

CONTRACT	
NO.	<u>01-65-Y-142605-1209</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**Intergovernmental Agreement  
between  
Pima County and Yavapai County  
for  
Restoration to Competency Services**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, ("Pima") and Yavapai County ("Yavapai"), bodies politic and corporate of the State of Arizona, pursuant to A.R.S. § 11-952.

**Recitals**

- A. Pima and Yavapai may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.
- B. Pima and Yavapai desire to enter into an agreement for the provision of restoration to competency services for Yavapai pre-trial detainees.
- C. Yavapai County detainees will remain under the jurisdiction of Yavapai County and will be assigned a defense attorney and prosecutor from Yavapai County.

NOW, THEREFORE, Pima and Yavapai, 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 Yavapai's pre-trial detainees into Pima's Restoration to Competency Program ("RTC Program") and provision of restoration services to Yavapai detainees in the Pima County Adult Detention Complex (PCADC).
- 2. **Scope.** Pima will receive and detain Yavapai's pre-trial inmates after the inmate has been determined by the Superior Court of Yavapai County through the Rule 11 process as not competent to stand trial and who are medically and administratively fit to be incarcerated by Pima, for the purpose of admitting the inmates into and providing the restoration services of the Pima RTC Program.

Yavapai shall apply to admit a Yavapai inmate into the RTC Program by submitting a "Request for RTC Services" to Pima County. An initial letter of interest must be faxed to the Office of the Chief Medical Director for Pima County, Dr. Fred Miller, at (520) 791-

This is an Official Copy of the Pima County contract executed and on file with Pima County.

6530 prior to sending the Request for RTC Services by mail or courier service (FedEx preferred) to the address provided in the RTC Services Packet. This request must include the following items, collated and clearly labeled where so indicated:

1. The initial Request Form (included in the RTC Services Packet), completed and signed;
2. Hardcopy of the detainee's medical and behavioral health records, collated and labeled, for use by the PCADC health care vendor;
3. Hardcopy of the detainee's administrative records, collated and labeled, for use by PCADC corrections staff in determining the suitability of the detainee for detention at PCADC and housing classification should the detainee be accepted into the RTC program;
4. Hardcopy of all Rule 11 paperwork (including but not limited to, minute entries, court orders, evaluations and all materials presented to Yavapai Rule 11 providers for evaluation prior to the court order), collated and labeled, for use by the Pima RTC staff in determining if the detainee is a viable candidate for inclusion in the Pima RTC program.

Pima will determine whether to accept the inmate within 3 business days after receiving the complete Request package. Pima reserves the right to refuse or return a Yavapai inmate for any reason, including but not limited to reasons based upon the inmate's medical condition or available bed capacity at the PCADC. The Yavapai inmate will not be eligible for admission to Pima's out-of-custody restoration program.

If the detainee is accepted, Yavapai shall coordinate with Pima and PCADC custody staff (see RTC Services Packet) to arrange for delivery of the detainee, by Yavapai, to PCADC. Pima will house the Yavapai inmate based upon classification criteria established by PCADC and will provide for the onsite care, supervision, feeding and medical care, behavioral health and dental care of Yavapai's inmates except as otherwise provided in this IGA. A court order from Yavapai County is required for admission to the Pima County RTC Program (A.R.S. § 13-4510). The Pima County RTC program will begin the intake process for all inmates court ordered into the Pima County RTC program by the Superior Court after receipt of the Rule 11 provider's evaluations, the court order, and the County has the inmate incarcerated. The inmate will not be sent to Pima County PCADC for Pima County Restoration Services until a minute entry is received admitting the detainee. The minute entry is the official notification of an inmate's referral to the program. The Yavapai County Superior Court will be responsible for providing all collateral data that was shared with Rule 11 providers to the Pima County RTC program. Court orders into the Pima County RTC program will include the ability to force medications.

Yavapai jail administrative records may also be used by the supervising RTC Forensic Psychologist and Forensic Social Worker during the course of restoration. At time of admission administrative records to include such items as, i.e., booking information, jail

phone records, video visits if recorded, administrative requests filed by the Defendant, logs such as commissary requests, health services requests, and library use requests, etc. will be provided to the Pima County RTC program.

The Pima RTC Supervising Forensic Psychologist shall provide Yavapai County Court with status reports on the detainee's progress every sixty (60) days from date the detainee was admitted into the Pima County RTC program. Date of admission is considered the date the detainee was accepted by Pima County, the court order was completed, Rule 11 paperwork received, and the inmate was transferred to PCADC.

If during the process of restoration it is determined that the detainee requires an intensive inpatient restoration setting, Pima RTC will notify Yavapai such that a Yavapai County Court order can be issued to transfer the detainee to Arizona State Hospital (ASH) if applicable. The detainee will otherwise remain at PCADC until a recommendation regarding competency is completed, unless otherwise ordered by Yavapai secondary to time limitations on competency or charges, or Pima determines the detainee is no longer appropriate for housing at PCADC as indicated above. Yavapai and Pima agree to exchange such documentation as is required by RTC staff or County Court in as expedient a fashion as reasonably possible.

Any non-English speaking detainees will need services provided by a contract interpreter who will provide services at the Pima County RTC program. These costs are included in the daily rate.

Yavapai County shall, whenever indicated, initiate Title 36 proceedings prior to transfer of a detainee and shall be responsible for initiation of Title 36 proceedings whenever indicated upon completion of the RTC program.

Yavapai shall be responsible for paying any offsite health services for Yavapai inmates housed at the PCADC. Offsite health services include hospital inpatient or outpatient treatment or surgeries, specialty physician consults, or diagnostic services that PCADC does not provide onsite for its inmates. Yavapai shall also be responsible for paying any expenses related to exceptional medical care including, but not limited to, "outlier medications" as defined by PCADC health care vendor contract #07-65-C-141126-0808.

Pima will notify offsite health providers and Yavapai upon learning of Yavapai inmate receiving offsite services that those services are the financial responsibility of Yavapai. In the event a Yavapai inmate must be transported offsite for health services in an inpatient setting, Pima shall provide transport and security for the inmate for a maximum of one shift to allow Yavapai to make arrangements to either transport the inmate back to a provider in Yavapai or send officers to relieve Pima officers at local inpatient facility.

Transportation of inmates to any Court or other locations, only as ordered by the Superior Court in and for Yavapai County, shall be Yavapai's responsibility.

Yavapai shall specify a single point of contact for Yavapai Court inquiries, who shall serve as a court liaison and an additional single point of contact for Yavapai custody communication. Pima shall specify a single point of contact for RTC program service coordination and an additional single point of contact for billing and finance inquiries.

3. **Financing.** For each inmate admitted to the RTC Program Yavapai will pay Pima \$365.00 for the initial day to cover booking and intake expenditures plus \$245.00 per day thereafter for inmate housing, routine onsite healthcare services and costs of restoration services. Yavapai shall be billed separately for exceptional onsite healthcare services including Outlier Medications as defined by PCADC healthcare vendor contract. The billing day as defined herein applies to each Yavapai inmate who is an inmate in, or under control of the detention facilities maintained and operated by Pima. Neither the acceptance of the detainee into the 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 June 30, 2011, at which time the parties shall have agreed to a new RTC per diem rate pursuant to this IGA. Yavapai must pay community providers directly for all health services provided outside PCADC.

Yavapai shall reimburse Pima at the hourly rate of \$40.07 per corrections officer hour and \$0.75 per mile for van transport for transporting a Yavapai inmate outside the PCADC. A minimum of 2 corrections officers will accompany the Yavapai inmate per Pima policy. In the event a Pima County corrections officer or Sheriff's Deputy must post an officer at an offsite health service location Yavapai shall reimburse Pima at the hourly rate of \$40.07 per corrections officer hour.

In the event Pima RTC staff is required by the Superior Court in and for Yavapai County to make a physical court appearance, Yavapai shall reimburse Pima at the daily rate of \$914.89 for per diem, time and travel costs for the Supervising RTC Forensic Psychologist, and if requested, Pima RTC Forensic Social Worker(s). Should Pima RTC staff be required to remain in Yavapai overnight, Yavapai will reimburse actual lodging expenses plus an additional \$702.46 per day.

In the event Pima RTC staff is required by the Superior Court in and for Yavapai County to appear via video court, Yavapai shall reimburse Pima at the hourly rate of \$82.94 for the Supervising RTC Forensic Psychologist, and if requested, Pima RTC Forensic Social Worker(s). Yavapai County is responsible for procuring the tele-video equipment that is compatible with what Pima County RTC program utilizes and paying any costs to run the tele-video equipment.

In the event legal counsel is required on behalf of the Pima RTC program or staff related to provision of service to Yavapai inmates, Yavapai shall reimburse Pima 100% of billed charges for the Pima 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 Yavapai inmate is in the custody or control of PCADC.

Criteria for Assessment of Billing:

The costs of housing a Yavapai inmate shall commence on the day the inmate was booked into the PCADC. Pima 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 Yavapai inmate escapes, billing charges will cease to accrue after 2359 hours of the day of escape. Billing charges will begin again on the day that the inmate is recaptured and is actually being held in the PCADC.

At the end of each month after a Yavapai inmate is admitted into the RTC Program, Pima will submit to Yavapai a statement of charges. This statement shall provide information in alphabetical order as follows: 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. Yavapai shall be allowed access to necessary computer systems in a timely manner to verify the billing.

Yavapai shall notify Pima, by invoice, of any contested charges within 30 days after receipt of the monthly billing. If Yavapai notifies Pima of a dispute within 30 days of receipt of the monthly billing, Yavapai may withhold payment on each inmate for whom billing is disputed until the dispute has been resolved. No dispute will be accepted if not made within 30 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 days of the monthly billing. All charges shall be paid within sixty days of receipt of the monthly billing, excluding contested charges. Contested charges shall be paid within 30 days of resolution of the dispute. A mutually acceptable third party may arbitrate charges remaining unresolved after the 60-day period.

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

4. **Term.** This IGA shall be effective on the date it is recorded with the Secretary of State following execution by both parties and shall continue for a period of five years unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.
5. **Disposal of Property.** Upon the termination of this IGA, all property involved shall revert back to the 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. Yavapai acknowledges health care services at PCADC are provided by independent contractors.
7. **Insurance.** Each party shall obtain and maintain at its own expense, during the entire term of this Contract 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 Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.
  - d) If required by law, workers' compensation coverage including employees' liability coverage.

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

The above requirement may be alternatively met through self insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01 at no less than the minimal coverage levels set forth in this article. Parties to this agreement shall provide thirty (30) days written notice to all other parties of cancellation, non-renewal or material change of coverage.

8. **Compliance with Laws.** The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated

within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this IGA and any disputes hereunder. Any action relating to this IGA shall be brought in an Arizona court in Pima County.

9. **Non-Discrimination.** The parties shall not discriminate against any Pima or Yavapai employee, client 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 parties 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. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
13. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County or Yavapai County Board of Supervisors 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.
14. **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.
15. **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.
16. **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.

17. **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.
18. **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):

Pima County:

Larry Kraus, Director  
Pima County Institutional Health  
3950 S. Country Club Road, Ste 3460  
Tucson, AZ 85714

Yavapai County:

Julie Ayers, County Administrator  
Yavapai County Administration  
1015 Fair Street  
Prescott, AZ 86305

*With copies to:*

County Administrator  
130 West Congress Street, 10<sup>th</sup> Floor  
Tucson, Arizona 85701

Clerk of the Board  
130 West Congress, 5<sup>th</sup> Floor  
Tucson, Arizona 85701

19. **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 the parties and recorded with the Pima County Recorder, or Arizona Secretary of State, whichever is appropriate.

**(Remainder of this page intentionally left blank)**

In Witness Whereof, Pima County has caused this Intergovernmental Agreement to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and Yavapai County has caused this Intergovernmental Agreement to be executed by the Chairman of its Board of Supervisors upon resolution of the Board and attested to by the Clerk of the Board:

**PIMA COUNTY:**

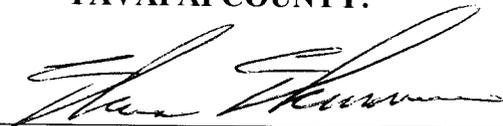
  
\_\_\_\_\_  
Chairman  
Board of Supervisors

DEC 15 2009

ATTEST:

  
\_\_\_\_\_  
Clerk of the Board

**YAVAPAI COUNTY:**

  
\_\_\_\_\_  
Chairman  
Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
Clerk of the Board

### Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and Yavapai County 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.

**PIMA COUNTY:**

  
\_\_\_\_\_  
Deputy County Attorney

**YAVAPAI COUNTY**

  
\_\_\_\_\_  
Deputy County Attorney

This is an Official Copy of the Pima County contract executed and on file with Pima County.

RESOLUTION OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS TO DESIGNATE THE PIMA COUNTY COMPETENCY RESTORATION PROGRAM PURSUANT TO A.R.S. §13-4512(A)

WHEREAS, Yavapai County is fiscally responsible for in-custody services to restore criminal defendants to competency to stand trial; and

WHEREAS, pursuant to A.R.S. §13-4512(A) the Yavapai County Board of Supervisors is authorized to designate a competency restoration treatment program for Yavapai County criminal defendants in need of restoration treatment; and

WHEREAS, pursuant to A.R.S. §13-4512(C) the Yavapai County Board of Supervisors may enter into contracts with in-custody competency restoration treatment providers; and

WHEREAS, Pima County, Arizona has developed a competency restoration program ("Pima County RTC") that has been designated by the Pima County Board of Supervisors as the Pima County competency restoration program pursuant to A.R.S. §13-4512(A); and

WHEREAS, the Yavapai County Board of Supervisors has, pursuant to A.R.S. §13-4512(C), contemporaneously with this Resolution considered and approved an inter-governmental agreement with Pima County, Arizona wherein Pima County RTC will provide competency restoration treatment for Yavapai County criminal defendants.

NOW THEREFORE, BE IT RESOLVED that the Yavapai County Board of Supervisors hereby designates the Pima County RTC program as Yavapai County's competency restoration program, effective December 21, 2009.

PASSED AND ADOPTED THIS 21 day of December, 2009.

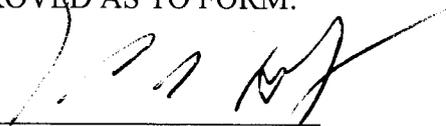
YAVAPAI COUNTY BOARD OF SUPERVISORS

  
Thomas Thurman, Chairman

ATTEST:

  
Clerk of the Board

APPROVED AS TO FORM:

  
Deputy County Attorney

This is an Official Copy of the Pima County contract executed and on file with Pima County.

**A RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS  
APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
PIMA COUNTY AND YAVAPAI COUNTY RELATING TO  
RESTORATION TO COMPETENCY SERVICES**

**WHEREAS**, Pima County, in accordance with Arizona Revised Statutes (ARS) §13-4512, operates a jail-based Restoration To Competency (RTC) program at its Pima County Adult Detention Complex for in-custody defendants requiring restoration services pursuant to ARS §13-4501 et seq.; and,

**WHEREAS**, Yavapai County is likewise required to provide RTC services for its defendants requiring such services, and it is advantageous for Yavapai County to enter into an agreement with Pima County for the provision of such services; and

**WHEREAS**, the parties are authorized to enter into an Intergovernmental Agreement pursuant to A.R.S. § 11-951 et.seq.;

NOW THEREFORE, BE IT RESOLVED:

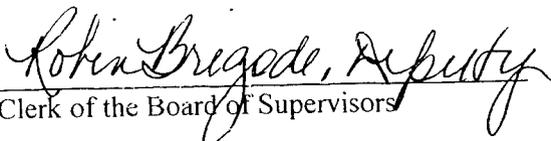
1. The Intergovernmental Agreement between Pima County and Yavapai County is approved, and the Chairman of the Board of Supervisors is authorized to execute the Agreement; and
2. The appropriate County officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

PASSED by the Pima County Board of Supervisors this 15<sup>th</sup> day of December, 2009.

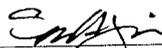
**PIMA COUNTY BOARD OF SUPERVISORS**

By:   
Richard Elias, Chairman  
DEC 15 2009

ATTEST

By:   
Clerk of the Board of Supervisors

APPROVED AS TO FORM

By:   
Deputy County Attorney