

RESOLUTION NO. 55 -21
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Approving a Supplemental Staffing Agreement Between the
Yavapai-Apache Nation and AB Staffing Solutions, LLC for Temporary
Supplemental Staffing for the Health Center**

WHEREAS: The Yavapai-Apache Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”), act on all matters that concern the health and welfare of the Nation, and make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided by Article V (a) of the Constitution; and

WHEREAS: The Council is authorized to manage the Nation’s economic affairs and to appropriate and regulate the use of tribal funds as provided by Article V (i) and (k), respectively, of the Constitution; and

WHEREAS: The Council is authorized to appoint subordinate committees, commissions, boards, tribal officials and employees not otherwise provided for in the Constitution and to prescribe their compensation, tenure, duties, policies and procedures as provided by Article V(p) of the Constitution; and

WHEREAS: The Medical Clinic Manager has recommended that the Council approve a Supplemental Staffing Agreement (“Agreement”) with AB Staffing Solutions, LLC for temporary supplemental staffing for the Health Center when the Registered Nurse position at the Medical Center is vacant or to fill any additional nurse staffing needs due to the COVID-19 public health emergency (*Agreement attached to this Resolution as Exhibit A and incorporated herein by reference*); and

WHEREAS: The hourly rates for any personnel requested by the Health Center and provided by AB Staffing Solutions, Inc. under the Agreement are set forth in Schedule A attached to the Agreement; and

WHEREAS: Funding to pay compensation under the Agreement shall be paid from the COVID CARES Act Grant #6 NUIROT000140-01-01; and

WHEREAS: The Council has determined that it is in the best interest of the Nation to enter into the Supplemental Staffing Agreement with AB Staffing Solutions, LLC.


NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby approves the Supplemental Staffing Agreement between the Nation and AB Staffing Solutions, LLC (*Agreement attached to this Resolution as Exhibit A*) under which AB Staffing Solutions, LLC will provide temporary supplemental staffing for the Health Center as further specified in the attached Agreement, with compensation

under the Agreement to be paid from the COVID CARES Act Grant #6 NU1ROT000140-01-01, payable as provided under the terms of the Agreement.

BE IT FINALLY RESOLVED that the Chairman, and Vice-Chairwoman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the purposes and intent of this Resolution.


CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on March 25 2021, by a vote of 9 9 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.




Jon Huey, Chairman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

Supplemental Staffing Agreement between the
Nation and AB Staffing Solutions, LLC

SUPPLEMENTAL STAFFING AGREEMENT

THIS SUPPLEMENTAL STAFFING AGREEMENT (the "Agreement") is entered into this ___ day of _____, 202_, between the Yavapai-Apache Nation, a federally recognized Indian Tribe, with its physical location at 2400 West Datsi Street, Camp Verde, Arizona 86322 ("Client") and AB Staffing Solutions, LLC, an Arizona limited liability company, with its principal office located at 3451 S. Mercy Road, Suite 102, Gilbert, Arizona 85297 ("ABSS") (each a "Party" and collectively the "Parties").

RECITALS

- A. Client operates an acute care hospital, nursing home, clinic and/or other patient care facility(ies).
- B. ABSS is a temporary staffing company in the business of recruiting qualified personnel and providing supplemental clinical and non-clinical healthcare staffing services to commercial and governmental healthcare clients.
- C. Client desires ABSS to provide, when requested and on a non-exclusive basis, competent and qualified supplemental staffing.

THEREFORE, the Parties agree as follows:

AGREEMENT

1 Requests for Staff; Qualifications. Upon request by Client, ABSS will use its best efforts to recruit, interview, screen and assign competent and qualified temporary supplemental personnel, whether employees or independent contractors of ABSS (individually and collectively "Staff") to Client to meet Client's supplemental staffing needs. All Staff supplied by ABSS shall be appropriately screened by ABSS in accordance with policies and procedures consistent with the then current published standards of The Joint Commission. Such screening will include, without limitation, obtaining pertinent information concerning the past employment, licensure, certification, education and professional skills of Staff. ABSS shall make available all screening information of Staff to Client upon request. Each Staff is subject to approval by Client. The average time required for Staff to report to a facility is 7 days from hire and completion of the appropriate background and credentialing activities.

2 Training; Policies and Procedures; Discipline of Staff.

2.1 At the outset of any assignment, Client shall orient each Staff to its facility and rules and regulations, and shall provide Staff with information about the facility's policies and procedures, including dress code, physical layout, emergency procedures and equipment. Client shall also confirm Staff's competency and ability in the proper use of any equipment to be used by such Staff in connection with the assignment.

2.2 Staff shall perform the Services described herein for the benefit of the Client and under the direction of a Client Clinical Manager or other written designee. Staff initially requested for a particular area may be reassigned to other areas by Client after arriving at Client's facility or at any time while working for Client, subject to Staff's demonstrated competency, appropriate certifications, credentials and professional qualifications. Staff should be reassigned only to areas of comparable clinical diagnoses and acutities.

2.3 Client agrees to notify ABSS in writing within 24 hours of any event, competency issue, unexpected incident, including errors, unanticipated deaths and other events related to the care and services provided by any Staff. Client agrees to notify ABSS in writing whenever an incident/injury report related to Staff is completed. ABSS will document and track all incidents, injuries and unexpected events. Staff assigned by ABSS to Client under this Agreement are employees of ABSS or, in some cases, independent contractors, and are not employees, contractors or agents of Client.

2.4 If Client concludes that any Staff assigned to Client by ABSS is not performing such Staff's duties in a satisfactory manner or that such Staff is otherwise failing to satisfy the criteria for qualified Staff, such Staff shall not be permitted to continue working for Client. Under such circumstances, Client may immediately terminate Staff's assignment and ask such Staff to immediately leave Client's property. Client shall immediately inform ABSS in

writing of any such action. ABSS will be paid for the actual hours worked by such Staff prior to dismissal. Client shall cooperate in an evaluation of Staff relative to such Staff's ability to perform specific job functions and responsibilities upon completion of any assignment.

3 Fees; Invoicing; Payment Terms.

3.1 All-inclusive hourly rates, representing the entire rate to be charged to Client for Staff provided by ABSS, are set forth on the attached **Schedule A – Rate Schedule**. The Rate Schedule is not subject to adjustment unless agreed upon by both Parties in writing. Pricing is subject to renegotiation when either Party initiates negotiations; however, during such negotiations, the most recent Rate Schedule shall remain in effect until a new structure is agreed upon in writing.

3.2 ABSS will invoice Client on a weekly basis for the Services provided under this Agreement. Invoices shall be remitted to Client by email to tclark@yan-medical.org which mode of transmission and/or address may be changed by Client upon written notice pursuant to Section 9.

3.3 Invoices will be supported by the pertinent time sheets documenting time worked by the assigned Staff. Client's signature or other agreed method of approval of the time sheets submitted for assigned Staff certifies that the documented hours are correct and authorizes ABSS to bill Client for those hours.

3.4 All invoices shall be serially numbered and shall contain the following information: (i) Staff's name, (ii) Date worked, (iii) Total hours worked, (iv) Hourly rate, (v) Total charge, (vi) Overtime identified, (vii) Additional charges identified.

3.5 Payment is due upon receipt of the invoice. All payments shall be in U.S. Dollars. Invoices that are not paid within thirty (30) days of the date of such invoice will be considered Past Due and will be subject to interest from the date of such invoice at a rate equal to the lesser of 10% per annum or the maximum amount allowed by law. Client agrees that it is responsible to ABSS for all costs of collection, including, but not limited to, attorney's fees and taxable and non-taxable costs and expenses. Client also agrees that ABSS may discontinue an assignment at any time, in its sole discretion, should Client not timely remit payment based on the terms of payment set forth in this Agreement.

3.6 Client agrees that in the event any Staff assigned by ABSS to Client becomes employed, in the broadest sense, directly or indirectly, by Client or any affiliate or related party of Client, or provides services of any kind through any third party at the facility such Staff was assigned to by ABSS, other than pursuant to the terms of this Agreement, (collectively "Direct Client Employment"), within the first 6 months from the date the assignment began, Client shall pay to ABSS a conversion fee equal to (a) 15% of the first year's salary for each such Staff providing services as a nurse (other than an advanced practice nurse) and/or in any other allied health position, and (b) 25% of the first year's salary for each such Staff providing services as a physician or advanced practice nurse. In the event any form of Direct Client Employment of Staff occurs more than 6 months after the date the ABSS assignment began, Client shall pay to ABSS a conversion fee equal to (a) 10% of the first year's salary for each such Staff providing services as a nurse (other than an advanced practice nurse) and/or in any other allied health position, and (b) 17.5% of the first year's salary for each such Staff providing services as a physician or advanced practice nurse. Should such Staff leave voluntarily or be terminated for just cause within the first 90 days of Direct Client Employment, the conversion fee(s) shall be refunded on a pro-rata basis. Otherwise, there will be no adjustment in any conversion fee.

4 ABSS Insurance. ABSS shall purchase and maintain during the duration of this Agreement the following insurance coverages:

4.1 Workers' compensation and employer's liability insurance covering ABSS's legal and statutory obligations for damages due to bodily injury either by accident or disease, occurring to any ABSS employee in connection with their employment.

4.2 Unemployment insurance as required by law for all employees.

4.3 General liability insurance covering ABSS Staff, employees, contractors and agents for bodily injury, personal injury or property damage claims arising out of or relating to the activities of ABSS. Minimum limits of liability for the above coverage shall be \$1,000,000 per occurrence and \$3,000,000 annual aggregate for bodily injury and property damage.

4.4 Professional liability insurance covering ABSS Staff, employees, contractors and agents. Minimum limits of liability shall be \$1,000,000 per incident and \$3,000,000 annual aggregate.

4.5 Upon Client's request, ABSS will provide Client with certificates of insurance as evidence that all coverage required under this Agreement have been obtained and are in full force and effect.

5 **Cooperation.** The Parties agree to cooperate fully and to provide assistance to the other Party in the investigation and resolution of any complaints, claims, actions or proceedings that may be brought by or that may involve any ABSS Staff.

6 **Representations.**

6.1 ABSS represent that it does not unlawfully discriminate against its Staff, employees, contractors, or agents and that it fully complies with all applicable local, state and federal anti-discrimination and employment related regulations and laws.

6.2 ABSS represents and warrants that ABSS has not been excluded from any Federal healthcare program. ABSS verifies that is has not been nor is it presently excluded or subject to sanctions by any regulatory or governmental agencies. ABSS also represents and warrants that all Staff (a) are not Excluded Individuals or Entities, and (b) have been screened for exclusion status under the OIG List and the GSA List.

6.3 The individual signing this Agreement on behalf of Client certifies that he/she is authorized by Client to bind Client pursuant to the terms and conditions set forth in this Agreement. Further, he/she certifies that all Client authorizations have been obtained from the Tribal Council or other authorized individual(s) or governing bodies of Client and that ABSS may rely on such authorizations and the certifications made herein.

7 **Termination.** This Agreement may be terminated by either Party, for any reason, upon providing written notice to the other Party as set forth in Section 9, with such termination to be deemed effective the earlier of (a) thirty (30) days following such written notice or (b) the end of the last assignment of Staff placed with Client by ABSS. In the event Client terminates this Agreement upon less than thirty (30) days prior written notice to ABSS, Client shall pay to ABSS, as agreed upon liquidated damages, an amount equal to \$20/hour for nursing and allied health positions, and \$40/hour for physician positions, for each hour that such Staff would have otherwise worked under the assignment with Client through the thirty (30) day required notice period, together with any out of pocket expenses incurred, but not yet recovered, by ABSS in the placement of such Staff with Client.

8 **Survival of Certain Obligations.** Termination of this Agreement shall not affect any obligation of either Party which has occurred prior to such termination. Provisions of this Agreement, which by their terms extend beyond the termination or non-renewal of this Agreement will remain effective after termination or non-renewal of this Agreement.

9 **Notices.** All notices required or permitted to be given under this Agreement must be (a) in writing and (b) sent to the Parties at their addresses set forth below, and will be effective (i) on delivery, if delivered personally (including by messenger, telephone facsimile or overnight courier), or (ii) three (3) calendar days after mailing, by registered or certified mail, return receipt requested, postage prepaid, if given by mail:

If to ABSS: AB Staffing Solutions, LLC
Attn: Evan Burks, President
3451 S. Mercy Rd, Suite 102
Gilbert, AZ 85297

With copies to: Shannon Crane
shannon@abstaffing.com
(888) 515-3900 Ext 210

If to Client: Yavapai-Apache Health Center
Attn: Ms. Trudy Clark
2400 Datsi Street
Camp Verde, AZ 86322
tclark@yan-medical.org
928-567-8471

Any Party may change its address by notice given under this Section 9.

10 Indemnification. It is understood and agreed that ABSS shall not become a Business Associate of Client for purposes of HIPAA compliance in recognition of the fact that ABSS has no control over or direct access to any Protected Health Information. ABSS is performing the Services hereunder per the terms of this Agreement and is not a partner or joint venturer of the Client. Nothing contained in this Agreement is intended, nor shall it be construed, to create any responsibility on the part of ABSS for any liability, including, but not limited to claims for damages, losses, costs, expenses or damages arising from or relating to: (a) any negligent or intentional acts or omissions of Client, its employees, contractors or agents, or (b) any negligent or intentional acts or omissions of Staff, employees, contractors or agents of ABSS in circumstances where the act or omission giving rise to a potential claim occurred at the explicit direction of Client or its employees, contractors, or agents. Client agrees to indemnify, defend and hold ABSS and its Staff, employees, contractors, agents and/or other representatives harmless for, from and against any and all claims, demands, causes of action, losses, damages, costs, and expenses, including reasonable attorney's fees, arising from or relating in any manner, directly or indirectly, to any of the foregoing circumstances. Except for the foregoing circumstances, ABSS agrees to indemnify, defend and hold Client and its officers, employees, contractors, agents and/or representatives harmless for, from and against any and all claims, demands, causes of action, losses, damages, costs, and expenses, including reasonable attorney's fees, arising from or relating in any manner, directly or indirectly, from the services provided under this Agreement.

11 Miscellaneous.

11.1 Binding Effect. Except as otherwise agreed, this Agreement is personal to the Parties. No Party will have the right or power to assign any of its rights or obligations, and any attempted assignment, at the option of the non-assigning Party, will be void. Subject to the foregoing, this Agreement and all of its terms will be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns.

11.2 Entire Agreement. This Agreement sets forth the entire agreement between the Parties as to its subject matter, and is subject to no promise, warranty or representation not expressly set forth.

11.3 No Third-Party Beneficiaries. Except as specifically set forth in this Agreement, no person or entity other than the Parties is an intended beneficiary of this Agreement.

11.4 No Oral Modifications. This Agreement may not be modified except by a writing signed by both Parties.

11.5 Jurisdiction: The Yavapai-Apache Nation is a federally recognized Indian Tribe and possesses sovereign immunity under law and the Nation's Constitution. Any and all disputes arising under this Agreement shall be resolved according to the laws of the Yavapai-Apache Nation (including the laws of the state of Arizona where the Laws of the Nation do not address a particular matter), and the Yavapai-Apache Nation's Tribal Courts shall have exclusive jurisdiction to the extent necessary to interpret and enforce this Agreement in any actions brought by the Client or ABSS and arising under this Agreement. No other court or tribunal shall have jurisdiction over any action arising under this Agreement and brought by ABSS. No third-party shall have any right to bring an action under this Agreement, whether against the Client or against ABSS. In all actions brought by ABSS against the Client, the Tribal Courts shall have jurisdiction only to the extent necessary to determine the amount of any earned but unpaid compensation under this Agreement and to order its payment (in addition to any attorney's fees and other costs that

may be awarded under Section 11.6 of this Agreement). The Tribal Courts shall not have jurisdiction for any other purpose in any action brought by the ABSS under this Agreement. Client and ABSS intentionally and knowingly waive their right to have any dispute arising under this Agreement tried before a jury.

11.6 Attorneys' Fees. If any Party commences an action or other proceeding against the other Party arising out of or in any manner relating to this Agreement, the substantially prevailing Party shall be entitled to recover from the non-substantially prevailing Party all of its reasonable attorneys' fees and taxable and non-taxable costs and expenses incurred with respect to such action or proceeding, including, without limitation, any such fees and costs incurred on appeal. In the event a judgment is entered in such action or proceeding, the judgment creditor shall be entitled to recover from the judgment debtor all of its reasonable attorneys' fees and taxable and non-taxable costs and expenses incurred in the enforcement and/or collection of the judgment upon application to the Court, which Court shall expressly reserve jurisdiction in the judgment to award such fees, costs and expenses and amend, modify and supplement the judgment accordingly.

11.7 Captions. Captions and paragraph headings used in this Agreement are for convenience only, are not a part of this Agreement, and do not limit or alter any of its provisions.

11.8 Execution; Counterparts. This Agreement will not be binding on any Party until it is executed by all Parties. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any Party may execute this Agreement by signing any such counterpart. The signature of a Party on a faxed or electronically transmitted document shall be considered, for all purposes, an original signature.

Client: Yavapai-Apache Nation, a federally recognized Indian Tribe

AB Staffing Solutions, LLC, an Arizona limited liability company

By: 
Jon Huey, Chairman

By: _____
Evan Burks, President

Date: 3/25/2021

Date: _____

SUPPLEMENTAL STAFFING AGREEMENT

AB Staffing Solutions, LLC

Schedule A – Rate Schedule

Revised as of March 2021

| Specialty | Standard Rate Per Hour | COVID/Crisis Rate Per Hour |
|--|-----------------------------------|---------------------------------------|
| Dental Assistant | \$31.00 | \$38.00 |
| Medical Assistant | \$32.00 | \$40.00 |
| Registered Nurse /Outpatient Clinic | \$64.00 | \$80.00 |
| Registered Nurse /PHN | \$66.00 | \$82.00 |
| Nurse Practitioner /Clinic | \$91.00 | \$117.00 |
| Nurse Practitioner /Urgent Care/ER | \$94.00 | \$125.00 |