

First Amended

INTERGOVERNMENTAL AGREEMENT

Between

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION
("AHCCCS")

And

MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT d.b.a.
MARICOPA INTEGRATED HEALTH SYSTEM,
MARICOPA MEDICAL CENTER
("DISTRICT")

for

Safety Net Hospital and Health System Funding
Pursuant to S.B. 1357

WHEREAS, the District, a political subdivision of the State of Arizona, operates the Maricopa Integrated Health System, which includes the Maricopa Medical Center (a disproportionate share hospital), the Desert Vista Campus, eleven Family Health Centers, and related health care facilities, and serves as the primary public safety net hospital and health system for Maricopa County, Arizona; and,

WHEREAS, the District wishes to increase access to comprehensive and affordable primary, specialty, and preventative health care services in order to improve the health care of the uninsured, the underinsured, the underserved and the vulnerable populations in Maricopa County through a continuum of care at the community health delivery system level; and,

WHEREAS, the Arizona legislature, during its Fiftieth Legislature, First Regular Session of 2011 enacted Senate Bill 1357 ("SB 1357"), which permits the District, as a political subdivision of the State of Arizona, contingent upon the approval by AHCCCS and the Centers for Medicare and Medicaid Services ("CMS"), to contribute District (public) funds to be used as the Non-Federal Share of the Medicaid funding to further the purposes identified in SB 1357, which include but are not limited to funding for the Safety Net Care Pool ("SNCP"); and,

WHEREAS, the federal government has approved a Demonstration Project that permits AHCCCS to claim as expenditures eligible for FFP costs associated with expanded enrollment in KidsCare and the SNCP; and,

WHEREAS, as of December 21, 2009, AHCCCS, pursuant to A.R.S. § 36-2985, stopped processing applications under Arizona Revised Statutes, Title 36, Chapter 29, Article 4 for the KidsCare program due to insufficient funds; and,

WHEREAS, A.R.S. § 36-2995 authorizes AHCCCS to accept donations from any source to pay for the administrative and program costs associated with the operation of the KidsCare program; and,

WHEREAS, the District, is authorized to enter into this Agreement under A.R.S. §§ 48-5501 et. seq. and under SB 1357; and,

WHEREAS, AHCCCS is authorized to execute and administer agreements under SB 1357 and under A.R.S. § 36-2903 et seq., and is also authorized to make payments to certain healthcare provider funded in part by the District pursuant to SB 1357; and

WHEREAS, AHCCCS and the District are authorized by A.R.S. § 11-951 et seq. as well as SB 1357 to enter into Intergovernmental Agreements for cooperative action pertaining to the advancements and reimbursement of public funds for services performed consistent with SB 1357; and

WHEREAS, as authorized by SB 1357, the District and AHCCCS wish to enter into this Agreement in order to permit the District to provide the Non-Federal Share of the Medicaid payment which monies will be expended in furtherance of the goals set forth in SB 1357;

NOW, THEREFORE, the District and AHCCCS (collectively, the "Parties"), pursuant to the above and in consideration of the matters set forth herein, mutually agree as follows:

- 1.0 DEFINITIONS: Unless otherwise defined in this Agreement, all terms have the same meaning as set forth in Title 36 of the Arizona Revised Statutes, Title 9, Ch. 22, of the Arizona Administrative Code (A.A.C.) and/or as set forth in SB 1357.
 - 1.1 Agreement: This document, together with all attachments, appendices, exhibits, schedules and future amendments as agreed to by the Parties. The term "Agreement" is synonymous with "Intergovernmental Agreement", "IGA" "Intergovernmental Transfer Agreement," or "IGT Agreement".
 - 1.2 AHCCCS: Arizona Health Care Cost Containment System an agency of the State, which administers the Medicaid program under Title XIX and the Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act in Arizona.
 - 1.3 CFR: Code of Federal Regulations, the official compilation of Federal rules and requirements.
 - 1.4 District: The Maricopa County Special Health Care District, a political subdivision of the State of Arizona.
 - 1.5 CMS: Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.
 - 1.6 Day: A calendar day, unless specified otherwise.
 - 1.7 Demonstration Project: The agreement between the State and CMS that includes: (1) a list of those provisions of Title XIX and Title XXI of the Social Security Act which have been waived by CMS with respect to the State's operation of programs under those Titles, (2) a list of expenditures which CMS has approved as claimable by the State for FFP notwithstanding the limitations on claims in those Titles, and (3) the Special Terms and Conditions associated with the waivers and expenditure authority, including provisions relating to the SNCP Program and the expansion of KidsCare as described in this Agreement.
 - 1.8 Eligible Hospital: Those hospitals and licensed health care facilities that are owned and operated by the District.
 - 1.9 Eligible Provider: physicians affiliated with Eligible Hospitals as described in the Demonstration Project.

- 1.10 FFP: Federal Financial Participation refers to the federal monies that AHCCCS claims from CMS for the Federal share of AHCCCS expenditures for the administration of and services paid for through the Medicaid and CHIP programs, Titles XIX and XXI of the Social Security Act.
- 1.11 MIHS or Maricopa Integrated Health System: a collection of health care facilities and providers operated by the District including the Maricopa Medical Center (a disproportionate share hospital), the Desert Vista Campus, eleven Family Health Centers, and all other health care facilities owned and operated by the District.
- 1.12 Safety Net Care Pool (“SNCP Programs”): Those programs, goods, and services that are authorized by SB 1357, this Agreement, and the Demonstration Project which includes but is not limited to funding to support payments to Eligible Hospitals and Eligible Providers for uncompensated care via the Safety Net Care Pool.
- 1.13 State: The State of Arizona.
- 1.14 Non-Federal Share: The portion of AHCCCS expenditures for the administration and services paid for through the State’s Medicaid and CHIP programs, Titles XIX and XXI of the Social Security Act, for which FFP cannot be claimed and which are authorized by SB 1357.

2.0 PURPOSE:

The purpose of this Agreement is to set forth the procedures under which the District will, at its discretion and contingent upon AHCCCS and CMS approval, intergovernmentally transfer public funds as the Non-Federal Share of payments as authorized and permitted under SB 1357 and the Demonstration Project, in order to provide the monies necessary to qualify for federal matching monies in order to: (1) provide health care coverage to children who were potentially eligible for KidsCare under Arizona Revised Statutes, Title 36, Chapter 29, Article 4, but whose eligibility was not determined because the program was closed to new enrollment as of December 21, 2009, due to insufficient funds;; and, (2) support safety net health systems through supplemental payments for the costs incurred by Eligible Hospitals and Eligible Providers for uncompensated care including, but not limited to, uncompensated care as referenced in SB 1357.

Distributions from the Safety Net Care Pool to Eligible Hospitals will be based on goods, and services provided by those Eligible Hospitals and as described in this Agreement during the period beginning October 1, 2011 and ending December 31, 2013. For each year ending September 30, the SNCP payments will be distributed to each provider based on its proportionate share of projected uncompensated care (based on prior period data). Furthermore, payments to each provider in each year will be subject to a limit computed based on the provider's uncompensated care costs incurred for a 12-month period covered by the that year, except in the third year when the limit will be computed based on uncompensated care costs incurred between October 1, 2013 and December 31, 2013. Actual distributions from the Safety Net Care Pool to Eligible Hospitals and Eligible Providers may occur after December 31, 2013. In addition, expenditures under this Agreement will be made for expanded KidsCare coverage during the period beginning May 1, 2012 and ending December 31, 2013. The actual payments for KidsCare expansion services during the expansion period may occur after December 31, 2013. It is also the intent of the parties that the procedures herein fully comply with Federal and State laws, rules and regulations.

3.0 ELIGIBILITY AND DISTRIBUTION REQUIREMENTS.

Monies generated through this Agreement may only be utilized for expenditures by AHCCCS for the cost of expanding KidsCare enrollment under this Agreement and for

payments from the Safety Net Care Pool to Eligible Hospitals and Eligible Providers. The AHCCCS Administration will determine the amount of the funds provided under this Agreement to support the District's contribution to the expansion of KidsCare enrollment, which Eligible Hospital and Eligible Providers qualify for payments made pursuant to the SNCP Program, and the amount of any SNCP Program distribution. The expenditure of funds for expansion of the KidsCare program, distribution amounts and related determinations for SNCP Program payments will be consistent with applicable federal and state statutes, regulations, rules, the Demonstration Project including any documents incorporated by reference in the Demonstration Project.

4.0 CONTACT INFORMATION.

AHCCCS. Questions, comments and concerns regarding the duties and responsibilities of AHCCCS are to be directed to:

Tom Betlach, Director, or
Michael Veit, Contracts Administrator
AHCCCS
701 E. Jefferson, MD 5700
Phoenix, AZ 85034
Phone: 6024174762
Fax: 6024175957
Email: Michael.Veit@azahcccs.gov

THE DISTRICT. Questions, comments and concerns regarding the duties and responsibilities of the District are to be directed to:

Kathleen Benaquista
V.P. Finance
Maricopa Integrated Health System
2601 E. Roosevelt
Phoenix, Az. 85008
Phone: 602-344-1231
Fax: 602-344-5190
Email: Kathleen.Benaquista@MIHS.org

5.0 AHCCCS RIGHTS AND OBLIGATIONS.

5.1 Receipt and Distribution of Funds.

Consistent with the Demonstration Project, state and federal law and regulations and with the Approved State Plans for Medicaid and CHIP, AHCCCS will utilize the funds provided by the District to obtain FFP for the cost of expanding KidsCare enrollment and to distribute payments consisting of combined State and federal Title XIX funds to Eligible Hospital and Eligible Providers as part of the SNCP Program. Both the Non-Federal Share and the FFP under this Agreement may only be used for purposes described in this Agreement.

5.2 AHCCCS Payment Recoupment from Eligible Hospital and Eligible Providers.

5.2.1 AHCCCS, upon prior written notice, will require Eligible Hospital and Eligible Providers receiving payments as a result of this Agreement, to reimburse AHCCCS upon demand and, if not reimbursed upon demand, AHCCCS will deduct from any future payments to the receiving Eligible Hospital or Eligible Provider any amount is:

5.2.1.1 Received by the Eligible Hospital or Eligible Provider from AHCCCS for payments under this Agreement that have been inaccurately reported or paid or are found by the hospital, provider or AHCCCS to be an excluded expense;

5.2.1.2 Paid by AHCCCS for which an Eligible Hospital's or Eligible Provider's books, records, and other documents are not sufficient to clearly confirm that the Eligible Hospital or Eligible Provider was entitled to the amount of payments paid under this Agreement;

5.2.1.3 Identified as payments under this Agreement that, as the result of a CMS financial management review or audit, is not eligible for FFP.

5.2.2 AHCCCS is responsible to satisfy any reporting or FFP reimbursement requirements imposed by CMS, if made as a result of a recoupment as noted in this Paragraphs 5.2 of this Agreement or applicable federal laws, rules and regulations. In the event AHCCCS recoups any payments from an Eligible Hospital or Eligible Provider, AHCCCS will promptly return to the District, without demand, that portion of the recoupment representing the Non-Federal Share contributed under this Agreement

5.2.4 Eligible Hospitals and Eligible Providers will receive and retain one hundred percent (100%) of all payments under this Agreement, and except as provided for in this Agreement or as required by federal law or regulatory authority, an Eligible Hospital or Eligible Provider is not required to return any portion of any payment made under this Agreement to AHCCCS.

6.0 THE DISTRICT'S RIGHTS AND OBLIGATIONS.

6.1 Payment of funds to support SNCP. The total funds the District will transfer to AHCCCS under this Agreement shall not exceed \$ 52,700,000, which shall be used in furtherance of the provisions of SB 1357 and the SNCP Programs, the monies to come from the District's General Fund, which includes local property tax assessments.

6.1.1. Timing of Fund Transfers to Support of SNCP. The parties anticipate that funds will be transferred and SNCP distributions will be made quarterly, the first transfer and distributions occurring as soon as practical after federal approval of the Demonstration Project for SNCP, related protocols incorporated by reference in the Demonstration Project, and of the intergovernmental agreements necessary to fund SNCP and the expansion of KidsCare. At such time and prior to each quarter thereafter, AHCCCS will provide written notice to the District of the amounts necessary to make SNCP distributions for the quarter as described in this Agreement.

6.1.2. SNCP Distributions. Within fifteen (15) working days after the receipt of the necessary funds from the District, AHCCCS shall make quarterly supplemental payments under the SNCP Program to the Eligible Hospitals and Eligible Providers listed in Attachment A to this Agreement. The maximum annual payment to individual hospitals and providers shall be determined using the methodology described in the Demonstration Project for the SNCP Program. Total annual payments to individual hospitals and providers shall not exceed an amount that is equal to the non-federal share designated by the District for each hospital and provider as described in Attachment A plus the FFP associated with the non-federal share.

6.2 Payment of funds to support expanded enrollment in KidsCare. In addition to the amounts set forth in section 6.1. of this Agreement, the District shall transfers such funds from the District's General Fund, which includes local property tax assessments, as are necessary to support the expansion of enrollment in KidsCare, as follows:

6.2.1. Installment Payments for the Estimated Cost of KidsCare Expansion. Initially, AHCCCS shall establish the amount to be transferred by the District necessary to fund the estimated cost of the first six months of expanded KidsCare enrollment under the Demonstration Project and this Agreement and such amount shall not exceed \$2,307,704. Thereafter, AHCCCS shall establish similar amounts estimating the cost of expanded KidsCare enrollment on a quarterly basis. The estimated funds shall include AHCCCS' estimate of the costs associated with, but not limited to, any fee-for-service payments (including estimates of the cost of claims Incurred But Not Reported), capitation payments and reinsurance payments to managed care organizations for expanded KidsCare Enrollment, any increase in payments by AHCCCS to the Arizona Department of Health Services for vaccines for children eligible for KidsCare or to Federally Qualified Health Centers that result from the expansion of KidsCare, and related administrative costs. As part of the process of estimating the cost of expanded KidsCare enrollment for the period covered by each transfer, AHCCCS shall project the total cost of the KidsCare program (including children eligible before and after the expansion) for the same period and multiply that cost by a ratio equal to (1) the projected number of children added during the period due to the expansion by (2) the projected number of children eligible for KidsCare during the period.

6.2.2 Timing of Installment Payments. Following notice from AHCCCS of the initial estimated amount and prior to May 1, 2012, the District shall transfer the estimated amount to AHCCCS. Thereafter, the District shall transfer the estimated amounts at least 30 days prior to the beginning of each quarter.

6.2.3 Payments for Fee-For-Service Claims processed after December 31, 2013. All fee-for-service claims for healthcare services must be submitted as clean claims within 12 months of the date of service (these claims are sometimes referred to as Incurred But Not Reported claims and/or as the "lag claims"). As such, AHCCCS will receive and process lag claims for children eligible for KidsCare on a fee-for-service basis after expanded eligibility for KidsCare under this Agreement ends on December 31, 2013. Collectively, the District and all other political subdivisions participating in the funding of the Safety Net Care Pool Program shall be responsible for the payment of any difference between that portion of the installment payments that was estimated to be the cost of Incurred But Not Reported Claims and an amount equal to the cost of the lag claims multiplied by a ratio equal to the number of children added due to the expansion by the number of the total number of children eligible for KidsCare during the period.

6.2.4 Payments for Reinsurance Claims. Under the agreements between AHCCCS and managed care entities, AHCCCS may incur obligations to managed care entities to share in the cost of certain KidsCare eligible children (including children added to KidsCare under the Agreement) under the AHCCCS "reinsurance" program. AHCCCS' final payments to managed care entities under the reinsurance program are usually not complete until nineteen (19) months after the end of the contract year. Collectively, the District and all other political subdivisions participating in the funding of the Safety Net Care Pool Program shall responsible for the payment of any difference between that portion of the installment payments that was estimated to be the cost of the reinsurance program and the actual the cost of reinsurance payments made by AHCCCS to

managed care entities for services covered by the reinsurance program to children added to KidsCare under this Agreement.

6.2.5 Payments for Increased costs of Immunizations for KidCare. Under an agreement with the Arizona Department of Health Services ("ADHS"), AHCCCS pays for the cost of vaccines and the administration of vaccines for children enrolled in KidsCare. Collectively, the District and all other political subdivisions participating in the funding of the SNCP Program under this Agreement shall be responsible for the payment of any difference between that portion of the installment payments that was estimated to be the cost of the vaccines for KidsCare eligible children and the proportion of the cost of payments made by AHCCCS to ADHS for vaccines and vaccine administration attributable to children added to KidsCare under this Agreement.

6.2.6. Payment for Reconciliation of FQHC costs. Under the provisions of the Medicaid Act and the Arizona State Plan for Medicaid, AHCCCS is required to reimburse Federally Qualified Health Centers ("FQHC's"), FQHC "look-alikes," and Rural Health Centers ("Centers") at cost for AHCCCS covered services rendered through those Centers. Annually, AHCCCS conducts a reconciliation of the costs reported by these Centers to the total of the actual payments to the Centers made by AHCCCS and its contracted managed care entities. Collectively, the District and all other political subdivisions participating in the funding of the SNCP Program under this Agreement shall be responsible for the payment of any difference between that portion of the installment payments that was estimated to be the cost of reconciliation payments to such Centers and the proportion of the actual cost of the services provided by the Centers attributable to children added to KidsCare under this Agreement.

7.0 AHCCCS REPORTING: EXPENDITURE REPORT

AHCCCS will submit to the District a report showing actual distribution of funds to the Eligible Hospitals and Eligible Providers under the SNCP Program. The distribution report shall be submitted within fifteen (15) days after the date of distribution of the payments made pursuant to Paragraph 6.1 above.

8.0 GENERAL PROVISIONS.

- 8.1 Entire Agreement. This document, its attachments and appendices, including any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the Parties, and supersedes all other understandings, oral or written.
- 8.2 Exercise of Rights. Failure to exercise any right, power or privilege under this Agreement will not operate as a waiver thereof, nor will a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.
- 8.3 Contract Term. Notwithstanding the facts that certain AHCCCS or District obligations under this Agreement occur after the Term hereof, the parties agree that the Term of this Agreement is for the period of time from October 1, 2011 through December 31, 2015 and is not effective until signed by both parties.
- 8.4 Compliance with Laws, Rules and Regulations. AHCCCS, the District, Eligible Hospital, and their subcontractors must comply with all applicable Federal and state laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations, of the State of Arizona govern the rights of the Parties, the performance of this Agreement, and any disputes arising from the Agreement. Any action relating to this Agreement must be brought by arbitration to the extent required by A.R.S. § 12-

1518 or in an appropriate court. Any arbitration award will be enforced in an appropriate court.

- 8.5 Non-Discrimination. The parties shall not discriminate against any 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 755, as amended by Executive Order 994, which is incorporated into this Agreement by reference, as if set forth in full herein.
- 8.6 ADA. The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101336, 42 U.S.C. 1210112213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 8.7 Amendments. This Agreement, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as the Agreement.
- 8.8 Termination. Pursuant to A.R.S. § 38-511, either party to this Agreement may terminate this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when AHCCCS or the District receives written notice of the cancellation unless the notice specifies a later time.
- 8.9 Records. The Parties, including Eligible Hospital, agree to retain all financial books, records, and other documents and will contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All records are subject to inspection and audit by the Parties at reasonable times. Upon request, the Parties will produce a legible copy of any or all such records.
- 8.10 Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remaining provisions continue to be valid and enforceable to the full extent permitted by law.
- 8.11 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, agents, employees, or volunteers.
- 8.12 No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to or Eligible Hospital under this Agreement or effect the legal liability of either party to the Agreement.
- 8.13 No Joint Venture. Nothing in this Agreement is intended to create a joint venture between or among the Parties, including the Eligible Hospital, and it will not be so construed. Neither AHCCCS' nor the District's employees will be considered officers, agents or employees of the other or be entitled to receive any employment related fringe benefits from the other.

9.0 COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION

- 9.1 District warrants that, consistent with 42 C.F.R. Part 433, Subpart B, no portion of the funds transferred to AHCCCS are derived from (1) provider-related donations other than bona fide provider-related donations or (2) health care-related taxes other than as permitted in Subpart B.
- 9.2 District agrees to provide AHCCCS with supporting documentation that provides a detailed description (including but not limited to the amount, source, and uses) and the legal basis for (1) each provider-related donation received by the District including all bona fide and presumed-to-be bona fide donations, and (2) all health care-related taxes collected. In addition, District agrees to provide AHCCCS, upon request, with supporting documentation that provides a detailed description (including but not limited to the amount, source, and uses) of any funds transferred under this agreement regardless of whether the funds are derived from provider-related donations or health-care related taxes.
- 9.3 If District fails to provide supporting documentation, or if any funds transferred by District are determined to be derived from provider-related donations or health care-related taxes such that CMS adjusts future grant awards to AHCCCS or disallows any expenditures claimed by AHCCCS, then District agrees to reimburse AHCCCS, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the impermissible provider-related donation and/or health care-related tax.
- 9.4 District certifies that, consistent with 42 C.F.R. § 433.51(c), the funds transferred to AHCCCS under this Agreement are not federal funds, or are federal funds authorized by federal law to be used to match federal funds. If any funds transferred to AHCCCS under this Agreement are determined to be federal funds such that the Center for Medicare and Medicaid adjusts future grant awards to AHCCCS or disallows any expenditures claimed by AHCCCS, then District agrees to reimburse AHCCCS, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the transfer of federal funds.
- 9.5 District certifies that the funds transferred to AHCCCS as described in this Agreement are made voluntarily and that neither the State nor AHCCCS has through statute, rule, or otherwise required the District to provide the funding.

NOW THEREFORE, AHCCCS and the District agree to abide by the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year specified below.

MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT ("District")

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ("AHCCCS")

BY: Chair, Board of Directors Date

BY: Michael Veit, Contracts Administrator Date

ATTEST:

Clerk of Board Date

In accordance with A.R.S. § 11-952, undersigned counsel have determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona, including but not limited to A.R.S. §§ 36-2903 et seq and A.R.S. §§ 48-5501 et seq .

Counsel for District

Counsel for AHCCCS

Date

DRAFT