

**Intergovernmental Agreement
Between
Yavapai County and the Fort McDowell Yavapai Nation
For
Restoration to Competency Services**

This Intergovernmental Agreement (“IGA”) is entered into by and between Yavapai County, (“Provider”) a body politic and corporate of the State of Arizona, pursuant to A.R.S. § 11-952, and the Fort McDowell Yavapai Nation (“Nation”), a federally recognized and sovereign Indian nation in Arizona.

Recitals

- A. The Provider, pursuant to A.R.S. § 11-951, et seq., may contract for services and enter into agreements for cooperative action with the Nation.
- B. The Parties desire to enter into an agreement for the provision of restoration to competency services for the Nation’s pre-trial inmates.
- C. The Parties acknowledge that the Nation’s inmates will remain under the jurisdiction of the Nation during the period for which services are being provided by the Provider pursuant to this IGA and that the Nation will assign a defense attorney and prosecutor to the Nation’s case during the entirety of the service period.

NOW, THEREFORE, the Parties, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

- 1. **Purpose.** The purpose of this IGA is to set forth the terms and conditions for admission of the Nation’s pre-trial inmates into the Provider’s Restoration to Competency Program (“RTC Program” or “Program”) and provision of restoration services to Nation inmates in the Provider’s Adult Jail Facilities (“AJF”).
- 2. **Scope.** The Provider will receive and detain the Nation’s pre-trial inmates after the inmate has been determined by the Fort McDowell Yavapai Nation Tribal Court (“Tribal Court”) through the process under Rule 24 of the Nation’s Law and Order Code as not competent to stand trial and who are medically and administratively fit to be incarcerated by the Provider, for the purpose of admitting the inmates into and providing the restoration services of the Provider’s RTC Program.

The Nation shall e-mail SheriffDetentionRTC@Co.Yavapai.AZ.US to inform the Provider’s RTC team of the Nation’s need for placement in Provider’s RTC Program. A member of the RTC team will promptly reply to sender with a letter indicating what information is needed in order to determine acceptance into the Provider’s RTC Program. If the Provider’s RTC Program has no available bed space upon receipt of the initial e-mail from the Nation, the Nation will be advised immediately and will be

given an estimated date of bed space availability. The information requested will constitute the "Request Package."

The Provider will determine whether to accept the inmate within 3 business days after receiving the complete Request Package. The Provider reserves the right to refuse to accept a Nation's inmate or return an accepted inmate for any reason. If the inmate is accepted, the Nation shall deliver the inmate to the Provider's AJF Facility at a time specified by the Provider. The Provider will house the Nation's inmate based upon classification criteria established by the Provider's AJF and will provide for the onsite care, supervision, feeding and medical care, behavioral health and dental care of the Nation's inmates except as otherwise provided in this IGA. A court order from the Tribal Court is required for admission to the Provider's RTC Program. The court order committing an inmate into the Provider's RTC Program must include authorization to administer medications involuntarily. The Provider's RTC Program will begin the intake process after receiving the inmate and all necessary paperwork.

The Provider's RTC staff shall provide the Tribal Court with status reports on the inmate's progress every 60 calendar days from the date the inmate is admitted into the Provider's RTC program. The date of admission shall be the date that all of the following actions are completed: acceptance by the Provider's RTC program, receipt by the Provider's RTC staff of the completed Tribal Court order and other Rule 24 paperwork, and physical transfer of the inmate to the Provider's AJF.

It is the intention of the Parties that the inmate will remain at the Provider's AJF until a recommendation regarding competency is completed unless one of the following occurs:

1. If, at any time during the process of restoration it is determined that the inmate requires an intensive inpatient restoration setting in which case the Provider's RTC staff shall notify the Nation to allow the Nation to seek issuance of an order by the Tribal Court for transfer of the inmate to an Arizona State Hospital (ASH) or a designated medical center determined by the Nation.
2. The Nation directs that the Nation's inmate be transferred to its custody pursuant to limitations imposed by law with respect to competency or charges.
3. The Provider otherwise determines that the inmate is no longer appropriate for housing at the Provider's AJF. The Nation and Provider agree to exchange such documentation as is required by RTC staff or the Tribal Court in as expedient a fashion as reasonably possible.

Any non-English speaking inmates will be provided interpretation services. Costs for this service, as required, are included in the daily rate.

If court-ordered treatment proceedings become necessary or desirable at any time during the inmate's stay at the Provider's RTC Program, or otherwise upon the request of Provider's RTC Program, the Nation will initiate such proceedings in the Tribal Court and shall be responsible for the costs of evaluation and court proceedings

associated with such proceedings, as well as provision of mental health treatment services occurring as a result of court-ordered treatment. The Nation shall ensure that the Provider's RTC physicians are listed in any treatment plan and that a copy of the treatment plan is delivered to the Provider's RTC Program Director.

The Nation shall be separately responsible for paying any offsite health services for inmates housed at the Provider's AJF. Offsite health services include hospital inpatient or outpatient treatment or surgeries, specialty physician consultations, or diagnostic services that the Provider's AJF does not provide onsite for its inmates. The Nation shall also be responsible for paying any expenses related to exceptional medical care including, but not limited to, "non-formulary medications" as defined by the Provider's health care vendor contract.

Upon notification that a Nation's inmate is to receive or has received offsite health services, the Provider shall notify offsite health providers and the Nation and confirm that such services are the financial responsibility of the Nation. If the Nation's inmate must be transported offsite to receive health services in an inpatient setting, the Provider shall provide transport and security for the inmate for a maximum of one shift to allow the Nation to make arrangements to either transport the inmate back to a provider in the Nation's jurisdiction, a provider or facility determined by the Nation or to send officers to relieve Provider's officers at local inpatient facility.

The transportation of inmates to any court or any other location, as ordered by the Tribal Court or done at the request of the Nation shall be the Nation's responsibility.

The Nation shall specify a single point of contact for the Nation for all inquiries. The Provider shall specify a single point of contact for its RTC Program service coordination and an additional single point of contact for billing and finance inquiries.

- 3. Financing.** For each inmate admitted to the Provider's RTC Program, the Nation will pay the Provider \$350.00 for the initial day and \$250.00 per day thereafter for inmate housing, routine onsite healthcare services and costs of restoration services. The Nation shall be billed separately for exceptional onsite healthcare services including "non-formulary medications" as defined in the Provider's healthcare vendor contract. The billing day as defined herein applies to each Nation inmate who is an inmate in, or under control of the Provider's AJF. Neither the acceptance of the inmate into the Provider's RTC Program nor the acceptance of per diem payments is a guarantee of restoration to competency for any specific inmate. The RTC per diem rate shall remain in effect until April 1, 2013, at which time the Parties shall have agreed to a new RTC per diem rate pursuant to this IGA. The Nation must pay community providers directly for all health services provided outside the Provider's AJF.

The Nation shall reimburse the Provider at the hourly rate of \$30.00 per corrections officer hour and \$.55 per mile for van transport for transporting a Nation inmate outside the Provider's AJF. A minimum of 2 corrections officers will accompany the Nation inmate per Provider policy. In the event a Provider County corrections officer or Sheriff's Deputy must post an officer at an offsite health service location the Nation

shall reimburse the Provider at the hourly rate of \$30.00 per corrections officer hour.

In the event that the Provider's RTC staff is required by the Tribal Court to make a physical court appearance, the Nation shall reimburse the Provider at the daily rate of \$900.00 for per diem, time and travel costs for the Provider's RTC Staff. Should Provider RTC staff be required to remain within 45 miles of the Fort McDowell Yavapai Nation jurisdiction overnight, the Nation will reimburse actual lodging expenses plus an additional \$750.00 per day.

In the event Provider RTC staff is required by the Tribal Court to appear in court via video, the Nation shall reimburse Provider at the hourly rate of \$85.00. The Tribal Court is responsible for procuring the tele video equipment that is compatible with that utilized by the Provider's RTC Program and for any costs required for operation of the tele video equipment.

~~In the event legal counsel is required on behalf of the Provider RTC Program or staff related to provision of service to Nation inmates, the Nation shall reimburse Provider 100% of billed charges for the Provider's RTC contracted legal service.~~

Criteria and Rules Governing Billing:

For purposes of this IGA a "billable day" is that period commencing at 0000 hours and ending at 2359 hours that same day, or any fractional part thereof, of any day the Nation inmate is in the custody or control of the Provider's AJF.

Criteria for Assessment of Billing:

The costs of housing a Nation inmate shall commence on the day the inmate was booked into the Provider's AJF. The Provider shall cease charging the RTC per diem under the guidelines established earlier in this IGA under the definition of "billable day."

In the event a Nation inmate escapes, billing charges will cease to accrue after 2359 hours of the day of escape. The billing charges will begin again on the day that the inmate is recaptured and is actually being held in the Provider's AJF.

At the end of each month after a Nation inmate is admitted into the RTC Program, the Provider will submit to the Nation a statement of charges. This statement shall provide the following information: name of inmate, booking date and hour, release date and hour, indication of booking day billing or subsequent day billing, billing period, daily rates, total billing days, and the total bill. The Nation shall be allowed access to necessary computer systems in a timely manner as necessary to verify the billing.

The Nation shall notify the Provider in writing of any contested charges within 30 calendar days following receipt of a monthly billing. If the Nation notifies the Provider

of a dispute within 30 calendar days of receipt of the monthly billing, the Nation may withhold payment on each inmate for whom billing is disputed until the dispute has been resolved. It is understood and agreed that the billed charges are deemed accepted and will be paid if no dispute notice is received by the Provider within 30 calendar days after the receipt on the monthly billing. Disputes about the billing statement shall be jointly reviewed by both parties and satisfactorily resolved within 45 calendar days of the monthly billing. Excluding contested charges all charges shall be paid within 60 calendar days of receipt of a monthly billing. The contested charges shall be paid within 30 calendar days of resolution of the dispute. A mutually acceptable third party may arbitrate charges remaining unresolved after the 60-calendar day period.

The Nation shall pay interest on outstanding charges beginning on the 10th day after resolution of the billing at a rate of 10% per annum until paid. Upon paying a previously disputed charge, the Nation will attach a statement detailing the specific charges that are being paid. The Nation will attach statement to each check submitted to Yavapai County indicating the dates for which the check is to be applied.

4. **Term.** The initial term of this IGA shall be effective as of April 1, 2012 and shall continue in effect until April 1, 2013. Thereafter it may be renewed annually beginning on April 1 for up to three (3) renewal terms by mutual agreement of the Parties.
5. **Disposal of Property.** Upon the termination of this IGA, all property involved shall revert back to its owner. Termination shall not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.
6. **Indemnification.** Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, employees, or volunteers. The Nation acknowledges that health care services at the Provider's AJF are provided by independent contractors.
7. **Insurance.** Each party shall obtain and maintain at its own expense, during the entire term of this IGA the following type(s) and amounts of insurance:
 - a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
 - b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.

- c) If this IGA involves professional services, professional liability insurance in the amount of \$1,000,000.00.
- d) If required by applicable law, workers' compensation coverage including employees' liability coverage.

Parties to this IGA shall provide 30 calendar days written notice to all parties to this IGA of cancellation, non-renewal or material change of coverage.

- 8. **Compliance with Laws.** The Provider shall comply with all applicable federal, state and local laws, rules, regulations, standards and Executive Orders, with limitation to those designated within this IGA. Any action relating to this IGA shall be brought in an Arizona court in Provider's County. Nothing in this IGA shall be construed as an explicit or implicit waiver of the sovereign immunity of the Fort McDowell Yavapai Nation.
- 9. **Non-Discrimination.** The Provider shall not discriminate against any Provider or Nation employee, the Nation or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this IGA. The Provider shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.
- 10. **ADA.** The Parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 11. **Severability.** If any provision of this IGA or any application thereof to the Parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.
- 12. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Provider's Board of Supervisors or the Nation does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the Parties shall have no further obligation to each other except for payment for services rendered prior to cancellation.
- 13. **Legal Authority.** Neither Party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either Party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
- 14. **Worker's Compensation.** Each Party shall comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in

place, each Party is solely responsible for the payment of Worker's Compensation benefits for its employees.

15. **No Joint Obligations.** Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
16. **No Third Party Beneficiaries.** Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
17. **Notice.** Any notice required or permitted to be given under this IGA shall be in writing and shall be served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party) :

Provider:

Yavapai County RTC
2830 N. Commonwealth Dr., Ste 105
Camp Verde, AZ 86322

Fort McDowell Yavapai Nation:

Dr. Clinton M. Pattea, President
Fort McDowell Yavapai Nation Tribal Council
P.O. Box 17779
Fountain Hills, AZ 85269

Thomas Moriarty, Acting General Counsel
Office of General Counsel
P.O. Box 17779
Fountain Hills, AZ 85269

With copies to:

County Administrator/Clerk of the Board
1015 Fair Street
Prescott, AZ 86305

18. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by both Parties.

APPROVALS

PROVIDER:

FORT MCDOWELL YAVAPAI NATION:

Date _____, 20_____

Date _____, 20_____

Chairman
Board of Supervisors

Dr. Clinton M. Pattea, President

ATTEST:

ATTEST:

Clerk of the Board

Tom Moriarty, Acting General Counsel
Fort McDowell Yavapai Nation

Determinations of Provider's Counsel

The foregoing Intergovernmental Agreement between Provider has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

PROVIDER

Deputy County Attorney