

MEMORANDUM OF UNDERSTANDING CAMPUS OFFICER PROGRAM

CITY OF BILLINGS POLICE DEPARTMENT BILLINGS CLINIC

This Memorandum of Understanding (MOU) is made this _____ day of _____, 2018 (“Effective Date”), by and between Billings Clinic, a Montana non-profit corporation and the City of Billings Police Department (“City” or “Billings Police Department”). We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as Billings Clinic Officers (“BCOs”) to increase the police services focused on the Clinic’s property located in downtown Billings. The Billings Police Department recognizes and supports the need for a safe and secure health care environment.

The purpose of this document is to facilitate a clear understanding of each party’s roles, duties, and responsibilities. This MOU is intended to provide clarification of expectations, to minimize confusion, and to provide for consistency between officers, Billings Clinic administration, and city officials. The parties recognize that this MOU must be a living document to allow for program evolution and provide for variances, needs, and future changes.

PROGRAM OBJECTIVES

1. Friendly contact among the Police Department, Billings Clinic staff, patients, visitors, and guests.
2. Assistance and information-sharing concerning problems and issues affecting Billings Clinic, including its staff, patients, visitors, and guests.
3. Maintain order and prevent crime on the Billings Campus. Increase in safety and security of Campus patients staff, and visitors.
7. Effective problem solving and liaison with neighborhoods, staff, patients, and visitors.

SUMMARY OF BCO RESPONSIBILITIES

BCOs are employees of the City of Billings Police Department and are subject to the administration, supervision, and control of the City. BCOs are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department and are subject to the chain of command of the police department. BCOs are not employees

or agents of the Billings Clinic, and no employee or agent of the Billings Clinic shall be deemed an employee or agent of the City.

The BCOs' primary responsibility is to maintain law and order at the Billings Clinic campus and to insure a safe, secure, and illegal drug-free environment. As such, the BCOs maintain order through the enforcement of local, state and federal laws, recover stolen property, bring perpetrators to justice, and support a safe and lawful environment. As law enforcement officers, BCOs must comply with the federal and state constitutions, laws, and City policies and procedures. The Billings Clinic cannot be held liable or responsible for the BCO's failure to comply with these obligations.

The BCO will be responsible for carrying out his/her duties at the Billings Clinic downtown campus.

- ◆ BCO are "non-exempt" employees covered by the federal Fair Labor Standards Act and the Montana Wage and Hour laws. Wages, benefits, and other terms and conditions of employment comply with those laws, the City employment contract, and the current collective bargaining agreements between the Montana Public Employees Association-Billings Police Unit and the City.
- ◆ BCO are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant.
- ◆ BCO are encouraged to be a part of Billings Clinic groups and committees when requested, and to work as a team with Billings Clinic leadership.
- ◆ BCOs are encouraged to work Billings Clinic events as requested, including the Billings Clinic Classic event which occurs in August. The BCO will not be used as a replacement security officer for off-duty/special duty assignments. If security is needed at special events, the Billings Clinic is encouraged to employ its own security personnel or contract with a private security provider. All work outside of scheduled hours or at off-site locations shall be approved by the assigned Police Department Supervisor in advance and will be consistent with the federal and state wage and hour laws and the collective bargaining agreement. The cost of any overtime will be the responsibility of the City of Billings. Billings Clinic shall provide documentation to the City of Billings regarding any additional hours, if requested.
- ◆ BCOs are expected to keep the Billings Clinic liaison or designee informed about law enforcement action which occurs on Billings Clinic property. The City and Billings Clinic agree to cooperate with each other during their respective investigations. The parties agree to establish a chain of command within Billings Clinic for BCO collaboration or information sharing, depending on the nature of the issue and the time of day.

- ◆ BCOs are expected to attend all training, meetings, and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the Billings Clinic campus during agreed-upon service hours. These conflicts will be minimized as much as possible, but the potential exists that such requirements will take precedence over Billings Clinic presence. The BCOs shall strive to keep the designated Billings Clinic liaison informed about such absences as appropriate on a need to know basis.
- ◆ If the BCO is absent from work, the BCO shall notify the City of Billings in accordance with its usual protocols and the Billings Clinic liaison. If during the BCO absence an incident arises that requires police involvement, the Billings Clinic shall notify the Police Department who shall provide an officer to respond to the incident. The parties will work together to address excessive absences.
- ◆ It is the intent of the parties that the BCO duty hours shall be on a mutually agreed schedule, with a goal of 24 hours a day, 7 days a week coverage once fully staffed.
- ◆ The BCOs shall coordinate closely with Billings Clinic leadership on all matters and seek guidance, permission, and advice as to any actions or activities that are not law enforcement. Billings Clinic administrative leadership has the primary responsibility for establishing and enforcing policies and procedures to establish a safe healing environment on the Billings Clinic campus. The BCO is there to assist the Principal as the Principal determines is necessary. In so doing, the BCO shall be the designee of Billings Clinic leadership in maintaining the safety of the Billings Clinic physical plant, which includes but is not limited to the building(s), ground(s), and parking lot(s). The Billings Clinic liaison will develop a system of record-keeping by which the BCO logs and shares information.
- ◆ BCOs will not be involved in issues related to patient care or employee discipline UNLESS it will prevent a disruption and/or situation that places someone at risk of imminent and serious harm. Patient care and employee discipline is a Billings Clinic responsibility, and only when the Billings Clinic liaison (or designee) and the BCO agree that BCO assistance is needed to maintain a safe and proper environment will the Billings Clinic liaison request such assistance and the BCO provide it.
- ◆ Billings Clinic shall provide training regarding Billings Clinic policies and procedures, as well as specific state and federal laws that apply to the health care environment including laws and regulations related to the privacy and security of patient healthcare information (HIPAA). The Police Department will cause its BCOs to comply with such laws.

ACCESS TO HEALTHCARE INFORMATION

The parties acknowledge that Billings Clinic is required by state and federal law, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA") and its regulations to maintain the privacy and security of the health information of its patients. The parties will enter into the Business Associate Agreement attached as Exhibit A, incorporated into this Agreement. The Business Associate Agreement covers situations in which the SRO needs identifiable patient information for purposes of this Agreement. In addition, the Billings Police Department and the City of Billings will require all BCOs to complete Billings Clinic training on HIPAA and Billings Clinic's rules and policies regarding use and disclosure of confidential patient information. The Billings Clinic policy on Disclosure to Law Enforcement in effect on the effective date is attached as Exhibit B.

INDEMNIFICATION AND INSURANCE

The Billings Clinic shall provide, at its own expense, adequate liability insurance coverage to cover the acts and omissions of Billings Clinic and its employees, agents, and representatives. The Billings Clinic shall defend, indemnify, and hold harmless the City and the BCOs from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses, and reasonable attorney's fees, arising from the negligent or wrongful acts or omissions of the Billings Clinic, its employees, agents, and representatives.

The City of Billings shall provide, at its own expense, adequate liability insurance coverage to cover the acts and omissions of the City of Billings and its employees, agents, and representatives, including the BCO. The City shall defend, indemnify, and hold harmless the Billings Clinic, its agents, employees, representatives, and volunteers from any and all claims for loss or damage to property or injury or death to persons, arising from the negligent or wrongful acts or omissions of the City, its Council Members, Mayor, employees (including the BCOs), agents, or representatives.

SELECTION AND FINANCIAL CONSIDERATION

The BCOs will be selected by means of a joint selection committee composed as mutually agreed. The Selection Committee will make recommendations to the Chief of Police. While the Chief of Police will duly consider the Committee's recommendations, selection of each BCO is within the sole discretion of the Chief of Police. In return for services provided by the officer, the Billings Clinic will pay to the City of Billings the sum of seventy-four thousand one hundred seventy-three dollars (\$74,173) to cover the salary and benefits for an entry level officer for 12 months. Payment shall be made no later than three days before the start date of the officer.

Billings Clinic will provide a private office, office furnishings, telephone, and any other necessary office supplies to the BCO for his/her use in the Billings Clinic campus. The Police Department will provide to its BCOs any required police equipment, including but not limited to radios and motorized and non-motorized vehicles, to be reimbursed by Billings Clinic as described in this MOU on Exhibit C.

PROGRAM ASSESSMENT

BCOs, the Billings Clinic liaison, and the assigned Police Supervisor will meet at least twice per year to set and review the goals and objectives of the BCO. An assessment mechanism will be developed jointly that will be used to determine the effectiveness of the BCO program. The BCO program will be assessed annually, and the evaluation will be conducted jointly by the Billings Police Department and Billings Clinic. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

The following topics, at a minimum, will be used to evaluate the program:

- ◆ Success of established goals and objectives.
- ◆ An internal survey of Billings Clinic staff, providers, and other stakeholders primarily concerning perceptions of safety and security.
- ◆ Traditional police-citizen contacts (warnings, citations, arrests, FIRs, etc.).
- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, patient or family interviews, etc.).
- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the Billings Clinic campus.
- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Billings Clinic liaison.

In addition, each officer's effectiveness in the program will be evaluated at the end of each year. Billings Clinic leadership, through the Billings Clinic liaison or designee, will provide input into the evaluation, including information regarding and supporting any dissatisfaction. This input may include a recommendation to the Chief of Police that the officer not be assigned to that Billings Clinic the following year. The Chief of Police will seriously consider the evaluation and the input of the Billings Clinic when assigning an officer to the Billings Clinic campus, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a BCO and where is within the sole discretion of the Police Chief.

EFFECTIVE DATE

This Memorandum of Understanding is effective on the Effective Date listed above and shall remain in effect for a period of three (3) years unless terminated as provided herein.

TERMINATION OF AGREEMENT

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by the Billings Clinic other than for good cause, then the full balance of the amount paid for the then-current year will be retained by the City of Billings. If the agreement is terminated by the City of Billings other than for good cause, then the pro-rated balance of the amount paid will be refunded to the Billings Clinic. The pro-rated balance will be based on the total number of days left in the year for which the pre-payment has been made. Both parties will cooperate to complete any investigations and to participate in any court or disciplinary proceedings which extend beyond the termination of this agreement.

NOTICES

All requests, notices, payments, demands, authorizations, directions, consents, waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid and return receipt requested in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police
Billings Police Department
City of Billings
P. O. Box 1554
Billings, MT 59103

or to Billings Clinic at:

Billings Clinic
Attention: Legal Department
2800 10th Avenue North
PO Box 37000
Billings, MT 59107-7000

Notice is deemed given upon receipt.

MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED

This Memorandum of Understanding expresses the entire agreement of the parties. No modification of this Agreement shall be valid or binding unless the modification is in writing, dated, and signed by both parties.

Executed this ____ day of _____, 2018.

BILLINGS CLINIC

By: _____
Mitch Goplen, VP Facility Services

CITY OF BILLINGS

Attest:

City Clerk

By: _____
Mayor

Approved as to form and content:

City Attorney

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT (OMNIBUS)

This Business Associate Agreement (“Agreement”) is entered into as of the date last signed below (“Effective Date”), by and between the entity listed in the signature lines below (“Business Associate”) and Billings Clinic (“Covered Entity”), (each a “Party” and collectively, the “Parties”).

The Business Associate and Covered Entity have entered into one or more agreements or arrangements (the “Underlying Agreements”) pursuant to which Business Associate is providing services to the Covered Entity that may require the use, creation of, transmittal, storage and/or disclosure of Protected Health Information (“PHI”). Both Parties are committed to complying with the Privacy and Security Rules promulgated pursuant to the Health Insurance Portability & Accountability Act of 1996 (“HIPAA”), as amended from time to time. This Agreement sets forth the terms and conditions by which PHI created by, transmitted, stored or received by the Business Associate from or on behalf of the Covered Entity will be safeguarded in accordance with applicable law. The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Underlying Agreement, Business Associate provides service for the Covered Entity that involve the use and disclosure of PHI. Business Associate agrees as follows:

- a. Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement(s), provided that Business Associate may not use or disclose PHI in a manner that would violate the requirements of HIPAA if done by Covered Entity. All other uses not authorized by this Agreement or the Underlying Agreement(s) are prohibited.
- b. Business Associate shall not directly or indirectly receive remuneration in exchange for an Individual’s PHI or for making communications to Individuals, unless specifically authorized by the Underlying Agreement and the Individual.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

- a. Use Covered Entity’s PHI if necessary for Business Associate’s proper management and administration or to carry out the legal responsibilities of the Business Associate provided that such uses are permitted under applicable state and federal laws;
- b. Disclose Covered Entity’s PHI to third parties if necessary for Business Associate’s proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that: (i) the disclosures are Required by Law; or (ii) the Business Associate has received from the third party written assurances from the party to whom it will be disclosed that the recipient will hold the PHI confidential and will use or further disclose it only as Required by Law or for the purpose for which it was disclosed by Business Associate by the person, and the person agrees to immediately notify the Business Associate (and Business Associate will notify Covered Entity) of any instance of which it is aware in which the confidentiality of the information has been breached.

- 1.3 Data Aggregation. Upon request by Covered Entity and as described in the Underlying Agreement(s), Business Associate may use PHI to provide data aggregation services relating to the Health Care Operations of Covered Entity.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

- 2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:
- a. Use and/or disclose PHI only as permitted or required by this Agreement or as Required by Law.
 - b. Report to the Covered Entity Privacy Official, in writing c/o Privacy Officer, Billings Clinic, PO Box 37000, Billings, MT 59107-7000, any use and/or disclosure of PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, including the discovery (as set forth in 45 CFR 164.410) of an actual or suspected privacy or security Breach or any Security Incident, within two (2) business days of the Business Associate's discovery of such unauthorized use and/or disclosure. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such suspected Breach or Security Incident. Business Associate acknowledges and agrees that Covered Entity is responsible to make the final determination as to whether a use or disclosure was unauthorized, whether information was unsecured, or whether any such unauthorized access, acquisition, use or disclosure compromises the security or privacy of PHI. Business Associate will be solely responsible for all costs in connection with any unauthorized use or disclosure of PHI, Security Incident, Breach of Unsecured Protected Health Information, and/or a breach of this Agreement caused by Business Associate, its employees, agents, affiliates, contractors or subcontractors, including, but not limited to, providing notification of a Breach of Unsecured Protected Health Information to individuals, the media and/or the Secretary, in compliance with HIPAA.
 - c. Establish and maintain procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI that the Business Associate reports to the Covered Entity and cooperate with Covered Entity in providing information related to any Security Incident, unauthorized acquisition, access, use or disclosure, or Breach of PHI.
 - d. Implement procedures to reasonably and appropriately safeguard and maintain the confidentiality, availability, and security of PHI (including all electronic PHI or "E PHI") and to prevent unauthorized use and/or disclosure of such PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. §164, Business Associate will comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
 - e. Require all of its subcontractors and agents that receive, maintain, transmit store or otherwise use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate pursuant to this Agreement. Business Associate is not in compliance if Business Associate is aware of a subcontractor's pattern of activity or practice that constitutes a breach or violation of the subcontractor's obligations, unless Business Associate takes reasonable steps to cure or terminate the arrangement. Business Associate will not send PHI to any

subcontractor or agent that is located outside of the United States without the express written permission of Covered Entity.

- f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining the Covered Entity's and the Business Associate's compliance with the Privacy & Security Rule, subject to attorney-client and other applicable legal privileges.
- g. Upon prior written request, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Covered Entity within fourteen (14) days for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement.
- h. Within five (5) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's PHI in accordance with 45 C.F.R. §164.528.
- i. Upon termination of this Agreement, return to the Covered Entity or destroy all PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
- j. Use and disclose only the minimum PHI necessary to perform or fulfill a specific function required or permitted under this Agreement or the Underlying Agreement.
- k. Business Associate may not use PHI for Research unless specifically permitted by Covered Entity and described in the Underlying Agreement(s).
- l. Otherwise comply with all components and parts of HIPAA that apply to Business Associates.

2.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of PHI by the Covered Entity to the Business Associate or the use and/or disclosure of PHI by the Business Associate, the Covered Entity hereby agrees:

- a. To notify the Business Associate of any limitation(s) in its notice of privacy practices (the "Notice") that the Covered Entity provides to Individuals pursuant to 45 C.F.R. §64.520, to the extent such limitation(s) may affect Business Associate's use or disclosure of PHI.
- b. To notify the Business Associate of any changes in, or revocation of, an authorization provided to the Covered Entity by an Individual pursuant to 45 C.F.R. §164.506 or §164.508, to the extent such changes may affect Business Associate's use or disclosure of PHI.
- c. To notify the Business Associate of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. §164.522 agreed to by the Covered Entity, to the extent such restrictions may affect Business Associate's use or disclosure of PHI.

3. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that the PHI constitutes a Designated Record Set, the Business Associate hereby agrees to do the following:

- a. At the request of, and in the time and manner designated by the Covered Entity, provide access, including an electronic copy, to the PHI to the Covered Entity or the Individual to whom such PHI relates or his or her authorized representative in order to meet a request by such Individual under 45 C.F.R. §164.524.
- b. At the request of, and in the time and manner designated by the Covered Entity, make any amendment(s) to the PHI that the Covered Entity directs pursuant to 45 C.F.R. §164.526. Provided, however, that the Covered Entity makes the determination that the amendment(s) are necessary because the PHI that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by the Business Associate or others to the detriment of the Individual who is the subject of the PHI to be amended.
- c. 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 PHI in accordance with the Privacy Rule. Business Associate agrees to provide to Covered Entity or an Individual (as directed by Covered Entity), in time and manner identified by Covered Entity, information collected to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the Privacy Rule.

3.2 Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that the PHI constitutes a Designated Record Set, the Covered Entity hereby agrees to do the following:

- a. Notify the Business Associate, in writing, of any PHI that Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. §164.524 and the time, manner and form in which the Business Associate shall provide such access.
- b. Notify the Business Associate, in writing, of any amendment(s) to the PHI in the possession of the Business Associate that the Business Associate shall make and inform the Business Associate of the time, form and manner in which such amendment(s) shall be made.

4. REPRESENTATIONS AND WARRANTIES

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- a. that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Privacy/Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion.

- b. that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

5. TERM AND TERMINATION

- 5.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 6.3 herein.
- 5.2 Termination by the Covered Entity. As provided for under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may terminate this Agreement in the event that Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement and any Underlying Agreement(s). Nothing contained in this Section 5.2 shall be deemed to require the Covered Entity to terminate this Agreement and the Underlying Agreement(s) upon breach by Business Associate of a material term of this Agreement if termination is not feasible, and the Covered Entity shall have the right to report any such breach to the Secretary as provided for under 45 C.F.R. §164.504(e)(1)(ii).
- 5.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under this Agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days' notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as any Agreement is in effect.
- 5.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the last Underlying Agreement in effect between the Parties, provided that the provisions that survive termination will remain in effect.
- 5.5 Effect of Termination. Upon the event of termination pursuant to this Section 5, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify the Covered Entity in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If Covered Entity agrees that return or destruction is not feasible, Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the

Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

6. **MISCELLANEOUS**

- 6.1 **Definition of Terms.** All capitalized terms used herein will have the meanings ascribed to them in the HIPAA statute and regulations, unless specifically provided otherwise in this Agreement.
- 6.2 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 5.5, and 6 solely with respect to PHI Business Associate retains in accordance with Section 5.5 because it is not feasible to return or destroy such PHI, shall survive termination of this Agreement indefinitely. In addition, Section 3 shall survive termination of this Agreement, provided that the Covered Entity determines that the PHI being retained pursuant to Section 5.5 herein constitutes a Designated Record Set.
- 6.3 **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. 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 and Security Rule of HIPAA as that legislation may be amended from time to time. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 6.4 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 6.5 **Notices.** Any notices to be given hereunder to a Party shall be made via overnight express courier with tracking to such Party's address given below the signature line. Each Party may change its address and that of its representative for notice by giving written notice of such change.
- 6.6 **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- 6.7 **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Business Associate Agreement, the Parties shall make good faith efforts to resolve such matters informally. In no event shall this clause effect a mutually agreed upon forum selection clause.
- 6.8 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy & Security Rule.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the first date written above.

COVERED ENTITY

Billings Clinic

BUSINESS ASSOCIATE

City of Billings

By: _____

Name:

Its:

Date: _____

Billings Clinic
PO Box 37000
Billings, MT 59107-7000
Attn: Compliance Department
Phone: 406-238-5033
Email: compliance@billingsclinic.org

By: _____

Name:

Its:

Date: _____

Address:
Chief of Police
Billings Police Department
City of Billings
P. O. Box 1554
Billings, MT 59103

Phone:

Email: _____

EXHIBIT B
POLICY ON DISCLOSURE TO LAW ENFORCEMENT

EXHIBIT C
FEE STRUCTURE

Salary and wages for entry level officer	\$74,173
Police Interceptor	\$27,946
Interior Patrol Car Equipment	\$29,848
One-time officer costs for uniforms and equipment	\$ 7,967
 TOTAL:	 <u>\$139,934</u>