

Attachment A

INTERGOVERNMENTAL AGREEMENT

BETWEEN

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

("AHCCCS")

AND

City of Phoenix

("Public Entity")

For the Support of the

Pediatric Services Initiative

WHEREAS, AHCCCS is authorized through contract to direct Medicaid managed care contractors' payments made to providers in a manner consistent with 42 C.F.R. § 438.6 when those directed payments are expected to advance the goals and objectives of the quality strategies adopted by AHCCCS which include improving access to high-quality health care; and

WHEREAS, AHCCCS is authorized under A.R.S. § 36-2913(C)(5) to accept donations from any source, and is permitted to use funds transferred from other public entities in support of the AHCCCS program; and

WHEREAS, the Public Entity, is authorized by City Ordinances No. S-41038, No. S-45435, and No. S-46597 to enter into this Agreement and to contribute the funds for health care services as provided hereunder; and

WHEREAS, 42 C.F.R. Part 433, Subpart B restricts States' use of Federal funds, health care-related taxes, and provider-related donations as sources for the Non-Federal Share of Medicaid expenditures; and

WHEREAS, AHCCCS and the Public Entity are authorized by A.R.S. § 11-952 to enter into Intergovernmental Agreements to jointly exercise powers common to the parties or for cooperative action; and

WHEREAS, the Public Entity and AHCCCS wish to enter into this Agreement in order to permit the Public Entity to provide the Non-Federal Share of a portion of the payments made by AHCCCS to Medicaid managed care contractors in support of the Pediatric Services Initiative;

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

1. DEFINITIONS: Unless otherwise defined in this Agreement, all terms have the same meaning as set forth in Chapters 29 and 34 of Title 36 of the Arizona Revised Statutes, 42 C.F.R. Parts 433 and 438, or Chapter 22 of Title 9 of the Arizona Administrative Code (A.A.C.) as appropriate.
 - 1.1. *AHCCCS Contract* means a contract between AHCCCS and a managed care entity for the services described in AHCCCS Contract Nos. YH19-0001 (AHCCCS Complete Care), YH19-0001 and YH22-0061R (ACC with Regional Behavioral Health Agreements), YH18-0001 (Arizona Long Term Care E/DP), YH6-0014 (Arizona Long Term Care DD), and YH15-0001 (DCS/CHP) including amendments to and extensions of those contracts.
 - 1.2. *Agreement* means this document, together with any and all attachments, appendices, exhibits, schedules and future amendments as agreed to by the Parties. The term "Agreement" is synonymous with "Intergovernmental Agreement."

- 1.3. *AHCCCS* means Arizona Health Care Cost Containment System Administration, an agency of the State that administers the Medicaid program under Title XIX of the Social Security Act in Arizona.
 - 1.4. *PSI or Pediatric Services Initiative* means the terms in the AHCCCS Contracts or in policies incorporated by reference into those contracts, that require the MCO to make supplemental payments to Qualifying Children's Hospitals for inpatient and outpatient hospital services above the rates otherwise negotiated for Qualified Children's Hospitals under a written contract with the MCO to provide service to persons enrolled with the MCO.
 - 1.5. *CFR* means Code of Federal Regulations – the official compilation of Federal rules and requirements.
 - 1.6. *Contract Year* means the period October 1, 2022 through September 30, 2023.
 - 1.7. *Public Entity* means the City of Phoenix.
 - 1.8. *CMS* means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services.
 - 1.9. *Day* means a calendar day, unless specified otherwise.
 - 1.10. *Qualified Children's Hospital* means a Hospital that (1) is a freestanding children's hospital with more than 100 licensed pediatric beds and (2) has completed and submitted to AHCCCS a fully executed attestation as set forth in Attachment B.
 - 1.11. *FFP or Federal Financial Participation* means 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 Program, Title XIX of the Social Security Act.
 - 1.12. *Hospital* means a health care facility licensed in Arizona as a hospital that is registered with AHCCCS as a participating provider.
 - 1.13. *MCO or Medicaid Managed Care Contractor* means an entity that has an AHCCCS Contract and meets the definition in 42 C.F.R. § 438.2.
 - 1.14. *State* means the State of Arizona.
 - 1.15. *State Plan* means the agreement between the State and CMS for the administration of the Medicaid program in Arizona as described in 42 C.F.R. 430.10.
 - 1.16. *Non-Federal Share* means the portion of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act, that are not FFP and which meet the requirements of 42 C.F.R. Part 433, Subpart B.
 - 1.17. *Prior Period Adjustment* means an adjustment to the amount that would be transferred by the Public Entity for the Contract Year under Section 4.2 of this Agreement, but for Section 4.2.1, to reconcile amounts transferred for previous Contract Years with the Non-Federal Share of actual MCO payments to the Qualifying Children's Hospitals in that previous Contract Year.
2. The purpose of this Agreement is to set forth the procedures under which the Public Entity will, at its discretion, transfer public funds to AHCCCS for use as the Non-Federal Share of expenditures made by AHCCCS to MCOs for the Contract Year, as modified to account for Prior Period Adjustments, in support of the PSI described in this Agreement. It is the intent of the parties that the procedures herein fully comply with Federal and State laws, rules and regulations.

3. Monies transferred by the Public Entity under this Agreement may only be used by AHCCCS for the Non-Federal Share of payment made by AHCCCS to MCOs as part of the PSI. Such payments will be made consistent with applicable Federal and State statutes, regulations, rules and the terms of the State Plan.
4. RIGHTS AND OBLIGATIONS OF THE PARTIES.
 - 4.1. In advance of each Contract Year:
 - 4.1.1. AHCCCS will estimate the total amount for the Contract Year of the supplemental payments that MCOs will make to Qualified Children's Hospitals as the result of the PSI.
 - 4.1.2. AHCCCS will then calculate the Non-Federal Share of the costs identified in Section 4.1.1 and will notify the Public Entity of the Non-Federal Share.
 - 4.1.3. The Public Entity shall provide AHCCCS with an attestation from each Qualified Children's Hospital in the form set forth in Attachment B of this Agreement.
 - 4.2. The Public Entity shall transfer to AHCCCS periodic payments equal to the amounts specified in Attachment A on or before the dates specified therein.
 - 4.2.1. The amount of the first payment made by the Public Entity under Section 4.2 may be modified to reflect any Prior Period Adjustments owed by or to the Public Entity as specified in Attachment A.
 - 4.3. Subject to approval by CMS, upon receipt of the transfer of funds from the Public Entity that is specified in Attachment A, AHCCCS shall distribute the funds transferred and the associated FFP to the MCOs and shall require the MCOs to make the corresponding PSI payment for service provided during the Contract Year to Qualified Children's Hospitals.
 - 4.4. Qualified Children's Hospitals will receive and retain one hundred percent (100%) of all PSI payments received, and neither the State, AHCCCS nor the Public Entity shall require, by contract or otherwise, a Qualified Children's Hospital to return any portion of the PSI payment to the State, AHCCCS, or the Public Entity.
 - 4.5. In advance of the Contract Year, the Public Entity will submit to AHCCCS Attachment A to this Agreement listing the amounts and public source of the payment made under Section 4.2.
 - 4.6. In the event of a disallowance based on the impermissibility of the transferred funds and the failure of the Qualified Children's Hospital to refund PSI payments as required by Attachment B, AHCCCS shall make diligent efforts to recover the amounts due under Attachment B. If AHCCCS is unable to recover the total computable amount associated with such disallowance from the hospital within twelve months of final exhaustion of any administrative appeal related to such disallowance, the Public Entity shall make a payment to AHCCCS within 30 days of written demand from AHCCCS. AHCCCS shall only make such written demand if AHCCCS has been unable to recover the total computable amount associated with such disallowance from the Qualified Children's Hospital within twelve months or after final exhaustion of any administrative appeal related to such disallowance, whichever is later. The payment due from the Public Entity shall be equal to the amount due to CMS as a result of the disallowance, less any amount recovered from the Qualified Children's Hospital associated with the disallowance, and including any interest incurred as a result of an appeal of the disallowance.

5. COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION
 - 5.1. Public Entity certifies that, consistent with 42 C.F.R. Part 433, Subpart B, no portion of the funds transferred to AHCCCS are derived from (1) direct or indirect provider-related donations (in cash or in kind), other than bona fide provider-related donations or (2) health care-related taxes, other than as permitted in Subpart B and any other federal law or regulation applicable to the permissibility of funding sources.
 - 5.2. Public Entity 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.
 - 5.3. Public Entity agrees to provide AHCCCS with supporting documentation of the sources of the funds transferred pursuant to this Agreement and of the bases for the Public Entity's assurance that the funds transferred comply with Sections 5.1 and 5.2.
 - 5.4. If Public Entity fails to provide supporting documentation required in Section 5.3 of this Agreement such that CMS adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS immediately, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to sources that do not comply with Sections 5.1 or 5.2 of this Agreement, only to the extent not reimbursed pursuant to Attachment B.
 - 5.5. Public Entity 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 Public Entity to provide the funding.
6. GENERAL PROVISIONS.
 - 6.1. 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.
 - 6.2. 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.
 - 6.3. Contract Term. This Agreement commences when signed by both parties. Notwithstanding the fact that certain AHCCCS or Public Entity obligations under this Agreement occur after the Term hereof, the parties agree that the Term of this Agreement continues through the later of conclusion of: (1) any payment reconciliations required by Federal or State law for payments made under this Agreement or (2) audits of payments made under this Agreement as required by State or Federal law and any administrative appeal of such reconciliation or audit.
 - 6.4. Compliance with Laws, Rules and Regulations. The Public Entity and its subcontractors must comply with all applicable Federal and State laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.
 - 6.4.1. 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 Agreement. The Parties shall comply with the provisions of Arizona Executive Order 2009-09, incorporated into this Agreement by reference, as if set forth in full herein.

- 6.4.2. 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.
- 6.5. Choice of Law. 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.
- 6.6. Compulsory Arbitration. 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.
- 6.7. Amendments. This Agreement, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as the Agreement.
- 6.8. Notice. Any notice required by the terms of the Agreement and any questions regarding the duties and obligations of this contract shall be directed to:

6.8.1. For AHCCCS:

Meggan LaPorte, CPPO, MSW
Chief Procurement Officer
AHCCCS
801 E. Jefferson, MD 5700
Phoenix, AZ 85034
Email: Meggan.Laporte@azahcccs.gov

6.8.2. For the Public Entity:

Thomas Husband
Accountant IV
251 W. Washington St., 9th Floor
Phoenix AZ 85003
Email: thomas.husband@phoenix.gov

- 6.8.3. Notwithstanding Section 6.8 of this Agreement, AHCCCS and the Public Entity will give notice by regular mail or any other means reasonably anticipated to provide actual notice to the other party of any change of the address, telephone number, name of the authorized signatory or designee; or name and/or address of the person to whom notices are to be sent.

6.9. Termination.

- 6.9.1. AHCCCS may terminate this Agreement if the PSI program is terminated for any reason including the withdrawal of CMS approval of the PSI program, a determination that funds provided or payments made under this Agreement do not comply with this Agreement, or a change in Federal or State law. Upon termination under this Section, AHCCCS shall return to the Public Entity any funds transferred pursuant to Section 4.2 or 4.4 not used as the non-Federal share of PSI payments made.
- 6.9.2. 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 Public Entity receives written notice of the cancellation unless the notice specifies a later time.

- 6.10. Records. The Parties 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.
- 6.11. 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.
- 6.12. 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 this Agreement, but only to the extent that such claims 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.
- 6.13. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to (1) create duties or obligations to or rights in Qualified Children's Hospitals or any other persons or entities not parties to this Agreement or (2) effect the legal liability of either party to the Agreement with respect to Qualified Children's Hospitals or any other persons or entities not parties to this Agreement.
- 6.14. No Joint Venture. Nothing in this Agreement is intended to create a joint venture between or among the Parties, including the Qualified Children's Hospitals, and it will not be so construed. Neither AHCCCS' nor the Public Entity'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.


NOW THEREFORE, AHCCCS and the Public Entity 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.

City of Phoenix
("Public Entity")

Arizona Health Care Cost Containment
System
("AHCCCS")

By: Jeffrey Barton, City Manager




By: Meggan LaPorte, Chief Procurement Officer

Date: _____

Date: Sep 8, 2022

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.

Counsel for Public Entity



Susan Russo, Counsel for AHCCCS

Date: _____

Date: Sep 8, 2022

TO THE INTERGOVERNMENTAL AGREEMENT
 BETWEEN
 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION
 (“AHCCCS”)
 AND
 City of Phoenix
 (“Public Entity”)
 For the Support of the
 Pediatric Services Initiative

Pursuant to the Agreement, the Public Entity has agreed to transfer public funds from the source(s) and in the amount(s) specified below as the Non-Federal Share of expenditures in support of the PSI for the Contract Year ending September 30, 2023:

Payment Date	Source	Amount
February 1, 2023	Phoenix Health Care Initiative Fund	\$ 2,500,000
May 2, 2023	Phoenix Health Care Initiative Fund	\$ 2,500,000
	Grand Total	\$ 5,000,000

On behalf of Phoenix Children's Hospital ("Hospital"), I hereby attest to the following under penalty of perjury as true and correct to the best of my knowledge:

1. For purposes of this attestation, the following terms have the following meanings:
 - a. *PSI or Pediatric Services Initiative* means the terms in the AHCCCS Contracts or in policies incorporated by reference into those contracts, that require the MCO to supplement payments to Qualified Children's Hospitals for inpatient and outpatient hospital services above the rates otherwise negotiated for Qualified Children's Hospitals that have a written contract with the MCO to provide service to persons enrolled with the MCO.
 - b. *CFR* means Code of Federal Regulations – the official compilation of Federal rules and requirements.
 - c. *Contract Year* means the period from October 1, 2022 through September 30, 2023.
 - d. *CMS* means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services.
 - e. *Qualified Children's Hospital* means a Hospital that (1) is a freestanding children's hospitals with more than 100 licensed pediatric beds (2) has completed and submitted to AHCCCS this fully executed attestation.
 - f. *Entity related to the Hospital or Qualified Children's Hospital* means:
 - i. An organization, association, corporation, or partnership formed by or on behalf of the health care provider;
 - ii. An individual with an ownership or control interest in the health care provider, as defined in 42 USC 1320a-3(a)(3);
 - iii. An employee, spouse, parent, child, or sibling of the health care provider, or of a person with an ownership or control interest in the Hospital, as defined in 42 USC 1320a-3(a)(3); or
 - iv. A supplier of health care items or services or a supplier to the health care provider.
 - g. *FFP or Federal Financial Participation* means 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 Program, Title XIX of the Social Security Act.
 - h. *Funding Partner* means collectively the Public Entities providing funds to AHCCCS to be used as the Non-Federal Share of a claim by AHCCCS for FFP associated with the PSI.
 - i. *Hospital* means a health care facility licensed in Arizona as a hospital that is registered with AHCCCS as a participating provider.
 - j. *MCO or Medicaid Managed Care Contractor* means an entity that has a contract with AHCCCS and that meets the definition in 42 C.F.R. § 438.2.
 - k. *Non-Federal Share* means the portion of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act, that are not FFP and which meet the requirements of 42 C.F.R. Part 433, Subpart B.

2. On behalf of the Hospital, I attest that:
 - a. The Hospital is a Qualified Children's Hospital.
 - b. No formal or informal agreements exist between the Hospital, or any Entity Related to the Hospital, and any Funding Partner for the direct or indirect return to any Funding Partner of any portion of payments made by any MCO to Qualified Children's Hospitals as part of the PSI or of payments made by the Funding Partner for the administration of the PSI.
 - c. No formal or informal agreement exists between (1) the Hospital or any Entity Related to the Hospital and (2) any other Qualified Children's Hospital, or any Entity Related to any other Qualified Children's Hospital, for the direct or indirect return to any Funding Partner of any portion of payments made by any MCO to any Qualified Children's Hospital as part of the PSI or of payments made by the Funding Partner for the administration of the PSI.
 - d. Neither the Hospital nor any Entity Related to the Hospital has made any direct or indirect donations (in cash or in kind) to any Funding Partner in excess of the limitations in 42 CFR Part 433, Subpart B.
3. The Hospital accepts that completion of this attestation is a condition of the Hospital's participation in PSI. The Hospital shall inform AHCCCS immediately if the Hospital enters into an agreement described in this attestation or makes any donation to any Funding Partner in excess of the limitations in 42 CFR Part 433, Subpart B associated with payments under PSI.
4. The undersigned Hospital agrees that in the event CMS issues a disallowance of FFP based on a determination that the source of the funds transferred by any governmental entity in support of PSI payments to the Hospital are either Federal funds, provider donations, or health care-related taxes that are not permissible under 42 C.F.R. Part 433, Subpart B, the Hospital will, upon final exhaustion of any administrative appeal related to such disallowance:
 - a. Refund to AHCCCS within 30 days of written demand an amount of the PSI payments made to the Hospital equal to the total computable amount associated with such disallowance, including any interest incurred as a result of an appeal.
 - b. Permit AHCCCS to offset the amount referenced in (a), to the extent it is not refunded, from any amounts otherwise due to the Hospital.
5. The undersigned attests that they have personal knowledge of the matters attested to herein and has the legal authority to bind the Hospital to the terms herein.

Dated: _____

By: _____

Print Name: Dennis Bruns

Title: Chief Financial Officer