



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: January 19, 2016

or Procurement Director Award

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**Contractor/Vendor Name (DBA):** Arizona Health Care Cost Containment System (AHCCCS)

**Project Title/Description:**

Intergovernmental Agreement (IGA) between Pima County and AHCCCS for Tucson Medical Center (TMC)  
Disproportionate Share Hospital Payment (DSH)

**Purpose:**

Through this program, eligible hospitals with qualified local match partners enter into a public / private agreement to draw down federal matching funds for their disproportionate share of indigent healthcare. In Arizona, under ARS 36-2903.01, qualifying health providers can work with local, county, and tribal governments to recoup funding for those services through these federal programs.

**Procurement Method:**

N/A

**Program Goals/Predicted Outcomes:**

Provide matching funds to AHCCCS to draw down 2:1 Federal matching funds to support health care operations in the community.

**Public Benefit:**

The Disproportionate Share Hospital Payment (DSH) program provides support to thousands of American hospitals where low-income inpatients account for a large amount of the patient load. DSH is a federal matching initiative working in conjunction with state Medicaid programs to mitigate the impact of indigent care on eligible local hospitals.

**Metrics Available to Measure Performance:**

Timely provision of funding to meet State and Federal budget timelines.

**Retroactive:**

No

To COB: 1-6-16

9 pgs (2)

Procure Dept 12/23/15 PM 3:13

**Original Information**

Document Type: CT Department Code: HD Contract Number (i.e., 15-123): 16-0175  
Effective Date: upon final Termination Date: 06/30/2016 Prior Contract Number (Synergen/CMS): N/A  
 Expense Amount: \$ 770,350.60  Revenue Amount: \$ \_\_\_\_\_  
Funding Source(s): Pima County Primary Property Tax Revenues /General Fund

Cost to Pima County General Fund: \$770,350.60

Contract is fully or partially funded with Federal Funds?  Yes  No  Not Applicable to Grant Awards  
Were insurance or indemnity clauses modified?  Yes  No  Not Applicable to Grant Awards  
Vendor is using a Social Security Number?  Yes  No  Not Applicable to Grant Awards  
If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
 Expense  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_  
Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

Contact: Sharon Grant

Department: Pima County Health Department Telephone: 724-7842

Department Director Signature/Date: \_\_\_\_\_ [Signature] 12/22/15

Deputy County Administrator Signature/Date: \_\_\_\_\_ [Signature] 12/23/15

County Administrator Signature/Date: \_\_\_\_\_ C. P. [Signature] 12/23/15  
(Required for Board Agenda/Addendum Items)



- 1.5. CMS: The 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. Disproportionate Share Hospital (DSH): a hospital meeting the requirements set forth in 42 U.S.C. § 1396r-4 and the Special Terms and Conditions of Arizona's Demonstration Project for Medicaid as approved by the Secretary of the United States Department of Health and Human Services under the authority of 42 U.S.C. § 1315.
  - 1.8. DSH Payments: a supplemental payment by AHCCCS pursuant to the Special Terms and Conditions of Arizona's Demonstration Project for Medicaid to a Disproportionate Share Hospital.
  - 1.9. Eligible Hospital(s): Hospitals that AHCCCS has determined meet the requirements of and qualify as a Disproportionate Share Hospital and that are listed in Attachment A to this Agreement.
  - 1.10. FFP or Federal Financial Participation: 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.
  - 1.11. State: The State of Arizona.
  - 1.12. Non-Federal Share: The portion of AHCCCS expenditures for services rendered through, and for the administration of, 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. PURPOSE: The purpose of this Agreement is to set forth the procedures under which the Public Entity will, at its discretion and contingent upon AHCCCS and CMS approval, transfer public funds for use as the Non-federal Share of DSH Payments under this Agreement for hospital services rendered from October 1, 2013 through September 30, 2014. It is the intent of the parties that the procedures herein fully comply with Federal and State laws, rules and regulations.
  3. ELIGIBILITY REQUIREMENTS. Monies transferred by the Public Entity and claimed by AHCCCS as the non-federal share of Medicaid expenditures under this Agreement may only be used for permissible DSH Payments and distributed to Eligible Hospitals. AHCCCS will determine which Eligible Hospitals are eligible for DSH Payments for hospital services from October 1, 2013 through September 30, 2014 and the amount of any distribution. Eligibility and distribution amount determinations for DSH Payments will be consistent with applicable Federal and State statutes, regulations, rules and the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315.
  4. AHCCCS RIGHTS AND OBLIGATIONS.
    - 4.1. Receipt and Distribution of Funds. Consistent with the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315, and state and federal laws and regulations, AHCCCS will use the funds transferred by the Public Entity to claim FFP and distribute an amount equal to the sum of the Non-Federal Share transferred by the Public Entity under this Agreement and the corresponding FFP to Eligible Hospitals as DSH Payments for hospital services provided from October 1, 2013 through September 30, 2014 in the amounts shown on Attachment A to this Agreement. Both the Non-Federal Share and the FFP under this Agreement may only be used for DSH payments to Eligible Hospitals.

4.2. AHCCCS Payment Recoupment from Eligible Hospital. AHCCCS, upon prior written notice to the Eligible Hospitals, will require Eligible Hospitals receiving DSH 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 from AHCCCS otherwise due to the Eligible Hospital(s) any amount:

4.2.1. Received by the Eligible Hospital from AHCCCS as DSH Payments that were based on inaccurate information provided by the Public Entity or the Eligible Hospital, that are found to be for an excluded expense, or that otherwise result in an inaccurate payment;

4.2.2. Paid by AHCCCS for which an Eligible Hospital's books, records, and other documents are not sufficient to clearly confirm that the Eligible Hospital was entitled to the DSH payments;

4.2.3. Paid by AHCCCS for which the Public Entity's books, records, and other documents are not sufficient to clearly confirm that the funds transferred to AHCCCS are public funds which meet the requirements of 42 C.F.R. Part 433, Subpart B;

4.2.4. Identified as payments that may not be claimed for FFP as the result of a CMS financial management review, deferral, disallowance, or audit.

4.3. AHCCCS is responsible for satisfying CMS requirements regarding reporting, adjusting claims for or reimbursing FFP, as necessitated by a recoupment as noted in Paragraphs 4.1 and 4.2 of this Agreement, or applicable Federal laws, rules and regulations. This provision does not relieve the Public Entity or an Eligible Hospital from their obligations under Paragraph 4.2.1 or the obligations of under Paragraphs 6.2 and 6.3.

4.4. In the event AHCCCS recoups DSH Payments from an Eligible Hospital, AHCCCS will promptly return to the Public Entity, without demand, that portion of the recoupment representing the Non-Federal Share contributed by the Public Entity under this Agreement.

4.5. Eligible Hospitals will receive and retain one hundred percent (100%) of all DSH payments and, except as provided in this Agreement or as required by federal law or regulatory authority, Eligible Hospitals are not required to return any portion of the DSH payment to the State, AHCCCS, or the Public Entity.

4.6. As a condition of making DSH payments, AHCCCS requires Eligible Hospitals receiving payments as a result of this Agreement to enter into a separate written agreement (Attachment B, the Agreement to Reimburse Impermissible Disproportionate Share Hospital Payments) with regard to the requirements in the event of a disallowance based on the permissibility of the transferred funds.

## 5. THE PUBLIC ENTITY'S RIGHTS AND OBLIGATIONS.

5.1. The Public Entity will transfer to AHCCCS the amount identified in Attachment A to this Agreement which amount shall be used pursuant to Section 4.1 above. The Public Entity warrants that the Non-Federal Share transferred by the Public Entity to AHCCCS is derived from the public sources identified in Attachment A to this Agreement.

5.2. Within fifteen (15) business days of AHCCCS receiving the funds transferred by the Public Entity under this Agreement, AHCCCS will make DSH Payments to the Eligible Hospitals in the amounts shown on Attachment A to this Agreement pursuant to Section 4.1 hereof without any deductions or set offs.

5.3. Within fifteen (15) days after the date of distribution of the DSH payments to the Eligible Hospitals, AHCCCS will provide the Public Entity a report showing the actual distribution of funds to the Eligible Hospitals.

6. COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION

6.1. Public Entity warrants 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.

6.2. Public Entity 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 direct or indirect provider-related donation (in cash or in kind) received by the Public Entity including all bona fide and presumed-to-be bona fide donations, and (2) all taxes collected and transferred by the Public Entity to AHCCCS under this Agreement.

6.3. If Public Entity fails to provide supporting documentation required in section 6.2 of this Agreement, or if any funds transferred by Public Entity are determined to be derived from provider-related donations or health care-related taxes 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 the impermissible provider-related donation and/or health care-related tax. Immediate payment by the Public Entity does not relieve AHCCCS of its authority under section 4.2 of this Agreement to pursue recoupment from the Eligible Hospitals or its obligation under section 4.4 to return to the Public Entity the Non-Federal portion of amounts recouped from the Eligible Hospitals.

6.4. 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. 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 defers or disallows any expenditures claimed by AHCCCS, then Public Entity 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. Immediate payment by the Public Entity does not relieve AHCCCS of its authority under section 4.2 of this Agreement to pursue recoupment from the Eligible Hospitals or its obligation under section 4.4 to return to the Public Entity the Non-Federal portion of amounts recouped from the Eligible Hospitals.

6.5. 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.

7. GENERAL PROVISIONS.

7.1. 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.

7.2. 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.

- 7.3. **Contract Term.** Notwithstanding the facts that certain AHCCCS or Public Entity obligations under this Agreement occur after the Term hereof, the parties agree that the Term of this Agreement commences when signed by both parties and continues through the later of the conclusion of: (1) any payment reconciliations required by the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315 applicable to DSH Payments or (2) audits of DSH payments as required by 42 CFR Part 447, Subpart E.
- 7.4. **Compliance with Laws, Rules and Regulations.** AHCCCS, the Public Entity, Eligible Hospitals, 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.
- 7.4.1. **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.
- 7.4.2. **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.
- 7.5. **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.
- 7.6. **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.
- 7.7. **Amendments.** This Agreement, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as the Agreement.
- 7.8. **Notices.** Any notices required by the terms of the Agreement and any questions regarding the duties and obligations of this contract shall be directed to:

7.8.1. For AHCCCS:

AHCCCS  
701 E. Jefferson, MD 5700  
Phoenix, AZ 85034  
Phone: 602-417-4538  
Fax: 602-417-5957  
Email: Margaret.Harley@azahcccs.gov

7.8.2. For the Public Entity:

Janet K. Leshner  
Deputy County Administrator for Medical and Health Services  
Pima County  
130 W. Congress, 10<sup>th</sup> floor  
Tucson, AZ 85701-1333

Phone: 520-724-8977  
Fax: 520-724-8171  
Email: Jan.Lesher@pima.gov

- 7.8.3. Notwithstanding section 7.7 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.
- 7.9. 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 Public Entity receives written notice of the cancellation unless the notice specifies a later time.
- 7.10. Records. The Parties, including Eligible Hospitals, 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.
- 7.11. 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.
- 7.12. 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 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.
- 7.13. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to (1) create duties or obligations to or rights in Eligible 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 Eligible Hospitals or any other persons or entities not parties to this Agreement.
- 7.14. No Joint Venture. Nothing in this Agreement is intended to create a joint venture between or among the Parties, including the Eligible 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.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

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

Pima County  
Public Entity ("Public Entity")

Arizona Health Care Cost Containment System  
("AHCCCS")

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Meggan Harley, Procurement and Contracts  
Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board

Date: \_\_\_\_\_

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Janet K Leshner, Deputy County Administrator  
for Medical and Health Services

Date: 12-23-15

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

\_\_\_\_\_  
Counsel for AHCCCS

Date: 12.22.15

Date: \_\_\_\_\_

## ATTACHMENT A

To the Intergovernmental Agreement  
Between  
The Arizona Health Care Cost Containment System Administration  
and  
Pima County  
(the "Public Entity")

Pursuant to the Agreement: (1) the Public Entity has designated the hospitals listed below as Eligible Hospitals, (2) the Public Entity has agreed to transfer public funds in the amount specified below as the Non-Federal Share of DSH Payments made to each Eligible Hospital; and (3) AHCCCS has agreed to use the transferred funds to make the DSH Payments specified below:

Eligible Hospital	Non-Federal Share	DSH Payment
Tucson Medical Center	\$770,350.60	\$2,350,779.98
<b>Totals:</b>	\$770,350.60	\$2,350,779.98

Pursuant to the Agreement, the Public Entity warrants that the amounts transferred under the Agreement are derived from the following sources:

Source	Amount
Pima County Primary Property Tax Revenues	\$770,350.60
<b>Total:</b>	\$2,350,779.98

**ATTACHMENT B**

**AGREEMENT TO REIMBURSE IMPERMISSIBLE DISPROPORTIONATE SHARE HOSPITAL PAYMENTS**

As a condition of receiving Disproportionate Share Hospital (DSH) Payments from AHCCCS under A.R.S. § 36-2903.01(P), 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 DSH 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:

- (1) refund to AHCCCS within 30 days of written demand an amount of the DSH 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; and/or
- (2) permit AHCCCS to offset the amount referenced in (1), to the extent it is not refunded, from any amounts otherwise due to the Hospital.

**DEFINITIONS.** As used in this Agreement, the following terms have the following meanings:

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.

CMS: Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.

FFP: Federal financial participation.

Governmental Entity: local, county or tribal governments, universities under the jurisdiction of the Arizona Board of Regents or other governmental entities that are legally qualified to participate in funding program expenditures pursuant to A.R.S. § 36-2903.01(P) and that have transferred funds to AHCCCS under that authority.

Hospital: the undersigned Hospital, including the hospital and its employed physicians.

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2016 by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of: \_\_\_\_\_