CONTRACT BETWEEN THE ARKANSAS DEPARTMENT OF CORRECTIONS AND BOWIE COUNTY, TEXAS

THIS CONTRACT is made and executed thisday of 2015, by and between
the Arkansas Department of Correction, hereinafter referred to as "ADC," and Bowie County, a political
subdivision of the State of Texas, hereinafter referred to as the "COUNTY".
WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available through December 31, 2015, in the budget for the ADC for payment of the obligation set forth herein; and
WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies; and
WHEREAS, the COUNTY has beds available and is willing to contract for the confinement of ADC inmates at the Bowie County Correctional Facility "FACILITY"; and
WHEREAS, the State of Arkansas, Department of Correction, is empowered by Arkansas Code Annotated (hereinafter ACA) Section 12-27-103 to enter into this contract with the COUNTY; and
WHEREAS, the COUNTY has legal authority to enter into a contract with the State of Arkansas;
NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and promise

contained herein, the parties hereto agree as follows:

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1, DESCRIPTION OF SERVICES:

It shall be the responsibility of the COUNTY, in accordance with any and all applicable laws, including but not limited to those of the State of Arkansas, the State of Texas, and the United States, to confine and supervise ADC inmates in the Bowie County Correctional Facility; to give them care and treatment, including the furnishing of subsistence, appropriate clothing, and access to medical care; to provide for their physical needs; to make available programs of training and treatment which are consistent with individual needs; to retain them in safe, supervised custody; to maintain proper discipline and control; to make certain that sentences and orders of the committing court in the State of Arkansas are faithfully executed; to provide the same access to the law library as those inmates of the Bowie County Correctional Facility; and to otherwise comply with applicable law.

2 **DURATION**:

This contract shall enter into full force and effect upon final execution by all parties with designated signature lines, and shall continue until December 31, 2015, unless sooner terminated by notice from either party in accordance with Section 3 of this contract. However, this contract will renew for additional six month periods unless notice is given by either party, and may be terminated by notice in accordance with Section 3 below.

- (a) As prescribed by Arkansas law, it is understood and agreed this Contract is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Arkansas payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Further, the parties recognize that the act of appropriation is a legislative act, and the ADC hereby covenants to take such action as is necessary under the laws applicable to the ADC to timely and properly budget for, request, and pursue appropriation of funds from the Arkansas General Assembly which will permit the ADC to make all payments required under this Contract during the period to which such appropriation shall apply. In the event there shall be no funds made available, this Contract shall terminate at the end of the then current fiscal year, with no penalty or additional costs as a result thereof to the ADC.
- (b) In the event that continued funding is unavailable, the ADC shall notify County of such unavailability of funds by sending written notice thereof to the County forty-five (45) days prior to the effective date of termination.

(c) The parties hereto further understand and agree that the only funds that have been or may be so appropriated and available for payment under this Contract in any one particular fiscal year are for the purpose and in an amount sufficient only to pay the contractual compensation charges provided for in paragraph 15 below. Therefore, notwithstanding anything herein to the contrary, the payment by the ADC of any other charges, liabilities, costs, guarantees, waivers, and any awards thereon of any kind pursuant to this Contract against the ADC are contingent upon funds for such purpose(s) being appropriated, budgeted and otherwise made available through the said State of Arkansas legislative process.

3. TERMINATION:

This contract may be unilaterally terminated, with or without cause, by thirty (30) days written notice of either party, mailed to the other party by registered U.S. Mail, return receipt requested. Within thirty (30) days after receipt of said notice, the ADC shall claim custody of its inmates at the location designated by the County. Any notice so mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Contract.

4. RIGHT OF INSPECTION:

The ADC's contract monitor, Internal Affairs Administrator, members of the Board of Corrections and Director shall have the right to inspect the areas housing Arkansas inmates at any time. Inspection by ADC staff of additional areas of the FACILITY will be granted upon reasonable notice.

5. **INMATE INFORMATION:**

Access to Arkansas electronic offender management system (eOMIS) will be provided to designated staff at COUNTY for each inmate to be transferred. COUNTY designated staff will receive training and have access to ADC's helpdesk staff for eOMIS. The information available through eOMIS will include full information and all necessary documents relating to the case history, physical and clinical records, judicial and administrative rulings, and orders relating or pertinent to the inmate and the sentences pursuant to which confinement is to be had or to continue, identification data, and photographs. eOMIS access will be given to staff to the areas related to their job duties/functions; for example, medical staff will have access to the health services modules of eOMIS and can check for certification of TB testing as well as have access to all other medical information, but all staff with eOMIS access will have access to the health classification and restrictions. COUNTY will have the opportunity to review respective inmate classification and conduct records prior to transfer of inmates to COUNTY. Additionally, copies of the fingerprint cards will be provided with a printed copy of the Pen Pack for each inmate transferred. The County agrees to comply with all rules, provisions, requirements, and prohibitions applicable to use of the eOMIS management system. COUNTY also agrees not to house inmates in areas where construction security levels do not match the custody of inmate to be housed. Inmates with a history of institutional violence with a deadly weapon, a history of repeated violence while in custody, or escape or attempted escape from secured custody are not to be sent to COUNTY.

6. DELIVERY OF INMATES:

The COUNTY agrees to accept and provide for the transportation of ADC inmates at its expense. Transportation will include a trip once a day five days a week from a centralized site located at the Ouachita River Correctional Unit (ORCU) in Malvern, Arkansas, to the FACILITY or a site that is of equal distance from the FACILITY. Inmates will be delivered and returned to ORCU together with the Pen Packs described above. All inmates will be returned to an ADC facility for discharge or release.

7. TRANSFER OF INMATE FUNDS/PERSONAL PROPERTY:

Personal funds due transferred inmates shall be provided by the ADC to be credited to the account of the transferred inmate by the COUNTY. Upon return of the inmate to the ADC, the COUNTY shall provide the funds in the amount due the inmate at the time of return. The ADC will package and identify the personal property of each inmate prior to transferring the inmate to the FACILITY.

8. TRAINING/EMPLOYMENT OR EDUCATIONAL PROGRAMS:

- (a) Inmates from the ADC shall be afforded the opportunity to participate in programs of occupational training or work on the same basis as inmates of the COUNTY. Any such inmates of the ADC shall be subject to the regular work discipline imposed upon other inmate participants in the particular programs. However, nothing contained herein shall be construed to permit or require any ADC inmate to participate in any training, industrial or other work programs contrary to the laws of the State of Arkansas. Inmates from the ADC shall not be eligible for furloughs or participation in the work release program.
- (b) The COUNTY shall provide ADC inmates with educational programs consisting of at least GED programs.

9. DISCIPLINE:

Inmates from the ADC shall be subject to the rules and regulations of the County. The County shall have physical control and the power to exercise disciplinary authority over ADC inmates provided: (1) the disciplinary action is reasonable and proportionate in relation to the violation; (2) the action taken is impartial and non-discriminatory; (3) the action is neither arbitrary nor retaliatory; (4) the discipline is not physically abusive; and (5) accurate, detailed reports of the disciplinary actions against ADC inmates are provided to the ADC Classification Administrator within three (3) working days of the date the action is finalized or the punishment is administered. Inmates who have violated the County's rules and regulations will be subject to the same disciplinary rules and regulations as inmates of the Bowie County Correctional Facility. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the laws applicable to the State of Arkansas.

10. RECORDS AND REPORTS FROM COUNTY:

The COUNTY shall provide reports of all serious conduct infractions within seventy-two (72) hours to the ADC Classification Administrator. The COUNTY will also provide reports on the conduct and progress of each inmate to ADC every six (6) months. Access to record information collected on inmates from the ADC related to inmate programming will be made available by the COUNTY to the ADC Classification Administrator.

11. HEARINGS:

The COUNTY shall provide adequate on-site facilities for any parole hearing by authorities of the State of Arkansas to which an inmate may be entitled by the laws of Arkansas. At the request and sole expense of the State of Arkansas, the COUNTY shall provide telephonic or video conferencing access for such hearings before the parole authority of the State of Arkansas.

12. CUSTODY RECLASSIFICATION:

Inmates placed pursuant to this contract shall not be reduced in custody classification unless mutually agreed to by the ADC and the COUNTY, and consistent with the policies and procedures of the two parties.

13. RETAKING OF INMATES:

- (a) The COUNTY will surrender any ADC inmate to the proper officials of the ADC upon demand made to the COUNTY and presentation of official written authority to receive the inmate.
- (b) For good cause mutually agreed to by the ADC and the COUNTY, the ADC will retake any inmate within thirty (30) calendar days after receipt of a request from the COUNTY.
- (c) In case the commitment under which any of said inmates is confined is terminated for any reason, the ADC agrees to accept delivery of the inmate. Delivery of inmate will be in accordance with Section 6. DELIVERY OF INMATES.

14. PHOTOGRAPHING AND PUBLICITY:

Institutional or other officials of the COUNTY shall not be authorized to release publicity concerning inmates from the State of Arkansas. They shall not release personal histories or photographs of such inmates or information concerning their arrivals or departures or permit reporters or photographers to interview or photograph such inmates without the express written permission of the ADC given in accordance with applicable ADC Administrative Directives, and upon the request of the inmate. For purposes of requests under the Arkansas Freedom of Information Act, the custodian of records pertaining to inmates placed pursuant to this contract shall be the Director of the State of Arkansas Department of Correction or designee. Requests for information regarding inmates of the State of Arkansas shall be referred to the ADC. However, information of public record, such as sentence data or information concerning the escape of an inmate, may be given directly to the press by the County. The

County may photograph inmates from the State as means of identification for official use only; however, photographs of an inmate may be disseminated to appropriate law enforcement officials and to the press in the event of any escape from an institution by such inmate. The contact person for the ADC for publicity and FOI issues is Cathy Frye, Assistant to the Director, Legislative and Public Relations, telephone number (870) 267-6205.

15. COST AND REIMBURSEMENT:

- (a) The County agrees to house up to 288 Arkansas Department of Correction male inmates pursuant to this Contract as beds are available;
- (b) Except as otherwise provided herein, the entire cost to the ADC of housing inmates transferred by the ADC under the terms of this Contract shall be fixed at the rate of \$36.00 per inmate per day. The ADC shall be billed monthly by the County. The ADC shall pay the County for the day the County takes custody of an inmate and every subsequent day the inmate remains in the custody of the County except the County shall not be paid for the day the inmate ceases to be in the custody of the County. Payment shall be made within thirty (30) days of receipt of the invoice by the ADC.
- (c) The schedule for phasing inmates into the Bowie County Correctional Facility shall be arranged by the parties prior to transportation of any inmates under this Contract.

16. RESPONSIBILITY FOR LEGAL PROCEEDINGS:

Except as expressly provided otherwise in this Section 16, each party shall, at its own expense, be responsible for defending itself and its officers, employees, and agents in any action brought by any ADC inmate in the physical custody of the COUNTY. The State of Arkansas shall also defend such action to the extent such action challenges the validity of the conviction or the sentence to the Arkansas Department of Correction; however, the COUNTY's costs of legal services in these actions shall be deemed usual costs incidental to the operation of the Bowie County Correctional Facility for the ADC's inmate day-rate consideration set forth in Section 15. In no event shall the ADC have any financial obligation to the COUNTY for legal services. The County shall notify the ADC of any litigation by fax or email of a complete copy within 48 hours of service upon or other receipt by the COUNTY, and COUNTY shall also mail copies of such documentation to the ADC within 72-hour period of service or other receipt.

17. CONTACT PERSONS/CONTRACT MONITOR

In order to effectively administer this contract, each party appoints the following contact persons and a single contract monitor. The primary contact person and contract monitor for the ADC is 309 Coordinator Roy Agee, office: 870-267-6279, cell: 870-550-4904, email: roy.agee@arkansas.gov, mail: Arkansas Department of Correction, % Director Wendy Kelley, P.O. Box 8707, Pine Bluff, AR 71611. For medical issues the ADC's contact person is ADC Administrator for Medical & Dental Services George Wilson, office: 870-267-6331, cell: 870-692-4075, email: George.wilson@arkansas.gov, mail: Arkansas Department of Correction, P.O. Box 8707, Pine Bluff, AR 71611. For billing and other fiscal matters the

ADC contact person will be ADC Assistant Director Mike Carraway, office: 870-850-8719, cell: 692-3196, email: mike.carraway@arkansas.gov, mail: Arkansas Department of Correction, 2403 East Harding, Pine Bluff, AR 71602. The contact person and contract monitor for the County is Chief Deputy Jeff Neal, office 903-798-3022, 100 North Stateline Ave, Texarkana, Texas 75501 email: jneal@txkusa.org. Replacement of substitution of contact persons and the contract monitor shall require prompt written notice to the other party.

18. ESCAPES:

The COUNTY shall notify the Director and ADC Internal Affairs Administrator immediately upon the escape of an inmate transferred pursuant to this contract and shall take all action necessary to affect the apprehension of the escaped inmate. In the case of an escape to a jurisdiction other than the State of Texas, the responsibility for extradition or rendition proceedings shall be that of the State of Arkansas, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

19. DEATH OF AN INMATE:

In the event of the death of an ADC inmate, the COUNTY shall immediately notify the ADC Administrator for Medical & Dental Services. Arrangements shall be made for the body to be turned over to the Arkansas Office of the State Medical Examiner. The Arkansas State Medical Examiner shall be requested to review all deaths. The ADC Administrator for Medical & Dental Services shall furnish instructions and information regarding the disposition of the body in accordance with ADC Administrative Directive 12-31 Inmate Death. All expenses relative to any necessary preparation of the body and shipment or express charges, pursuant to the ADC Administrator for Medical & Dental Services' instructions, shall be reimbursed by the ADC. The provisions of this paragraph shall govern only the relations between the parties and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

20. URINALYSIS PROGRAM:

All sentenced inmates transferred pursuant to this contract with a condition of drug aftercare, known history of drug abuse, or suspected or illegal use of drugs, shall be required to participate in routine and random urinalysis testing to the same extent as are inmates of the COUNTY. All positive test results for unauthorized drugs shall be immediately reported to the ADC Administrator for Medical Services. Testing costs will be included in the \$36.00 per diem rate. This section does not prohibit random or suspicion drug testing of any ADC inmate as allowed by ADC drug testing policy.

21. MEDICAL

COUNTY agrees to use ADC formulary for prescription drugs and laboratory tests; non-formulary prescription drugs and laboratory tests require prior approval by ADC; all non-emergency off-site

services require prior approval by ADC. COUNTY agrees to provide reasonable medical services to inmates of ADC as follows:

- (a) The FACILITY shall provide all on-site routine medical services to inmates of ADC in the FACILITY, including on-site pill call, on-site routine chronic care visits, on-site routine treatment call, on-site nurse, physician, and psychiatric sick call (provided by on-site staff) and non-prescription, over-the-counter/non-legend and routine drugs and medical supplies; and
- (b) The FACILITY shall provide routine dental services to inmates of ADC in the FACILITY, including basic extractions and other routine on site dental procedures; and
- (c) The FACILITY shall provide non-routine medical services to inmates of ADC, which are necessitated by an emergency or by a life threatening medical situation, including ambulance transportation or emergency flight, if required, at the cost of ADC or ADC's medical contractor.
- (d) In the event an inmate of ADC requires medical services other than those described in subparagraph (a)&(b) hereinabove, including but not limited to off-site optical services, off-site mental health services, prescription drugs and off-site treatments, FACILITY agrees to contact ADC Administrator for Medical & Dental Services to advise the Designated Representative of the FACILITY: (i) the identity of the ADC inmate; (ii) the type of the medical services and/or treatments Facility has determined the ADC inmate requires; (iii) any services or treatments the ADC inmate has received at the FACILITY in connection with the illness or condition for which Facility is contacting ADC'S Administrator of Medical & Dental Services; (iv) a contact name and telephone number for the representative with FACILITY that determined the medical services and/or treatments are necessary for the ADC inmate; and (v) the arrangements which have been made to transport the ADC inmate back to Arkansas to receive the medical services and/or treatments. The off-site services and prescription medications will be at the cost of ADC or ADC's medical contractor.

22. REMOVAL FROM INSTITUTION:

The COUNTY shall immediately notify the ADC Administrator of Medical & Dental Services of all cases where an ADC immate may be removed from the COUNTY's institution for any health care/reason. All reasonable care shall be exercised for the safekeeping and care of the inmate, and the COUNTY will provide security unless the inmate is transferred back to ADC or an ADC facility.

23. UNAVAILABLE LEGAL MATERIALS:

The County shall provide, at its own cost, all state and federal legal reference works required by law to

enable ADC inmates to adequately research Arkansas state law and federal law regarding issues arising out of the inmate's incarceration. Should any question arise regarding whether additional material is necessary, the COUNTY shall contact Mark Colbert, Compliance Attorney for the Arkansas Board of Corrections, office: 870-267-6752, cell: 870-543-9412, email: mark.colbert@arkansas.gov, address: P.O. Box 20550, White Hall, AR 71612.

24. INDEPENDENT CONTRACTOR STATUS:

The COUNTY shall perform its duties hereunder as a contractor and not as an employee. Neither the contractor nor any agent or employee of the contractor shall be or shall be deemed an agent or employee of the ADC. The COUNTY shall be solely responsible for the acts of the COUNTY, its employees, agents, contractors and subcontractors.

25. NOTICES:

Any notice provided for in this contract shall be in writing and served by personal delivery or by certified mail, return receipt requested, postage prepaid, at the addresses listed in Section 17 until such time as written notice of a change is received from the other party. Any notice so mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will he used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Contract.

26. ASSIGNMENT:

No right or interest pursuant to this Contract shall be assigned or delegated by the County without the prior written permission of the ADC.

27. NO THIRD-PARTY BENEFICIARY ENFORCEMENT:

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the ADC and the COUNTY, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person on this Contract. It is the express intention of the ADC and the County that any person or entity, other than the ADC or the County, receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only. This Contract is not intended to create any rights, liberty interests or entitlements in favor of any inmate. The Contract is intended only to set forth the contractual rights and responsibilities of the Contract parties. Inmates shall have only those entitlements created by Federal or State constitutions, statues, regulations or case law.

28. MODIFICATION AND BREACH:

This Contract contains the entire agreement and understanding between the parties and supersedes any other

agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, notation, renewal or other alteration of or to this Contract shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties. No breach of any term, provision or clause of this Contract shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

29. HEADINGS:

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Contract.

30. TIME OF THE ESSENCE:

Time is of the essence in the performance of all of the parties' obligations and duties under this Contract.

31. SEVERABILITY:

If any term or condition of this Contract shall be held to be invalid, illegal or unenforceable, this Contract shall be construed and enforced without such provision to the extent this Contract is then capable of execution within the original intent of the parties.

32. RISK OF PHYSICAL DAMAGE TO FACILITY:

The risks and costs of physical damage to the FACILITY incurred as a direct result of the placement of Arkansas inmates in the Bowie County Correctional Facility shall be considered usual costs incidental to the operation of the facility and part of the costs reimbursed by the fixed rate per-inmate day as provided for in Section 15.

33. COMPLIANCE WITH APPLICABLE LAWS:

The COUNTY shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable federal laws and regulations, including protection of the confidentiality of all applicant/recipient records, papers, documents, tapes or any other materials that have been or may hereafter be established which relate to this Contract. The COUNTY acknowledges that, while its obligations under the paragraph are not limited to the following laws, the following laws are specifically acknowledged and included: Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Prison Rape Elimination Act (PREA) of 2003, and the Age Discrimination Act of 1975, the Americans with Disabilities Act, including Title 11, all rules and regulations applicable to these laws prohibiting discrimination because of race, religion, color, national origin, creed, sex, age and handicap in federally assisted health and human services programs. This assurance is given in part in consideration of and for the purpose of obtaining any and all federal grants, or other federal financial assistance.

The County assures the ADC that at all times during the performance of this Contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the services, programs, or activities performed by the County, or subjected to any discrimination by the County, upon which assurance the ADC relies.

34. CONFIDENTIALITY OF RECORDS:

Unless otherwise provided, and where appropriate:

- (a) In the event the County shall obtain access to any records or files of the ADC in connection with this Contract, or in connection with the performance of its obligations under this Contract, the County shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the ADC.
- (b) Nothing contained in this Contract section 34 shall be deemed to supersede Texas or Arkansas law regarding open or public records or freedom of information acts. The Parties will consult on all requests for ADC inmate information to facilitate the release of information which is required to be disclosed.

35. GOVERNING LAW:

Except where otherwise expressly provided, the laws and administrative rules and regulations of Texas and Bowie County shall govern in any matter relating to an ADC inmate confined pursuant to this Contract. ADC inmates shall be awarded "good time" according to the laws of Arkansas, as determined by ADC officials.

36. FORCE MAJEURE:

No party to this Contract shall be responsible for delays or failures in performances resulting from acts beyond the reasonable control of such party, and which could not have been avoided by the exercise of due care.

37. BILLING DISPUTES:

Any claim by either party for an adjustment in payment under the terms of this provision must be asserted in writing within thirty (30) days from the date of receipt of invoice or receipt of payment. If the parties fail to agree on any amount, they may pursue any and all available remedies. Neither the existence of a claim nor a disputed resolution process, litigation, nor any other provision of this Contract shall excuse either party from performance of the Contract generally.

38. APPLICABLE LAWS AND COURTS:

As between the Contract parties, this Contract shall be governed in all respects by the laws of the State of Arkansas and venue of any litigation with respect thereto shall be brought in the courts of Miller County,

court should hold that either ADC or the COUNTY lacked specific authority to enter into this Contract, ADC and the County do hereby agree the COUNTY is entitled to payment for services in quantum merit for the reasonable value of services rendered to ADC and that the reasonable value of services rendered to ADC by the COUNTY is \$36.00 per inmate per day the inmate is housed by COUNTY.

40. INMATE GRIEVANCE PROCEDURE:

The County will utilize ADC's policies regarding inmate grievance procedure and ADC's system for maintaining grievance-related records to the extent possible, and the parties agree to cooperate and mutually assist each other regarding inmate grievances. ADC will monitor inmate grievance procedures.

IN WITNESS WHEREOF, the parties here to have executed this contract on the day first above written.

ARKANSAS DEPARTMENT OF CORRECTIONS	BOWIE COUNTY, TEXAS
By: Wendy Kelley Director	By: James M. Carlow County Judge
	By: James Prince James Prince Sheriff
Approved:	Approved:
By:	By: