (Employer pays/Employee User Fees)
The City has a wellness program which includes educational seminars, exercise programs, and healthy lifestyle incentive programs.

CONSULTANT shall:

1. **Self-Funded Health Plan:**

a. Statistical analysis:

Provide quarterly reports analyzing claims experience, benefits paid, contributions, gross and net cost of insured benefits, net cost of self-funded coverages and other relevant items, including an analysis of income and expense for the prior quarter and year to date (YTD).

Provide annual report which includes an analysis of income and expense for the prior year.

Establish annual premium rates, including COBRA, actives, and retirees. In approximately July of each year a projection for the forthcoming year will need to be provided to the health insurance committee including a recommended cash reserve balance.

b. Policy analysis:

Provide general guidance on trends in benefits offered and eligibility requirements. Recommend plan changes based on these trends. Advise and consult on methods for improving cost containment and claims administration.

For above, where applicable, provide cost analysis of possible impact on plan.

c. Administrative Support:

Review Plan Document, including preparation of amendments and the restatement of the Plan Document, as needed. Review for accuracy and appropriateness revisions to the Summary Plan Description.

d. Advise and provide guidance on the Employee Health Care Act as needed.

e. **CONSULTANT** will provide a bi-annual actuarial report for GASB 45 implied subsidy by July 1st of the bi-annual year the report is due to the Finance Department.



2. Other Benefits:

Review dental plan document and flexible benefits plan document, including amendments and the restatement of the Plan Documents, as needed. Review for accuracy and appropriateness revisions to Summary Plan Descriptions.

Review contracts with vendors to insure accuracy and comprehensiveness of coverage. Provide guidance in contract interpretation, as needed.

Advise on required reserves for medical and dental plans.
Assist in the modification and pricing of any current or newly considered flexible benefit plan provisions.

Advise and consult on trends in benefit plans being offered locally and nationally (such as medical, dental, etc.).

Assist with development of Requests for Proposals (RFP's) for various vendors in compliance with CITY purchasing requirements. This may include developing evaluation criteria and evaluating/summarizing proposal information.

3. Contract Negotiation:

Work with CITY Purchasing and Human Resources to advise on negotiations with third party administrators, utilization review firms, PPO's, stop loss and prescription drug discount programs.

4. Legal Support:

Assist in the preparation of governmental filings. Provide notification and updates on changing laws, regulations, and administrative or judicial ruling which relate to benefits programs. Review plan documents to ensure compliance with appropriate laws and regulations and notify of any necessary plan document amendments.

5. General Guidance:

Provide answers or guidance to any general or technical benefits questions. If requested, review communication materials (Re-enrollment, summary plan descriptions, memos, etc.) for content, appearance, and compliance with laws and regulations.

The **CONSULTANT** will be working on a frequent basis with Human Resources. The **CONSULTANT** will be expected to assist the **CITY** on a regular basis and in a timely manner to provide guidance to technical problems that may arise.



6. Committee Meetings:

The **CITY** has a health insurance committee made up of three (3) members each from the Police, Fire and Teamsters unions, one (1) retiree and five (5) non-bargaining members.

The committee holds quarterly meetings to review YTD fiscal condition of the health insurance fund. The successful firm will be required to provide a report for committee members. The reserve amount and balance sheet for these reports is provided by the **CITY**. The **CONSULTANT** is required to attend these meetings.

The **CONSULTANT** is not expected to attend Re-enrollment meetings with employees. However, if the **CONSULTANT** is asked to attend Re-enrollment meetings, **CONSULTANT** shall provide these services at an additional cost as outlined in the price schedule to be included in the proposal. The **CONSULTANT** may occasionally be expected to attend special meetings to provide expert guidance and discussion of the plans, at no additional cost to the **CITY**.

7. Additional Requests for other services:

The **CITY** reserves the right to request duties unrelated to this defined set of consulting services. The Scope of these services and related cost will be agreed to prior to the **CONSULTANT** performing any work. Compensation for these services will be based on the hourly rates outlined in Section 3 of this **Agreement** and will be on a “not to exceed” amount. Reviewing plan documents should be part of the normal contract with amendments and updating documents.



EXHIBIT B

HIPAA HEALTH INFORMATION PRIVACY & SECURITY INFORMATION

A. Obligations and Activities of the Business Associate:

1. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required in the Administrative Services Agreement of which this Appendix is a part or as required by law.
2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Appendix.
3. 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 Appendix.
4. Business Associate agrees to report to the Plan Sponsor (City of Billings, Montana) any use or disclosure of the Protected Health Information not provided for by this Appendix of which it becomes aware.
5. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of the Plan Sponsor agrees to the same restrictions and conditions that apply through this Appendix to Business Associate with respect to such information.
6. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Plan Sponsor available to the Plan Sponsor, or to the Secretary, in a time and manner or designated by the Secretary, for purposes of the Secretary determining the Plan Sponsor's compliance with the Privacy Rule.
7. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
8. Business Associate agrees to provide to the Plan Sponsor or an Individual, in a reasonable time and manner, information collected in accordance with Section A.7. of this Provision, to permit Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528

B. Permitted Uses and Disclosures by Business Associate:

1. Except as otherwise limited in this Appendix, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, the Plan Sponsor for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Plan Sponsor or the minimum necessary policies and procedures of the Plan Sponsor: performing plan administration functions, obtaining premium bids from insurance companies or other health plans for providing insurance coverage under or on behalf of the group health plan, or modifying, amending, or terminating the group health plan.
2. Except as otherwise limited in this Appendix, Business Associate may use Protected Health Information to provide data aggregation services to the Plan Sponsor as permitted by 42 CFR § 164.504(e)(2)(i)(B).
3. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

C. Obligations of Plan Sponsor:

1. Plan Sponsor shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the Plan Sponsor has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
2. Plan Sponsor shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Plan Sponsor.



D. Termination

1. In addition to the termination provisions set forth in the Administrative Services Agreement of which this Appendix is a part, the following termination provisions are applicable:
 - a. Upon the Plan Sponsor's knowledge of a material breach by Business Associate of this Appendix, the Plan Sponsor shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Administrative Services Agreement of which this Appendix is a part if Business Associate does not cure the breach or end the violation within the time specified by Plan Sponsor; or,
 - ii. Immediately terminate the Administrative Services Agreement of which this Appendix is a part if Business Associate has breached a material term of this Appendix and cure is not possible; or,
 - iii. If neither termination nor cure are feasible, the Plan Sponsor shall report the violation to the Secretary.

E. Effect of Termination

1. Except as provided in paragraph (2) of this section E, upon termination of the Administrative Services Agreement of which this Appendix is a part, for any reason, Business Associate shall return or destroy all Protected Health Information received from the Plan Sponsor, or created or received by Business Associate on behalf of the Plan Sponsor. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Notwithstanding the foregoing, Business Associate shall be permitted to maintain a copy of the Protected Health Information that is part of its work product as necessary for document retention/archival purposes, as well as Protected Health Information that is stored as a result of backup e-mail systems that store e-mails for emergency backup purposes.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plan Sponsor notification of the conditions that make return or destruction infeasible. Upon the Plan Sponsor's agreement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Appendix 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.

F. Miscellaneous

1. The Parties agree to take such action as is necessary to amend this Appendix from time to time as is necessary for Plan Sponsor to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
2. The respective rights and obligations of Business Associate under Section E of this Provision shall survive the termination of the Administrative Services Agreement of which this Appendix is a part.
3. Any ambiguity in this Appendix shall be resolved to permit the Plan Sponsor to comply with HIPAA.

G. Security Standards

1. Business Associate agrees that it will implement policies and procedures to ensure that its creation, receipt, maintenance, or transmission of electronic protected health information ("ePHI") on behalf of Plan Sponsor complies with the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 CFR Part 164.
2. Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 CFR Part 164.
3. Business Associate agrees that it will report security violations to the Plan Sponsor.

H. Definitions

1. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of the Plan Sponsor.
2. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.



BUSINESS ASSOCIATE AGREEMENT – SECURITY STANDARDS



City of Billings

ATTACHMENT I

BUSINESS ASSOCIATE AGREEMENT – SECURITY STANDARDS

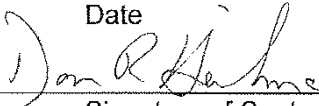
Fax this form to Liz Kampa-Weatherwax at (406) 247-8608 within two (2) days of proposal deadline, if you choose to participate in this RFP.

This agreement is entered into between Gallagher Benefit Services, Inc. (Business Associate) and the City of Billings.

Business Associate agrees that it will implement policies and procedures to ensure that its creation, receipt, maintenance, or transmission of electronic protected health information (“ePHI”) on behalf of the City of Billings complies with the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 CFR Part 164.

Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 CFR Part 164.

Business Associate agrees that it will report security violations to the City of Billings, Human Resource Manager.

Gallagher Benefit Services, Inc.	July 30, 2013
_____ Company Name	_____ Date
Don Heilman	
_____ Contact Name (please print)	_____ Signature of Contact Person

Area Senior Vice President
Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.