

**PROVIDER CONTRACT
TITLE 36 MENTAL HEALTH SERVICES
BETWEEN COCHISE COUNTY AND
UHS OF TUCSON, LLC, DBA PALO VERDE BEHAVIORAL HEALTH**

This agreement is between UHS of Tucson, LLC, DBA: Palo Verde Behavioral Health, a Delaware Limited Liability Company, hereinafter called "Provider", and the COUNTY OF COCHISE, a political subdivision of the State of Arizona, hereinafter called "County".

RECITALS

- A. Pursuant to A.R.S. §36-545.06, the County is obligated, in certain circumstances, to make available and pay for mental health screenings and evaluations for commitment of proposed patients who reside in Cochise County and those who were found in Cochise County prior to hospitalization.
- B. County and Provider desire to act jointly and cooperatively in developing and implementing a unified, cohesive and well integrated system of mental health services in Cochise County.
- C. County has the authority to enter into this agreement with the Provider for the provision of mental health services pursuant to A.R.S. § 11-251, 36-545.04, 36-545.06 and 36-545.07.
- D. Provider operates a level 1, inpatient psychiatric facility at 2895 N. Craycroft Road, Tucson, 85712, staffed by professionals qualified to perform evaluations of individuals to determine whether a Title 36 Court Order is appropriate.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, Provider and County agree as follows:

ARTICLE 1
TERM

1. This Agreement shall become effective immediately and terminate on June 30, 2019, unless further extended pursuant to the provisions of Article 7. All parties hereto acknowledge that this Agreement is subject to cancellation by the County, pursuant to the provisions of Section 38-511 of the Arizona Revised Statutes.

ARTICLE 2
SCOPE OF SERVICES

- 2.1 Provider will provide Title 36 evaluation services for, and on behalf of the County pursuant to, in accordance with and governed by Chapter 5, Title 36 of the Arizona Revised Statutes and any other current and future applicable statutes, rules and regulations.

It is understood that neither the County nor the Provider assumes any duty or obligation to provide or pay for medical or mental health treatment, but only for evaluation services and any associated court testimony. For example, and not by way of limitation, neither party is responsible for the payment of hospital costs (i.e. non-evaluation costs, such as physical medical treatment) incurred by a patient before, during or after evaluation services have been provided for the patient. Further, subject to applicable law, the County is not responsible for the cost of any short or long-term mental health treatment provided by the Provider. The only exception to the foregoing is if a patient is required to receive medical clearance before the Provider can provide Title 36 evaluation services to a patient. In this limited instance, a patient that requires medical clearance will be taken to the Emergency Department of the Tucson Medical Center ("TMC") for this service. The County will reimburse TMC for this service pursuant to a separate contract the County maintains with TMC.

- 2.2 All mental health services provided under this Agreement shall be rendered in accordance with applicable law and community professional and ethical standards.
- 2.3 County shall retain financial responsibility for the costs of evaluation services, court-appointed defense attorneys and actual court proceeding expenses for commitment actions brought under Title 36, Chapter 5, Article 4 and 5 of the Arizona Revised Statutes (A.R.S. §36-520 et seq and 36-533 et seq., respectively). Mental health services from the Provider shall not include independent evaluators.
- 2.4 Licenses: Provider certifies that it has procured and shall maintain all permits and licenses required in order to conduct business lawfully; and that it shall remain informed of and in compliance with all federal, state and local laws, ordinances and regulations that effect in any manner Provider's fulfillment of the contract.
- 2.5 Pursuant to Arizona Revised Statute § 36-524(E), Provider agrees that one of its psychiatrists may provide telephonic approval to a peace officer to take a person into custody and to transport that person to the Provider's facility if, based upon the telephonic conversation with the applicant and peace officer, the psychiatrist has reasonable cause to believe that an emergency examination is necessary. The psychiatrist will only grant such approval if a bed is available for the person at the facility.

ARTICLE 3 REIMBURSEMENT

- 3.1 The County agrees that it will reimburse the Provider for the costs associated with providing services to the County as follows:

In-patient services for evaluation, treatment, report writing and testimony, at the rate of One Thousand Dollars (\$1,000.00 USD) per day; plus One Hundred and Eighty dollars (\$180.00 USD) per psychiatric evaluation; said inpatient services shall be paid from the date of the filing of a Petition for Evaluation, up to and including the day before court ordered treatment, change to voluntary status or release from evaluation, or in any case where a patient is covered by AHCCCS, County will be responsible for the first three

days, including weekends and holidays, for court ordered evaluation, with the remaining stay billable to the RBHA.

If patient requires one-on-one monitoring during Court Ordered Evaluation then County will pay One thousand, Two Hundred Dollars (\$1,200.00 USD) per day up to the COT.

Invoices received by the County more than six (6) months following the date of service will not be paid pursuant to A.R.S. § 11-622.

3.2 Reimbursement for services shall be invoiced monthly to:

**Carrie Langley, Deputy Director of Clinical Services
1315 Melody Lane, Building A
Bisbee, AZ 85603**

AND

Invoices will be payable on a monthly basis to:

**Richard England
Chief Financial Officer
2695 N. Craycroft Rd.
Tucson, AZ 85712**

- 3.3 No later than 150 days after the end of the fiscal year, June 30, 2017, Provider shall complete a certified independent financial audit.**
- 3.4 The Provider agrees that the maximum amount payable under this contract for services and fixed costs will not exceed One Half Million Dollars (\$500,000.00 USD) per contract year.**

ARTICLE 4 **INDEMNIFICATION AND INSURANCE**

- 4.1 To the extent allowed by law, Provider shall defend, indemnify, and hold harmless Cochise County, and its departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or sub Providers. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Provider from and against any and all claims. It is agreed that Provider will be responsible for primary loss**

investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Provider agrees to waive all rights of subrogation against Cochise County, its officers, officials, agents and employees for losses arising from the work performed by the Provider for Cochise County.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in the above paragraph.

- 4.2 Provider shall procure and maintain, until all of its obligations have been discharged under the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Provider, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Provider from liabilities that might arise out of the performance of the work under this contract by the Provider, its agents, representatives, employees or subcontractors, and Provider is free to purchase additional insurance.

- A. Provider shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

The Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

- a. The policy shall include coverage for sexual abuse and molestation. This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit, or provided by separate endorsement with its own limits, or provided as separate coverage included with the professional liability.
- b. Provider must provide the following statement on their Certificate(s) of Insurance: **“Sexual Abuse/Molestation coverage is included.”** Policies/certificates stating that **“Sexual Abuse/Molestation coverage is not excluded”** do not meet this requirement.
- c. The policy shall be endorsed (**Blanket Endorsements are not acceptable**) to include the following additional insured language: **“Cochise County, and its departments, agencies, boards, commissions, officers, officials, agents, and employees shall be named as additional insured’s with respect to**

liability arising out of the activities performed by or on behalf of the Provider." Such additional insured shall be covered to the full limits of liability purchased by the Provider, even if those limits of liability are in excess of those required by this Contract.

- d. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of "Cochise County, and its departments, agencies, boards, commissions, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Provider.

2. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
- Each Accident \$1,000,000
- Disease – Each Employee \$1,000,000
- Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of "Cochise County, and its departments, agencies, boards, commissions, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Provider.

3. Professional Liability (Errors and Omissions Liability)

Each Claim \$ 1,000,000
Annual Aggregate \$ 3,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Provider warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or wrongful acts for those positions defined in the Scope of Work of this contract.
- c. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Provider warrants that any retroactive coverage date shall be no later than the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. The policies shall include, or be endorsed (Blanket Endorsements are not acceptable) to include, the following provisions:

1. The Provider's policies shall stipulate that the insurance afforded the Provider shall be primary insurance and that any insurance carried by the County, and its agents, officials employees or the County shall be excess and not contributory insurance.
2. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- 4.3 The Provider's breach of the above-mentioned indemnification and insurance provisions shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by Cochise County.

The Provider agrees to keep all books, accounts, reports, files and other records relating to this Contract for five (5) years after completion of the contract. In addition, the Provider agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.

- 4.4 Provider shall provide Certificates of Insurance to the County evidencing that Provider is in compliance with the insurance requirements before work commences under the Contract. Provider shall use commercially reasonable efforts to ensure that no policy shall expire, be cancelled or changed without thirty (30) days written prior notification of the County. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificates of Insurance. Prior to commencing services, the Certificates of Insurance shall identify this contract and shall be sent directly to Cochise County, at the address listed in Section 5.1(b).

ARTICLE 5 NOTICES

5. Any written notices required by the Agreement shall be addressed as follows:

- a. Notices to County shall be addressed and mailed as follows:

Carrie Langley, Deputy Director of Clinical Services
1415 Melody Lane, Bldg. A
Bisbee, Arizona 85803

- b. Notices to Provider shall be addressed and mailed as follows:

Richard England
Chief Financial Officer
2695 N. Craycroft Rd.
Tucson, AZ 85712

ARTICLE 6 RECORD KEEPING AND AUDITS

- 6.1 Provider shall provide to County monthly utilization reports indicating individuals served and number and type of services provided by the twentieth (20th) day of each month.
- 6.2 Provider shall provide to County annual Certified Independent Audits of Provider and subcontracted agencies for cost based reconciliation purposes within one hundred fifty (150) days of Provider fiscal year end (June 30).
- 6.3 Provider agrees to maintain all records associated with this Agreement for a period of at least five (5) years. County and Provider agree to maintain and furnish each other such records and documents pertaining to the services provided pursuant to this Agreement, both medical and non medical, as may be required by applicable Federal and State laws, rules and regulations. County and Department agree to facilitate the information and record exchanges necessary to Quality Management, Utilization Management or other programs required for their mutual benefit.
- 6.4 Provider shall allow County or County's designee reasonable access during regular business hours to specified health and medical records and any requested financial books, records or documents.
- 6.5 Provider, upon request by County, will meet with County staff monthly to review contract services to date; Provider will represent County as the Title 36 Provider at Community Mental Health Coalition meetings wherein Title 36 services are an issue and will provide a summary at the monthly County meetings.

ARTICLE 7
EXTENSIONS, AMENDMENTS AND TERMINATION

- 7.1 This document contains the entire Agreement of the parties and may not be changed orally. Any change, modification or extension of the Agreement must be in the form of a written amendment to this Agreement, signed by both parties hereto.
- 7.2 The parties may, by an amendment signed by both parties, extend this Agreement for additional two (2) year periods, not to exceed five (5) years. To be effective, an amendment extending the term of this Agreement must be executed by both parties at least sixty (60) days prior to the expiration of the current term. If not, this Agreement shall terminate on June 30 of the then current term.
- 7.3 Either party may terminate this Contract at any time, with ninety (90) days notice in writing, to the other party. Such notice shall be given by personal delivery or by registered or certified mail to the other party's official mailing address.
- 7.4 This contract is not assignable, the County reserves the right to terminate this Contract, without notice, in the event that the Agency sells, transfers or conveys ownership of the facility and/or if the Agency fails to perform its duties in accordance with this Contract.

ARTICLE 8
NON-DISCRIMINATION

8. Both County and Provider shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975; and the Federal Executive Order 112456, State Executive Order No. 7505; and A.R.S. § 41-1461 et seq., which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliations, shall have equal access to employment opportunities. Both County and Provider shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. Both county and Provider shall comply with title VI of the Civil Rights Act of 1964, as amended, which prohibits the denial of benefits or participation in services pursuant to this Agreement on the basis of race, color or national origin. Both County and Provider shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in delivering services pursuant tot his Agreement and with the provisions of the Americans with Disabilities Act of 1990, as amended.

ARTICLE 9
RELATIONSHIP OF PARTIES

9. Provider is an independent contractor of the County. Provider represents that he has or will secure at his own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state or local law to perform such services. It is further agreed by Provider that Provider shall obey all state and federal statutes, rules and regulations which are applicoable to provisions of the services called for herein. Neither Provider nor any employee of the Provider shall be deemed an officer, employee or agent of the County.

ARTICLE 10
MISCELLANEOUS

- 10.1 The parties agree that all of the conditions set forth herein are material to the Agreement and a breach of any condition is a breach of the Agreement.
- 10.2 Each Article of this Agreement stands alone. Any Article of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, without invalidating the remainder of the Agreement.
- 10.3 The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing at any time shall not be construed as an accord and satisfaction.
- 10.4 Captions and headings are for index purposes only and shall not be used in construing this Agreement.

- 10.5 This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.
- 10.6 If any provision of this Agreement shall conflict with any provisions of the exhibits hereto, the provisions of the exhibits or modifications shall prevail.
- 10.7 The Provider and the County have read this Agreement and agree to be bound by all of its terms; and further agree that it constitutes the entire Agreement between the two parties and may only be modified by a written mutual Agreement signed by both parties.
- 10.8 The Provider shall not assign any of its rights or obligations under this Agreement without the prior written consent of the County. Any attempt to assign shall be void.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement, inclusive of the attached Fee Addendum, as indicated below:

UHS of Tucson, LLC, DBA: Palo Verde Behavioral Health

SIGNATURE *N.J. Ebert* **DATE** 2/28/17
Chief Executive Officer

Cochise County Board of Supervisors

SIGNATURE _____ **DATE** _____
Ann English, Chairperson
Cochise County Board of Supervisors

Attest:

Arlene G. Rios, Clerk of the Board
 Date: _____

Approved as to form:

Deputy County Attorney
 Date: 3/2/17

