



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

**Requested Board Meeting Date:** September 15, 2015

**or Procurement Director Award** ☐

**Contractor/Vendor Name (DBA):** Banner Health

**Project Title/Description:**

Court Ordered Evaluation Services Pursuant to ARS 36, Chapter 5

**Purpose:**

This contract between Pima County and Banner Health provides for the provision of involuntary commitment services, with Pima County oversight, which are hospital-based psychiatric services required pursuant to Arizona Revised Statutes Title 36, Chapter 5, Court Ordered Evaluations (COE).

**Procurement Method:**

N/A

**Program Goals/Predicted Outcomes:**

This contract allows the Behavioral Health Department to bring the COE services in-house and provide the same services at a lower cost. It is anticipated that Pima County will save approximately \$543,000 to \$571,000 per year by doing so.

**Public Benefit:**

As a result of Pima County providing the COE services instead of an outside Vendor, a lower cost will be achieved because profit will not have to be paid and overhead expenses will be significantly reduced.

**Metrics Available to Measure Performance:**

For quality assurance, performance measures identified by Pima County and Contractor will be provided on a monthly basis as set forth in Exhibit D (Reporting) of the contract.

**Retroactive:**

No

SEP 08 15:40:13 PC CLK OF HD

To: COB - 9.10.15 (2)  
Ver. - 1  
pgs. 24  
Addendum

**Original Information**

Document Type: CT Department Code: OMS Contract Number (i.e., 15-123): 16\*0048  
Effective Date: 10/1/15 Termination Date: 9/30/16 Prior Contract Number (Synergen/CMS): N/A  
☒ Expense Amount: \$ 1,500,000 ☐ Revenue Amount: \$ \_\_\_\_\_  
Funding Source(s): General Fund

Cost to Pima County General Fund: \$1,500,000

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: Roxanne Ziegler

Department: OMS/Behavioral Health Telephone: 724-7834

Department Director Signature/Date: [Signature] 9-3-15

Deputy County Administrator Signature/Date: [Signature] 9-3-15

County Administrator Signature/Date: [Signature] 9/4/15  
(Required for Board Agenda/Addendum Items)

**PIMA COUNTY BEHAVIORAL HEALTH DEPARTMENT**

**PROJECT: COURT ORDERED EVALUATION SERVICES PURSUANT TO ARS 36, CHAPTER 5**

**CONTRACTOR: BANNER HEALTH 1441 N. 12<sup>TH</sup> STREET PHOENIX, AZ 85006**

**AMOUNT: \$1,500,000**

**FUND: General Fund**

**CONTRACT**

NO. *CT-OMS-1600000000000000048*

**AMENDMENT NO.** \_\_\_\_\_

This number must appear on all invoices, correspondence and documents pertaining to this contract.

(STAMP HERE)

**PROFESSIONAL SERVICES CONTRACT**

THIS Agreement, entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY; and Banner Health dba Banner University Medical Group and Banner University Medical Center–South Campus LLC hereinafter called CONTRACTOR,

**WITNESSETH**

WHEREAS, pursuant to Arizona Revised Statutes §36-545.06, COUNTY is responsible for the provision, either directly or by contract, of the services of a screening agency and an evaluation agency; and

WHEREAS, COUNTY provides funding for the seriously mentally ill and the services of a screening agency through an Intergovernmental Agreement with the Arizona Department of Health Services; and

WHEREAS, COUNTY has financial responsibility for certain services provided as part of the involuntary commitment process, and has the expectation that those services be provided in the least restrictive environment and most cost effective setting appropriate for an individual's needs; and

WHEREAS, COUNTY is authorized to enter into this Agreement pursuant to Pima County Board of Supervisors Policy D 29.7; and

WHEREAS, COUNTY has the authority, but not the obligation, to provide for the care and maintenance of the sick of the county pursuant to A.R.S. §11-251(5) and provide for the hospitalization and medical care of the sick in the county and, to the extent that such expenses are not covered by a third party payer, to persons under the supervision of a county corrections agency pursuant to A.R.S. §11-291;

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE I - TERM AND EXTENSION/RENEWAL/CHANGES**

This Agreement commences on October 1, 2015 and terminates on September 30, 2016, unless sooner terminated or further extended pursuant to the provisions of this Agreement. The parties may renew this Agreement for up to four (4) additional one-year periods or any portion thereof. Negotiation of rates for future years beyond the initial term, if applicable, shall commence by one hundred and eighty (180) days prior to, and must be completed by ninety (90) days prior to, the expiration of the existing contract term.

Any modification or extension of the Agreement termination date will be by formal written amendment executed by the parties hereto.

Amendments to the Agreement must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement code, before any work or deliveries under the amendment commences.

## **ARTICLE II – SCOPE OF SERVICES**

This Agreement establishes the terms under which CONTRACTOR will provide to COUNTY products and services in accordance with the attached **EXHIBIT A: SCOPE OF SERVICES** (5 pages).

CONTRACTOR will provide to COUNTY the goods and services as defined in this Agreement and the attached Exhibits. All goods and services will comply with the requirements and specifications as called for in this Agreement as well as the Arizona Revised Statutes, Title 36, Chapter 5 which is incorporated into the Agreement the same as if set forth in full herein.

CONTRACTOR will employ suitably trained and skilled professional personnel to perform all services under this Agreement as indicated in **EXHIBIT A: SCOPE OF SERVICES, Section C. Provider Qualifications and Licensure**.

## **ARTICLE III – COMPENSATION AND PAYMENT**

In consideration for the goods and services specified in this Agreement, COUNTY agrees to pay to CONTRACTOR amounts resulting from the adjudication of healthcare claims for eligible services provided to eligible patients as set forth in **EXHIBIT B: COMPENSATION** (2 pages).

Although State and City sales tax may not be fully or accurately defined on an order, they will be paid when they are DIRECTLY applicable to COUNTY and invoiced as a separate line item; those taxes should not be included in the item unit price.

CONTRACTOR will provide to COUNTY "clean claims" for healthcare services rendered pursuant to this Agreement. CONTRACTOR must submit such claims to COUNTY within ninety (90) days of the last date of service or within ninety (90) days of receipt of an Explanation of Benefits (EOB) from a previously billed payer. COUNTY may refuse to pay any amount billed in an untimely manner, and may refuse to pay any amount billed more than one hundred eighty (180) days after the last date of service on any specific claim, pursuant to A.R.S. § 11-622(C).

It is the intention of both parties that pricing remain firm during the term of the Agreement. In the event that economic conditions are such that CONTRACTOR desires unit price increases upon renewal of the Agreement, CONTRACTOR will submit a written request to COUNTY with supporting documents justifying such increases at least ninety (90) days prior to the termination date of the Agreement. Unit Prices will include compensation for the CONTRACTOR to implement and actively conduct price control activities. COUNTY will review the proposed pricing and determine if it is in the best interest of COUNTY to renew or extend the Agreement as provided for in Article I of this Agreement.

CONTRACTOR will not bill COUNTY for goods and services outside of the scope of services indicated herein or after the termination date of this Agreement without prior authorization via an amendment executed by COUNTY. Goods and services provided in excess of Line Item or Contract Total Amounts without prior authorization by fully executed amendment will be at CONTRACTOR'S own risk.

For the period of record retention required under Article XXII, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

## **ARTICLE IV - INSURANCE**

CONTRACTOR'S insurance will be primary insurance and non-contributory with respect to all other available sources. CONTRACTOR will obtain and maintain at its own expense, during the entire term of this Agreement the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 per occurrence and \$2 million general aggregate. COUNTY, including its employees, officers and officials are to be named as an additional insured for all operations performed

within the scope of the Agreement between COUNTY and CONTRACTOR. Such additional insured shall be covered to the full limits of liability purchased by CONTRACTOR, even if those limits of liability are in excess of those required by this Agreement;

- b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Agreement with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
- c) Professional liability (Errors and Omission) insurance in the amount of \$10,000,000.00. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed; and,
- d) Workers' compensation insurance to cover obligations imposed by state statutes having jurisdiction of CONTRACTOR's employees engaged in the performance of the work or services under this Agreement; and Employer's Liability insurance of not less than: \$500,000 for each accident, \$500,000 disease for each employee, and; \$1,000,000 disease policy limit.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to COUNTY under such policies. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The policies required hereunder shall contain a waiver of transfer of rights of recovery (subrogation) against COUNTY, its agents, representatives, officers, directors, officials and employees. CONTRACTOR will provide to COUNTY current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days' written notice to the COUNTY of cancellation, non-renewal or material change.

#### **ARTICLE V – INDEMNIFICATION**

CONTRACTOR will indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

CONTRACTOR warrants that all products and services provided under this contract are non-infringing. CONTRACTOR will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

#### **ARTICLE VI - COMPLIANCE WITH LAWS**

CONTRACTOR will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this Agreement require a license issued by the Arizona Registrar of Contractors (ROC), CONTRACTOR certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona govern the rights, performance and disputes of and between the parties. Any action relating to this contract must be brought in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during an agreement apply, but do not require an amendment or revisions.

## **ARTICLE VII - INDEPENDENT CONTRACTOR**

The status of the CONTRACTOR will be that of an independent contractor. Neither CONTRACTOR nor CONTRACTOR's officers, agents or employees will be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Agreement and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR'S failure to pay such taxes.

## **ARTICLE VIII - SUBCONTRACTOR**

CONTRACTOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement creates any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

## **ARTICLE IX - ASSIGNMENT**

Notwithstanding any provision of the Agreement to the contrary, either party may assign or otherwise transfer its interest under this Agreement to any related entity upon written consent of the other party. A related entity shall include a parent, subsidiary, an entity resulting from the sale of all or substantially all of the other party's assets or from a merger or consolidation

## **ARTICLE X - NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein **including flow down of all provisions and requirements to any subcontractors**. During the performance of this Agreement, CONTRACTOR will 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.

## **ARTICLE XI - AMERICANS WITH DISABILITIES ACT**

CONTRACTOR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

## **ARTICLE XII - AUTHORITY TO CONTRACT**

CONTRACTOR warrants its right and power to enter into this Agreement. If any court or administrative agency determines that COUNTY does not have authority to enter into this Agreement, COUNTY will not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Agreement.

## **ARTICLE XIII - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

## **ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST**

This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

**ARTICLE XV – TERMINATION OF AGREEMENT FOR DEFAULT**

A. Upon a failure by CONTRACTOR to cure a default under this Agreement within thirty (30) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Agreement for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONTRACTOR will be liable for any damage to the COUNTY resulting from CONTRACTOR's default, including any increased costs incurred by COUNTY in completing the work.

B. The occurrence of any of the following, without limitation to the named events, constitutes an event of default:

1. Abandonment of or failure by CONTRACTOR to observe, perform or comply with any material term, covenant, agreement or condition of this Agreement, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Agreement, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
3. Refusal or failure to remedy defective or deficient work within a reasonable time;
4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR's performance of this Agreement;
5. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Agreement;
6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;
7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Agreement; or
8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

C. In the event of a termination for default:

1. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project become COUNTY's property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
2. COUNTY may withhold payments to CONTRACTOR arising under this or any other Agreement for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONTRACTOR is determined; and
3. Subject to the immediately preceding subparagraph (2), COUNTY's liability to CONTRACTOR will not exceed the Agreement value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

D. The Agreement will not be terminated for default nor CONTRACTOR charged with damages under this Article, if:

1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Examples of such causes include:
  - (i) Acts of God or of the public enemy,
  - (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
  - (iii) Acts of another Contractor in the performance of an Agreement with COUNTY,
  - (iv) Fires,
  - (v) Floods,

- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the subcontractor(s); and

2. The CONTRACTOR, within seven (7) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies the COUNTY in writing of the cause(s) therefore. In this circumstance, the COUNTY will ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.

E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONTRACTOR's designated representative, by facsimile transmission with notice of receipt, or under the Notices clause of this Agreement.

F. If, after termination of the Agreement for default, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the COUNTY.

G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Agreement.

#### **ARTICLE XVI – TERMINATION FOR CONVENIENCE**

COUNTY reserves the right to terminate this Agreement at any time and without cause by serving upon CONTRACTOR thirty (30) days' advance written notice of such intent to terminate. In the event of such termination, the COUNTY'S only obligation to CONTRACTOR will be payment for services rendered prior to the date of termination.

Notwithstanding any other provision in this contract, this Agreement may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Agreement. In the event of such termination, COUNTY will have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

#### **ARTICLE XVII – REMITTANCES AND NOTICES**

Any notice required or permitted to be given under this Agreement will be in writing and will be served by personal delivery or by certified mail upon the other party as follows:

**COUNTY:**

Danna Whiting, Behavioral Health Administrator  
Pima County Behavioral Health Office  
3950 S. Country Club Road Suite 3240  
Tucson, Arizona 85714  
Ph: 520.724.7923

**CONTRACTOR:**

David Bixby, Sr. Vice President & General Counsel  
Banner Health  
1441 N. 12<sup>th</sup> Street  
Phoenix AZ 85006  
Ph: 602.747.4130

John Neunner, Managed Care Contracting Sr. Dir.  
Banner Health  
1441 N. 12<sup>th</sup> Street  
Phoenix AZ 85006  
Ph: 602.747.4636



CONTRACTOR must notify COUNTY within five (5) business days when there is a change in the above remittance or notice addresses.

#### **ARTICLE XVIII - NON-EXCLUSIVE AGREEMENT**

CONTRACTOR understands that this Agreement is nonexclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

#### **ARTICLE XIX – OTHER DOCUMENTS**

Not Applicable

#### **ARTICLE XX - REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

#### **ARTICLE XXI - SEVERABILITY**

Each provision of this Agreement stands alone, and any provision of this Agreement is found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

#### **ARTICLE XXII – BOOKS AND RECORDS**

CONTRACTOR will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

In addition, CONTRACTOR will retain all records relating to this Agreement at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

#### **ARTICLE XXIII – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 et seq., all information submitted in response to this Agreement, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors, subject to limitations indicated in the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

Any records or information, not otherwise protected by HIPAA, submitted as a result of this Agreement that CONTRACTOR reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CONTRACTOR upon submission.

Notwithstanding the above provisions, in the event records, exclusive of protected health information, marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release will not be counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor will COUNTY be in any way financially responsible for any costs associated with securing such an order.

#### **ARTICLE XXIV – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONTRACTOR hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each subcontractor who performs any work for CONTRACTOR under this Agreement likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting CONTRACTOR to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

CONTRACTOR will advise each subcontractor of COUNTY's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article will be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR's approved construction or critical milestones schedule, such period of delay will be deemed excusable delay for which CONTRACTOR will be entitled to an extension of time, but not costs.

#### **ARTICLE XXV- HIPAA COMPLIANCE**

The parties agree that Pima County's Behavioral Health Department is a covered entity for purposes of the Health Insurance Portability and Accountability Act (HIPAA) and that CONTRACTOR, as COUNTY'S Business Associate, is bound by the terms of HIPAA to the same degree and extent as COUNTY and must comply with the terms of the Business Associate Agreement (BAA) attached hereto as Exhibit C which is incorporated by this reference.

#### **ARTICLE XXVI - ENTIRE AGREEMENT**

This Agreement, together with its Exhibits as indicated below, constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

The following documents are attached and incorporated into the Agreement as set forth herein:

- Exhibit A: Scope of Services (5 pages)
- Exhibit B: Compensation (2 pages)
- Exhibit C: Business Associate Agreement (BAA) (3 pages)

Exhibit D: Reporting (1 page)  
Exhibit E: Glossary (3 pages)

IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the dates indicated below.

**PIMA COUNTY:**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
*Paul J. Pomeroy*

Deputy County Attorney

\_\_\_\_\_  
9-3-15

Date

**APPROVED AS TO CONTENT**

\_\_\_\_\_  
*O. Dur*

Behavioral Health Administrator

\_\_\_\_\_  
9-3-15

Date

**CONTRACTOR:**

\_\_\_\_\_  
*Chuck Lehn*

Authorized Officer Signature

\_\_\_\_\_  
*Joe*  
**Chuck Lehn, EVP, Strategic Growth**  
Printed Name and Title

\_\_\_\_\_  
9-2-2015  
Date

\_\_\_\_\_  
Banner University Medical Group  
TIN 94-2958258

\_\_\_\_\_  
Banner University Medical Center-South  
Campus LLC  
TIN 90-1074558

## **EXHIBIT A: SCOPE OF SERVICES**

### **A. INVOLUNTARY COMMITMENT COVERED SERVICES:**

CONTRACTOR shall provide involuntary commitment services, which are hospital-based psychiatric services required pursuant to Arizona Revised Statutes Title 36, Chapter 5, Article 4, Court Ordered Evaluations (COE). Hospital-based psychiatric services include the following:

1. **Emergency Department (ED) Services:** CONTRACTOR shall provide all necessary emergency psychiatric services to Proposed Patients who present or are presented to CONTRACTOR for mental health services through CONTRACTOR'S Emergency Department or, pursuant to the requirements of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, regulations which are set forth in the Code of Federal Regulations, 42 C.F.R. 489.24, 42 C.F.R. 413.65 and C.F.R. 489.20, at other sites located on CONTRACTOR's premises.
2. **Psychiatric Admissions:** CONTRACTOR shall provide necessary psychiatric services, limited to those offered by CONTRACTOR, to Proposed Patients admitted pursuant to an Application for Emergency Admission for Evaluation or a Court Order for Evaluation.
  - a. CONTRACTOR shall provide services in compliance with the provisions of ARS Chapter 5, Article 4. Notwithstanding statutorily permissible timeframes, CONTRACTOR must:
    1. Ensure that evaluations are performed as required under ARS Chapter 5, Article 4, and, if clinically appropriate, submit to the Pima County Attorney the Petition for Court Ordered Treatment, if any, on the same or the next business day following the completion of the second evaluation. Court ordered evaluations must be performed by licensed psychiatrists, except that, pursuant to ARS 36-501, a psychiatric resident in a training program approved by the American Medical Association or by the American Osteopathic Association may examine the person in place of one of the psychiatrists if he is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in his training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys. In the event an evaluation required pursuant to this section is performed by a psychiatric resident, the second required evaluation must be performed by a psychiatrist other than the psychiatrist supervising the psychiatric resident.
    2. Ensure that Proposed Patients are offered every opportunity, as clinically appropriate, to participate in treatment on a voluntary basis at any time during the involuntary commitment-related hospital stay, including on weekends and holidays, with appropriate documentation to be filed with the Court on the first available business day thereafter.
    3. Ensure that Proposed Patients are assessed on a daily basis, including on weekends and holidays, to determine whether Proposed Patients continue to be suitable for involuntary commitment. If, at any point during the stay, including weekends and holidays, Proposed Patients are found not to be suitable for involuntary commitment under ARS Title 36, Chapter 5, CONTRACTOR shall remove the Proposed Patient from the involuntary commitment process and either discharge Proposed Patient from the facility or keep Proposed Patient as a voluntary inpatient with a payer other than COUNTY, with appropriate documentation to be filed with the Court on the first available business day thereafter. CONTRACTOR shall ensure that such daily assessment is documented in the Proposed Patient's medical chart.

4. CONTRACTOR will ensure that progress notes contain the following information:
    - a. Day 1: Admitting diagnoses: Axis I, II and III
    - b. Upon Admission and Daily: Was patient offered voluntary treatment? If not, why not?
    - c. Upon Admission and Daily: Describe behaviors and symptoms that indicate the patient requires continued involuntary treatment today.
  5. CONTRACTOR must afford Proposed Patients the patients' rights that are established in Article 2 of Chapter 5, Title 36 of Arizona Revised Statutes.
3. Inpatient Professional Services: CONTRACTOR shall assure that Psychiatrists on its medical staff or a separate physicians group provide Contract Services to Proposed Patients in compliance with the terms of this Agreement and the provisions of ARS Title 36, Chapter 5.
4. Coordination with Courts and Pima County Attorney's Office Health Law Unit:
  - a. CONTRACTOR must complete and submit evaluations, petitions, motions, affidavits and any and all other paperwork required in connection with the involuntary commitment process to the Pima County Attorney's Office (PCAO) Health Law Unit according to the timetable established by the PCAO Health Law Unit.
  - b. CONTRACTOR must coordinate with the PCAO Health Law Unit to dismiss any pending proceedings for Court Ordered Evaluation or Court Ordered Treatment, when the attending physician determines that the Proposed Patient can engage in treatment on a voluntary basis, or does not suffer from a mental disorder as defined in A.R.S. section 36-501.
5. Exclusions: Medical services, rendered to Proposed Patients, which are not involuntary commitment services, unless COUNTY is otherwise responsible for a Proposed Patient's medical costs. CONTRACTOR should not bill, and County will not compensate CONTRACTOR, for such services. In the event that CONTRACTOR admits Proposed Patients to a medical service, CONTRACTOR shall ensure that psychiatric providers consult on a clinically appropriate basis with the Proposed Patient's non-psychiatrist attending physician until the Proposed Patient is transferred to CONTRACTOR's psychiatric service.
6. Coordination of Benefits: Before billing COUNTY for services provided in this Agreement, CONTRACTOR must make appropriate inquiry and determine, to the best of its ability, whether Proposed Patients are eligible for services that may be reimbursed by any payer other than COUNTY. CONTRACTOR must submit to COUNTY, together with each claim for payment for services rendered pursuant to this Agreement, evidence of denial of coverage by other known insurers, Remittance Advice, or documentation substantiating CONTRACTOR's efforts to discover and verify other potential payer coverage. CONTRACTOR agrees to accept all payments from insurers or non-County payers as payment in full, except that following COUNTY'S receipt of Remittance Advice, COUNTY will pay the co-payment, co-insurance or deductible for which the patient may otherwise be liable. In no event will COUNTY compensate CONTRACTOR in excess of the rates set forth in this contract. CONTRACTOR will ensure that no payer other than Pima County exists for Proposed Patients receiving services under this Agreement. Verification is to include examination of patient/family information to determine if the patient is any of the following:
  1. Employed;
  2. Medicaid eligible;

3. Medicare eligible;
4. Covered by, or eligible for, commercial or private insurance.
7. **Verification of Residency:** Before billing COUNTY for services provided in this contract, CONTRACTOR must make appropriate inquiry and determine, to the best of its ability, whether Proposed Patients reside within the geographical boundaries of COUNTY or whether the Proposed Patients are not residents of the State of Arizona. CONTRACTOR must submit claims for services rendered to Proposed Patients who are residents of other Arizona counties to the counties of residence, except for petitions that are initiated and filed within Pima County.
8. **Concurrent Review/Utilization Management:** COUNTY may conduct concurrent or retrospective review of all Involuntary Commitment Covered Services and Emergency Medical Services provided by CONTRACTOR to determine appropriateness and medical necessity of such services. COUNTY may deny claims for services or recover payment made to CONTRACTOR for denied services pursuant to **EXHIBIT B: COMPENSATION, Section 3 Claims Denial**. Any repayment, recovery or recoupment will be made by deduction from any amount owed to CONTRACTOR by COUNTY as the result of any contract between COUNTY and CONTRACTOR. CONTRACTOR shall have the right to appeal such denial or recovery pursuant to the terms described in COUNTY's Provider Manual.

#### **B. FACILITATION OF TRANSFER AND ADMISSION**

CONTRACTOR must cooperate and collaborate with other local hospitals, evaluating agencies, and the Regional Behavioral Health Authority and its crisis system to facilitate transfer of proposed patients to an available psychiatric bed as expeditiously as possible. CONTRACTOR will follow guidelines and protocols in COUNTY's Provider Manual that specify transfer and admission of proposed patients in the community.

#### **C. PROVIDER QUALIFICATIONS AND LICENSURE**

CONTRACTOR affirms that it and any of CONTRACTOR's employees or sub-contractors providing services pursuant to this agreement were and are appropriately licensed by the State of Arizona on the dates of service. COUNTY reserves the right to withhold payment and/or terminate this agreement for any services rendered by any entities or individuals whose license has been suspended or revoked.

In addition, CONTRACTOR shall meet and maintain the following requirements throughout the term of this Agreement:

1. Accreditation through the Joint Commission or is a hospital with an inpatient psychiatric program that undergoes a State survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital, or is accredited by a national accrediting organization whose hospital accrediting program has been approved by CMS if providing treatment to members under the age of 21; and
2. Meets the requirements specified in 42 CFR 440.10 and Part 482 and is licensed pursuant to A.R.S. § 36, Chapter 4, Articles 1 and 2; or
3. For adults age 21 and older, certified as a provider under Title XVIII of the Social Security Act; or
4. For adults age 21 or over, currently determined by ADHS Assurance and Licensure to meet such requirements.

#### **D. MINIMUM STAFFING REQUIREMENTS**

CONTRACTOR will maintain organizational, managerial and administrative systems and staff capable of fulfilling all contractual requirements and will employ staff persons with adequate time designated to carry out the required functions.

CONTRACTOR shall provide sufficient staffing to ensure:

- a. COEs are conducted as quickly as possible so as to expedite transition to voluntary status, petition for court-ordered treatment or discontinuation of the involuntary commitment process, as clinically indicated;
- b. All evaluations, petitions, motions, affidavits and other paperwork required in connection with the COE process are completed and submitted according to the Pima County Attorney's Office and court deadlines; and
- c. Patient and hospital staff are available for court appearances at the date, time and location ordered by the court schedules;
- d. Ensure a psychiatrist is available 24/7 as backup to a psychiatric and mental health nurse practitioner to discharge the patient from COE if further evaluation is not appropriate or the patient applies for treatment on a voluntary basis pursuant to A.R.S. §36-531.

#### **E. DISCHARGE PLAN**

All members receiving inpatient services under this contract will be discharged with a discharge plan. CONTRACTOR will work collaboratively with stakeholders in the placement and discharge of members from Level I services.

1. CONTRACTOR will ensure timely completion of discharge plans and provide a copy of the discharge summary to the member's RBHA assigned provider if applicable.
2. CONTRACTOR will assure that medication records are provided as a part of the discharge plan to the assigned CSP to assure coordination of care upon transition to the community, if applicable.
3. CONTRACTOR will work collaboratively with the assigned CSP, if applicable, to make arrangements to provide for discharges daily, including evenings, weekends and holidays.

#### **F. UTILIZATION MANAGEMENT**

1. CONTRACTOR shall adopt, maintain, and observe utilization review plans that conform to nationally accepted accreditation standards. CONTRACTOR will provide evidence of compliance with 42 CFR requirements to COUNTY at least annually or upon request. Specific Federal and AHCCCS compliance activities include:

- a. Development of Certifications of Need and Re-Certifications of Need and submission of those certifications in compliance with Pima County Providers Manual.
- b. Development of and performance of services based on a plan of care in accordance with 42 CFR 441.154 to 456.
- c. Development and implementation of utilization management plans and committees in accordance with 42 CFR 456.100 to 129 and 456.200 to 213.

2. CONTRACTOR will make available to COUNTY staff in person or telephonic access to professional behavioral health (non-clerical) staff that can review the medical record and present the basis for continuing medical necessity of Level I inpatient services. COUNTY may conduct concurrent review on admission and at frequent intervals during acute inpatient hospital stays to validate the medical necessity for continued stay and to evaluate quality of care.

3. CONTRACTOR will provide by email (PCBH.UM@pima.gov), within 24 business hours of request, any documentation requested by COUNTY UM that is needed to verify admission or continued stay criteria are being met.

4. COUNTY determines the appropriateness of continued services in consultation with physician advisors, as necessary. If it is determined that service is no longer appropriate, COUNTY UM will initiate a recommendation of denial. Continued hospital services may be denied when a patient no longer meets intensity and severity criteria.



5. COUNTY UM will notify the attending physician and the hospital UM liaison verbally with a written follow-up notification within three (3) days regarding a potential denial of coverage and the denial date. The attending physician has one (1) business day to agree or disagree and to provide information to COUNTY UM justifying medical necessity for continued stay. Clinical Information presented after the time of offer for collaboration will not be considered retrospectively.

6. The CONTRACTOR shall provide COUNTY UM (PCBH.UM@pima.gov) confirmation of each member's discharge date and disposition within one (1) business day of the member's discharge, including the following information: Patient first and last name, Patient Date of Birth, Admit Date, Discharge Date, and Disposition.

7. The CONTRACTOR will facilitate early identification of members who may be ready for discharge over a weekend and/or holiday, participate in adequate planning in the event the member is ready for discharge, provide sufficient physician staff to discharge the member when ready, write prescriptions and ensure hospital discharge planners/social workers communicate with the receiving CSP team and service provider to allow weekend and holiday discharges when members no longer meet criteria for continued stay and will actively coordinate such discharges with CSP personnel.

8. The CONTRACTOR, including its hospital medical staff, will meet with COUNTY as needed for the purpose of collaboration and discussion of application of medical necessity criteria, standards of documentation supporting use of criteria and other performance improvement activities as determined necessary by COUNTY to reduce occurrence of denials and appeals. CONTRACTOR's failure to provide access to medical staff for these purposes may result in contractual penalties.

9. COE services and claims for payment are subject to COUNTY's concurrent and retrospective utilization review and management to assess compliance with statutory requirements, appropriate payment of claims, documentation of clinical need for inpatient COE or COT and efficiency and effectiveness of processes applicable to service provision.

**(Remainder of this page intentionally left blank)**

## EXHIBIT B: COMPENSATION

### Payment for Involuntary Commitment Covered Services:

1. **For services provided October 1, 2015 through September 30, 2016**, COUNTY will compensate CONTRACTOR as follows, with the understanding that in the event that a separate physicians group provides services pursuant to this contract, CONTRACTOR shall ensure performance and compliance of said physicians group to the terms of this contract and shall be responsible for reimbursing said physicians group for services provided from the compensation paid to CONTRACTOR:

- a. **For Inpatient Covered Services:** CONTRACTOR shall be reimbursed at an all-inclusive COE daily tier rate of \$940.00 for up to four (4) consecutive days of service for which COUNTY is the payer, and for patients with no third party health insurance coverage and no ability to pay, at an all-inclusive post-COE daily rate of \$244.00 for up to four (4) additional consecutive days of service for which COUNTY is the payer. Such tier rates shall include all services necessary for the support and care of the patient including compensation for daily assessment of Proposed Patients by physician staff as indicated herein, but shall not include compensation for up to two psychiatric evaluations required pursuant to ARS Title 36, Chapter 5 to satisfy the Court Order for Evaluation as indicated below\*.

\*Inpatient days do not include the dates of, or days subsequent to, the date of hearing on Petition for Court Ordered Treatment, the date of transition from involuntary to voluntary status, or date of discharge, as applicable. COUNTY will not compensate CONTRACTOR for any additional inpatient days resulting from CONTRACTOR's failure to complete and file the two psychiatric evaluations required under Article 4, Chapter 5, Title 36 of Arizona Revised Statutes according to the deadlines established herein, or for evaluations that are determined to be deficient by the Court. In no event will COUNTY pay or otherwise compensate CONTRACTOR for services provided on or after the date an Order for Treatment is issued unless the patient is in the custody of the Pima County Sheriff's Department, in which event, COUNTY will compensate CONTRACTOR for services provided at the AHCCCS Tier Rate in effect on the date of service.

- b. **For Professional Covered Services:** CONTRACTOR will be compensated for up to two (2) psychiatric evaluations performed on Proposed Patients pursuant to a Court Order for Evaluation and completed pursuant to the timelines indicated in Article 4, Chapter 5, Title 36 of the Arizona Revised Statutes following the issuance of a Court Order for Evaluation. COUNTY will not compensate CONTRACTOR for psychiatric evaluations that are not completed in compliance with the statutory timeline or for evaluations that are not conducted or prepared in a manner acceptable to the Court. CONTRACTOR must bill for the first evaluation using procedure code 90791 and for the second evaluation using procedure 90791 with modifier PP. Payment will be made at the higher rate of either \$142.47 per 90791 evaluation, or at 100% of the AHCCCS fee for service schedule for place of service in effect on the date of service for procedure code 90791, as amended and updated by AHCCCS from time to time. Any changes in AHCCCS fee for service rates shall apply on the date such rate changes are published by AHCCCS and will not require an amendment to the contract.
- c. Where CONTRACTOR provides psychiatric services to a Proposed Patient in the **Emergency Department** under an Application for Emergency Admission and the Proposed Patient is not admitted for psychiatric services, COUNTY will

compensate CONTRACTOR for such services according to the AHCCCS fee for service rates for such services in effect on the dates of service.

2. In the event that an error or non-compliance with statutory timelines by CONTRACTOR or CONTRACTOR's staff causes an involuntary commitment action to be dismissed by the Court or rejected by the Pima County Attorney's Office, COUNTY will not compensate CONTRACTOR for either the inpatient days provided or the evaluations performed which pertain to the dismissed involuntary commitment action.
3. Claims denial: COUNTY may deny claims for services in the event CONTRACTOR does not adhere to the terms of this contract and for any of the following reasons:
  1. Claims submitted for medical services provided to Proposed Patients;
  2. Provider bills for services to Proposed Patients after their status changed to voluntary;
  3. Invalidation of a petition due to physicians performing evaluations after the statutory timelines, including payments for evaluation and inpatient day(s) associated with the hospitalization;
  4. Dismissal of a Petition for Court Ordered Treatment due to a physician's unavailability at the date, time and place of hearing;
  5. Failure to file complete petitions with the PCAO within the timeframe set forth by PCAO;
  6. Failure to file signed, legible evaluation paperwork that provides detail and specificity to meet statutory requirements; or
  7. Failure to document that a physician or mid-level practitioner sees and assesses the relevant Proposed Patient on a daily basis, including weekends and holidays, to determine whether Proposed Patients continue to require involuntary commitment.

#### **4. Claims and Payment Policies**

The following are CONTRACTOR's requirements for submitting claims. CONTRACTOR must submit accurate, timely and complete claims/encounter data for all COE covered behavioral health services. Claims must be received as follows:

1. Fee-for-service claims are considered timely submissions if the initial claim is not later than ninety (90) days from the date of service or within ninety (90) days of receipt of an Explanation of Benefits (EOB) from a previously billed payer.
2. For facility claims, "date of service" means the date of discharge of the patient or the service end date of the interim claim.
3. Claims initially received beyond the ninety (90) day time frame will be denied as untimely.
4. If a claim is originally received within the ninety (90) day time frame, CONTRACTOR has up to sixty (60) days from the date of initial denial notification to resubmit a clean claim.
5. In no event shall an initial submission or resubmission of a denied claim exceed 180 days from the date of service or date of discharge.
6. COUNTY will remunerate CONTRACTOR for services rendered pursuant to this Agreement as described herein within thirty (30) days of receipt of a clean claim.

**(Remainder of this page intentionally left blank)**

## EXHIBIT C: BUSINESS ASSOCIATE AGREEMENT

WHEREAS, COUNTY entered into this Agreement on behalf of its Behavioral Health Department, which is a "covered entity" as defined in 45 CFR §160.103; and,

WHEREAS, COUNTY has determined that CONTRACTOR is a "business associate" of COUNTY as defined in 45 CFR §160.103; and,

WHEREAS, the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E require that an agreement be entered into specifying the ways in which CONTRACTOR is permitted to use and disclose protected health information that is provided by COUNTY;

NOW, THEREFORE, CONTRACTOR agrees to comply with and be bound by the following Business Associate Agreement provisions:

**1. Definitions.** Terms used, but not otherwise defined in this Appendix shall have the same meaning as those terms in 45 CFR Parts 160 and 164 as currently drafted or subsequently amended.

1.1 "Business associate" means CONTRACTOR.

1.2 "Covered entity" means COUNTY'S Behavioral Health Department.

1.3 "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.4 "HITECH" means the provisions of the Health Information Technology for Economic and Clinical Health Act enacted on February 17, 2009 as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (PL 111-5).

1.5 "Individual" has the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.6 "Minimum necessary" means the standard as set forth in 45 CFR §164.502(b).

1.7 "PHI" means "protected health information" the term is defined in 45 CFR 164.501, limited to the information created or received by the business associate from or on behalf of the covered entity.

1.8 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.9 "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C.

### **2. Permissive uses of PHI by business associate.**

2.1 **Services.** Except as otherwise specified herein, business associate may make only those uses of PHI necessary to perform its obligations under the Agreement provided that such use or disclosure would not violate the HIPAA Rules if done by the covered entity. All other uses not authorized by this Appendix are prohibited, unless agreed to in writing by COUNTY.

2.2 **Activities.** Excepts as otherwise limited in this Appendix, business associate may:

2.2.1 Use the PHI for the proper management and administration of the business associate and to fulfill any present or future legal responsibilities of business associate provided that such uses are permitted under State and Federal confidentiality laws.

2.2.2 Disclose the PHI to a third party for the proper management and administration of the business associate, provided that:

2.2.2.1 Disclosures are required by law; or

2.2.2.2 Business associate obtains reasonable assurances from the third party that the PHI will remain confidential and not be used or further disclosed except as required by law or for the purpose for which it was disclosed to that third party and the third party notifies the business associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

### **3. Obligations of business associate with respect to PHI.**

3.1 With regard to use and disclosure of PHI provided by covered entity, business associate agrees not to use or further disclose PHI other than as permitted or required by this Appendix or as required by law.

3.2 With regard to use and disclosure of PHI provided by covered entity, business associate further agrees to:

3.2.1 Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Appendix;

3.2.2 Mitigate, to the extent practicable, any harmful effect that is known to business associate of a use or disclosure of PHI by business associate in violation of the requirements of this Appendix;

3.2.3 Report to covered entity, in writing, any use or disclosure of PHI not permitted or required by this Appendix of which it becomes aware within fifteen (15) days of business associate's discovery of such unauthorized use or disclosure;

3.2.4 Ensure that any agent, including a subcontractor, to whom business associate provides PHI agrees in writing to the same restrictions and conditions on use and disclosure of PHI that apply to business associate;

3.2.5 Make available all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary of HHS for purposes of determining compliance with the HIPAA Rules, subject to applicable legal privileges;

3.2.6 Make available, within seven (7) days of a written request, to covered entity during normal business hours at business associate's offices all records, books, agreements, policies and procedures relating to business associate's use or disclosure of PHI to enable covered entity to determine business associate compliance with the terms of this Appendix;

3.2.7 Provide access to PHI to the covered entity or the individual to whom PHI relates at the request of and in the time and manner chosen by covered entity or the individual to meet the requirements of 45 CFR § 164.524;

3.2.8 Make any amendment(s) to PHI that covered entity directs pursuant to 45 CFR §164.526;

3.2.9 Provide to covered entity, within fifteen (15) days of a written request, such information as is requested by covered entity to permit covered entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR §164.528; and

3.2.10 Disclose to subcontractors, agents or other third parties, and request from covered entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted under the Agreement.

3.3 With regard to securing PHI provided by covered entity, business associate agrees to comply with the requirements for business associates established by the HIPAA Rules and such modifications or additions to the Security Rule as may be established by the Secretary of the U.S. Department of Health and Human Services related to the HIPAA Rules.

3.4 To the extent the business associate is to carry out one or more of covered entity's obligations under Subpart E of 45 CFR Part 164, business associate agrees to comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligations.

3.5 Unless expressly authorized in the underlying agreement, business associate shall not:

3.5.1 Use PHI for marketing or fundraising;

3.5.2 Use PHI to de-identify the information;

3.5.3 Use COUNTY PHI to provide data aggregation services.

#### **4. Term and Termination.**

4.1 Term. This Agreement shall become effective on October 1, 2015 and shall continue in effect until all obligations of the Parties have been met, unless the Agreement is terminated as provided in Article I, TERM AND EXTENSION/RENEWAL/CHANGES or as provided in this Section 4.

4.2 Termination by COUNTY. Upon COUNTY'S knowledge of a material breach or violation of the terms of this Agreement by Business Associate COUNTY, in its sole discretion, may:

4.2.1 Immediately terminate the Agreement; or,

4.2.2 Provide business associate with an opportunity to cure the breach or violation within the time specified by COUNTY. If business associate fails to cure the breach or end the violation within the time specified by COUNTY, then COUNTY will either:

4.2.2.1 Terminate the Agreement; or,

4.2.2.2 If COUNTY determines termination is not feasible, report the breach or violation to the Secretary of HHS.

4.3 Effect of termination.

4.3.1 Upon termination of the Agreement, for any reason, business associate agrees to return or destroy all PHI, if it is feasible to do so, and retain no copies thereof. Return or destruction shall occur within 60 days of the termination of the Agreement. Business associate shall, upon return or destruction of PHI, provide written attestation to COUNTY that all PHI held by business associate has been returned to COUNTY or has been destroyed.

4.3.2 Business associate further agrees to recover any PHI in the possession of its subcontractors, agents or third parties to whom business associate has provided PHI and return or destroy such PHI within the 60 days after termination of the Agreement. Business associate shall, upon return or destruction of PHI, provide written attestation to COUNTY that all PHI held by business associate has been returned to COUNTY or has been destroyed.

4.3.3 If return or destruction of PHI is not feasible, business associate shall:

4.3.3.1 Notify covered entity in writing of the specific reasons why the business associate has determined it is infeasible to return or destroy the PHI;

4.3.3.2 Agree to extend any and all protections, limitations, and restrictions contained in this Agreement to business associate use, disclosure, security, breach notification and enforcement of any PHI retained after the termination of this Agreement; and

4.3.3.3 Agree to limit any further uses and disclosures to those allowed under the HIPAA Rules for the purposes that make the return or destruction of PHI infeasible.

4.3.4 If it is not feasible for business associate to obtain PHI in the possession of a subcontractor, agent, or third party to whom business associate has provided PHI, business associate shall:

4.3.4.1 Provide a written explanation to the covered entity why the PHI cannot be obtained;

4.3.4.2 Require the subcontractor, agent, or third party to agree, in writing, to extend any and all protections, limitations, and restrictions contained in this Appendix to the subcontractor's, agent's, or third party's use and disclosure of any PHI retained after the termination of this Agreement; and

4.3.4.3 Require the subcontractor, agent, or third party to agree, in writing, to limit any further uses and disclosures to those allowed under the HIPAA Rules for the purposes that make it infeasible for the business associate to obtain the PHI.

#### **5. Miscellaneous.**

5.1 Survival. Sections 4.3 and 2.1 solely with respect to PHI retained by the business associate in accordance with Section 4.3(c) and 4.3 (d), shall survive the termination of the Contract for services between COUNTY and CONTRACTOR.

5.2 Superceding Effect. Should the terms of this Appendix conflict with the terms of the Agreement, the terms providing for more stringent protections of PHI shall apply. Nothing contained in this Agreement shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements, or limitations of the Agreement other than as stated above in this Agreement.

## EXHIBIT D: REPORTING

CONTRACTOR will submit all documents, reports and data in accordance with the schedule in this Exhibit D. All deliverables will be submitted in the format prescribed by COUNTY and within the time frames specified. The CONTRACTOR is required to submit any additional documents and/or ad hoc reports as requested by COUNTY. In addition, CONTRACTOR shall provide the following information:

### A. Management and Reporting

1. COUNTY reserves the right to audit any process or data resulting from provision of services pursuant to this Agreement and to request evaluation agency reports or data compilation as COUNTY determines necessary.
  - a. Daily Census Report. No later than 10:00 a.m. each day the CONTRACTOR will provide to COUNTY via email (PCBH.Reports@pima.gov) the census of COUNTY's adult patients receiving COE services in Level I acute beds and the list of patients discharged since the last census report. CONTRATOR will email the admitting face sheet to Pima County UM (PCBH.UM@pima.gov).
  - b. CONTRACTOR shall cooperate with COUNTY in providing information and data, on a monthly basis, necessary for COUNTY to develop and submit all reports regarding COE services. Reporting data will be emailed to COUNTY (PCBH.Reports@pima.gov) on a calendar-monthly basis within thirty (30) days following the end of each month, and will include:

- Number of Emergency Applications;
- Number of Involuntary Applications;
- Total number of patients admitted for COE;
- Number of Outpatient Title 36 COEs, if applicable;
- Number of proposed patients transferred from Pima County Adult Detention Center (PCADC);
- Number of patients returned to PCADC before hearing;
- Number of patients on applications who were admitted in the previous 90 days;
- Number of petitions dropped because individual agreed to voluntary treatment;
- Number of petitions dropped before the hearing other than voluntary;
- Number of patients who went to court;
- Number of patients court ordered for treatment;
- Number of inpatient orders;
- Number of combined orders;
- Number ordered without a hearing (stipulated);
- Number of COE patients who had no insurance;
- Number of Petitions dismissed at court – patient able to be voluntary;
- Number of Petitions dismissed at court – patient did not meet criteria for court order;
- Number of Petitions dismissed at court – psychiatrist not available for hearing;
- Number of Petitions dismissed at court – filing error;
- Number of hearings rescheduled – psychiatrist not available for hearing;
- Number of hearings rescheduled – other; and
- Substance Abuse issues at time of admission (how many had a substance diagnosis and to which substance(s)).

## EXHIBIT E: GLOSSARY

Terms used herein for the purposes of this contract include the following:

1. **Arizona Department of Health Services (ADHS):** The State agency which contracts with AHCCCS and administers the behavioral health system within the State, including behavioral health benefits to AHCCCS-eligible residents, by subcontracts with Regional Behavioral Health Authorities.
2. **Agreement:** This document, together with its attachments or exhibits, which sets forth the terms and conditions upon which services will be provided and funded by the parties hereto.
3. **Arizona Health Care Cost Containment System (AHCCCS):** The State agency administering the Federal Medicaid program in Arizona and which contracts with Arizona Department of Health Services to provide behavioral health services to residents enrolled to receive Medicaid benefits.
4. **Application for Emergency Admission:** A signed and notarized application made by a responsible adult (applicant) attesting to the fact that the applicant has knowledge to support the fact that a person is a danger to self or others, and that if not immediately hospitalized, the person is likely to suffer or inflict serious physical harm on himself or others.
5. **Arizona Revised Statutes (ARS):** In this contract usually referring to Arizona Revised Statutes, Title 36, Chapter 5 – Mental Health Services.
6. **Clean Claim:** A healthcare claim that can reasonably be processed without any additional documentation or inquiry.
7. **Comprehensive Service Provider:** A licensed provider that does intake, assessment, service planning, referral to service, and follows the member throughout the course of treatment and has a direct contract with.
8. **Court Ordered Evaluation (COE) Period:** For purposes of this framework, that period which begins only after a Patient receives medical clearance, received aggressive treatment and triage, and is determined to be in need of involuntary commitment, under an Application for Emergency Admission or a Court Order for Evaluation, and continues on to the point that the patient is allowed to continue treatment on a voluntary basis, the patient is discharged or the petition for court-ordered evaluation is dismissed, the petition for court-ordered treatment is filed with the court, or up to four calendar days, whichever is sooner.
9. **Court Ordered Treatment (COT):** Treatment of a patient adjudged by the Court to require ongoing behavioral health treatment.
10. **Court:** "The superior court in the county in this state in which the patient resides or was found prior to screening or emergency admission" under provisions of ARS 36-501 et seq; the Probate Division of the Pima County Superior Court that oversees the Involuntary Commitment process.
11. **Court Order for Evaluation:** An order by the Court causing a patient or Proposed Patient to be evaluated (see Evaluation) to determine the patient's or Proposed Patient's need for ongoing mental health services. Such an order may be precipitated by an Application for Emergency Admission or as the result of an outpatient examination by a qualified behavioral health professional to determine the person's mental status and whether or not the person may need ongoing behavioral health treatment.
12. **Evaluation:** A professional multidisciplinary analysis based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of



persons, to determine the Proposed Patient's need for ongoing behavioral health treatment, and which may be followed by a petition for Court Ordered Treatment. See ARS 36-501.

13. **Evaluation Agency:** A health care agency that is licensed by the State and that has been approved to provide those services required of such agency pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Article 4. See ARS 36-501.
14. **Examination:** For purposes of this contract, an examination performed by an admitting officer of an evaluation agency on a person presenting for emergency admission pursuant to ARS 36-501 et seq., to determine if there is reasonable cause to believe that the person, as a result of a mental disorder, is a danger to self or others, and that during the time necessary to complete the pre-petition screening procedures set forth in sections 36-520 and 36-521 the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or to inflict serious physical harm on another person or whether treatment in a less restrictive venue is appropriate.
15. **Involuntary Commitment:** The term for the process by which, or period in which, a person is held against his will by an Evaluation Agency for Examination or Evaluation to determine whether the person requires ongoing behavioral health treatment ordered by the Court.
16. **Least Restrictive Environment:** The treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner. See ARS 36-501.
17. **Office of Behavioral Health (OBH):** Pima County's Office of Behavioral Health, which will have oversight of this Agreement effective October 1, 2015.
18. **Post Evaluation Period (PEP) day(s):** Inpatient days a Proposed Patient is involuntarily housed in a hospital setting following the COE period and prior to their hearing because the Proposed Patient is not willing or able to voluntarily receive treatment and is considered to remain a danger to himself or others and not safe for discharge.
19. **Petition:** An official request filed with the Court; for purposes of this contract, a request made to the Court seeking either the Court's order to perform evaluations on a Proposed Patient, or to hold a hearing to determine whether ongoing behavioral health treatment of a Proposed Patient should be ordered by the Court.
20. **Proposed Patient:** A person for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed. See ARS 36-501.
21. **Provider:** Any Hospital, Evaluation Agency, Institute for Mental Diseases (IMD), physician, or ambulance agency that provides qualifying services pursuant to this Contract.
22. **Psychiatric Resident (Medical):** A physician who has completed medical school and internship and is now receiving training in a specialized field of medicine, especially as it applies in this context to ARS 35-501 (12) (a) (i).
23. **Resident; Resided; Residence (Geographical):** A Resident of Pima County is a person who maintains and lives in a place of abode in Pima County, as may be evidenced by payment of property taxes, rent, or utilities associated with such an abode, and who has lived or intends to continue living in Pima County for an indefinite period of time; lived in and maintained a place of abode, a dwelling place, or home, as may be evidenced by a mortgage, lease, or rental agreement.
24. **Transfer:** Refers to the movement of a Proposed Patient from one facility to another, even if within the same provider. Moving a patient from the Emergency Department to the inpatient behavioral health unit for COE constitutes a transfer as well as movement from one hospital or other facility to another completely separate evaluation agency.

25. **Utilization Management:** For purposes of this contract, either a concurrent or retrospective review or both of claims for services or processes related to provision of services under ARS 36-501 et seq. to assess compliance with statute, appropriate payment of claims, or efficiency or effectiveness of processes applicable to service provision.