

YCSO DUI CENTER AGREEMENT

This Agreement, dated _____, for provision of conducting Driving Under the Influence (“DUI”) and related offense investigations and blood draws at the Yellowstone County Detention Facility (“Agreement”) is entered into between the City of Billings and Yellowstone County.

1. PARTIES

- a. Yellowstone County (“COUNTY”) is a political subdivision of the State of Montana.
- b. The City of Billings (“CITY”) is a political subdivision of the State of Montana.

2. PURPOSE

CITY desires to contract with COUNTY to use space at the Yellowstone County Detention Facility to conduct DUI and related offense investigations and for COUNTY to provide personnel to perform blood draws of suspects in DUI and related offense investigations conducted by the Billings Police Department.

3. TERM

This Agreement shall begin on _____, and shall renew every month for up to one year. The parties may mutually agree, in writing, to terminate this Agreement at any time. Further, either party may terminate this Agreement unilaterally with written notice of at least 30 days.

4. COUNTY OBLIGATIONS

- a. COUNTY will provide space at the Yellowstone County Detention Facility, located at 3165 King Ave E, Billings, MT 59101, for DUI or related offense investigations and blood draws to be conducted. This space shall include an investigation room in the DUI Center and access to the same.
- b. COUNTY will provide appropriate personnel, through use of contracted medical staff, to conduct blood draws on DUI or related offense suspects at the Yellowstone County Detention Facility as requested by CITY.
 1. COUNTY contracted medical staff shall:
 - i. comply with all Federal, State, and local laws and ordinances applicable to the work to be done;
 - ii. be qualified to perform the services to be furnished under this Agreement and be permitted by law to perform such services;
 - iii. be available to conduct blood draws on an on-call basis 24 hours a day, 7 days a week;
 2. COUNTY contracted medical staff shall not be considered an employee of the CITY for any purpose and under no circumstances shall their work be directed or controlled by the CITY.
- c. The COUNTY shall invoice the CITY monthly for all services rendered pursuant to this Agreement. Such invoices shall specify the quantity of successful blood draws provided to the CITY during the preceding month and identify the applicable

fees and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges. This invoice shall be provided to the City by the 5th of each month.

- d. COUNTY 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 eight 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.

5. CITY OBLIGATIONS

- a. CITY will pay COUNTY \$150.00 per successful blood draw performed. A blood draw is successful if it produces a valid sample.
- b. The CITY shall pay the COUNTY for monthly invoice provided pursuant to Agreement within thirty days after receipt.
- c. CITY acknowledges all persons brought in by CITY for DUI or related offense investigations remain in the custody and control of CITY unless and until processed into the Detention Facility through standard booking procedures.
- e. CITY and COUNTY acknowledge that CITY is a public entity subject to the Montana Constitution, Article II, Sections 9 and 10, and applicable public records laws (including Title 2, Chapter 6, Mont. Code Ann.). This Agreement and related records may constitute public records subject to disclosure. CITY retains sole discretion to determine its legal obligations regarding disclosure.

6. INSURANCE

- a. COUNTY is self-insured. COUNTY maintains excess insurance coverage for claims subject to state statutory tort limits for governmental entities of not less than \$750,000 per claim and \$1,500,000 per occurrence. For claims not subject to state statutory tort limits for governmental entities, COUNTY maintains coverage limits not less than \$5,000,000 per occurrence.
- b. COUNTY shall maintain for the duration of this Agreement, at its sole cost and expense, applicable liability insurance naming CITY as an additional insured against liability for damages for bodily injuries, including death, products, completed operations and property damages in a minimum amount of \$750,000.00 for each claim and \$1,500,000.00 in the aggregate arising from incidents which occur as a result of negligence by COUNTY, its employees, agents, or representatives which may arise from or in connection with this Agreement and for which CITY'S basis for liability is vicarious liability for the acts or omissions of COUNTY, its employees, or its agents.
- c. CITY shall maintain for the duration of this Agreement, at its sole cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with this Agreement by CITY, agents, employees, or representatives. This insurance shall cover such claims as may be caused by any negligent act or omission of CITY or its agents, employees, or representatives. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better.

- d. CITY shall maintain for the duration of this Agreement, at its sole cost and expense, applicable liability insurance naming COUNTY as an additional insured against liability for damages for bodily injuries, including death, products, completed operations and property damages in a minimum amount of \$750,000.00 for each claim and \$1,500,000.00 in the aggregate arising from incidents which occur as a result of negligence by CITY, its employees, agents, or representatives which may arise from or in connection with this Agreement and for which COUNTY's basis for liability is vicarious liability for the acts or omissions of CITY, its employees, or its agents.
- e. CITY will maintain for the duration of this agreement, at its sole cost and expense, workers' compensation insurance covering CITY and its employees.
- f. CITY shall deliver to COUNTY within at most ten days of the effective date of this Agreement a Certificate of Insurance showing such insurance to be in effect and naming COUNTY as an additional insured as provided above. COUNTY reserves the right to require complete copies of insurance policies at all times. The policy of insurance will be endorsed to provide COUNTY a thirty-day notice of cancellation.
- g. COUNTY shall deliver to CITY within at most ten days of the effective date of this Agreement a Certificate of Insurance showing such insurance to be in effect and naming CITY as an additional insured as provided above. CITY reserves the right to require complete copies of insurance policies at all times. The policy of insurance will be endorsed to provide CITY a thirty-day notice of cancellation.

7. INDEMNIFICATION

- a. The CITY SHALL:
 - 1. Indemnify, defend and save COUNTY, its elected officials, 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, reckless or negligent act on the part of CITY or its officers, agents or employees.
 - 2. Not indemnify, defend, save and hold COUNTY harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees, expert fees and costs arising from wrongful, reckless or negligent acts, error or omission solely of COUNTY occurring during the course of or as a result of the performance of the Agreement.
 - 3. Where claims, lawsuits or liability, including attorneys' fees, expert fees and costs arise from wrongful, reckless or negligent act of both COUNTY and CITY, CITY shall indemnify, defend, save, and hold COUNTY harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees, expert fees and costs, which result from CITY'S wrongful, reckless or negligent acts occurring as a result from CITY'S performance pursuant to this Agreement.
- b. The COUNTY shall:
 - 1. 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 CITY or its agents or employees.
 - 2. 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, reckless or negligent acts, error or omission solely of CITY occurring during the course of or as a result of the performance of the Agreement.

3. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful, reckless or negligent act of both the CITY and COUNTY, COUNTY 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 COUNTY'S or its officers, agents or employee's wrongful, reckless or negligent acts occurring as a result from COUNTY'S performance pursuant to this Agreement.

8. GOVERNING LAW AND VENUE.

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

9. 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.

10. SEVERABILITY.

Each provision of this Agreement is intended to be severable. If any provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity of said provision shall not affect the validity of the remainder of this Agreement.

11. INTERPRETATION.

All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or section to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and the masculine, feminine or neuter expressions shall be interchangeable.

12. SUCCESSORS AND ASSIGNS.

Neither the CITY nor COUNTY shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

13. ENTIRE AGREEMENT.

This Agreement embodies the entire understanding between CITY and COUNTY with respect to the specific subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement. This Agreement may not be modified except by action of both governing bodies.

14. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party

15. AUTHORIZED SIGNATURES

The parties represent and agree that the persons signing this Agreement have authorization to bind their respective entities to the terms of this Agreement.

Passed and Adopted on the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

CITY OF BILLINGS

Mark Morse, Chairman

Mike Nelson, Mayor

Mike Watters, Member

Attest:

Chris White, Member

Denise Bohlman
City Clerk

Attest:

Jeff Martin
Yellowstone County Clerk and Recorder