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to
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INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
MARICOPA COUNTY BOARD OF SUPERVISORS
AND THE
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
(FOR FISCAL YEAR 2020/2021)

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(C-49-20-~~000~~-3-00)
YH20-0133

This Intergovernmental Agreement ("Agreement" or "IGA") is entered into by and between the Maricopa County Board of Supervisors ("County") and the Arizona Health Care Cost Containment System("State") (may collectively be referred to as "Parties" and individually as "Party").

WHEREAS, the County and the State have statutory duties to provide mental health services to the seriously mentally ill ("SMI") indigent, adult residents of Maricopa County ("Class Members"), as noted in *Arnold v. Arizona Department of Health Services*, 160 Ariz. 593, 775 P.2d 521 (1989) ("*Arnold v. Sarn*"); and

WHEREAS, the County and the State desire to develop a unified continuum of behavioral health and mental health care services for Class Members in Maricopa County, that will benefit all of the residents of Maricopa County; and

WHEREAS, the State, in furtherance of its statutory duties, may choose to provide services directly or indirectly to Class Members through a regional behavioral health authority in Maricopa County ("RBHA"); and

WHEREAS, The County has the authority to enter into agreements with the State for the provision of behavioral health and mental health services pursuant to A.R.S. §§ 11-201, 11-297, 11-952, 36-104, 36-545.06, 36-545.07, and 36-550.03; and

WHEREAS, A.R.S. §§ 11-952, 36-104, 36-545.07, and 36-550.03 authorize the State to enter into agreements for the provision of behavioral health and mental health services in Maricopa County; and

WHEREAS, the Parties acknowledge that from time to time certain persons under the age of eighteen are arrested, charged with crimes and remanded to Maricopa County Superior Court to be tried as adults for certain crimes ("Remanded Juveniles"); and

WHEREAS, the Parties acknowledge that from time to time certain Remanded Juveniles are in need of behavioral health services, including the services of a screening agency, an evaluation agency or mental health treatment agency only when ordered by the Maricopa County Superior Court; and

WHEREAS, it is the intent of the Parties that the terms of this Agreement set forth the duties and responsibilities of the Parties with regard to behavioral health services for Remanded Juveniles when ordered by the Maricopa County Superior Court; and

IN CONSIDERATION of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1

TERM

This Agreement shall become effective July 1, 2020 or upon the date of signature of both Parties if after July 1, subject to the provisions of Article 7, and shall remain in effect until June 30, 2021, unless further amended, extended, or terminated pursuant to the provisions of this Agreement (Term).

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Duties of the State. During the term of this Agreement, the State shall fulfill the obligations set forth below in this Section 2.1.
- 2.1.1 Services to Class Members and to Non-SMIs:
- 2.1.1.1 Services to Class Members. The State shall provide to all Class Members, either directly or through a contract with the RBHA under Section 2.1.4 below, behavioral health and mental health care services, and medical services, to the extent such medical services are routinely associated with commonly accepted psychiatric practices or are medically necessary for psychiatric diagnosis and treatment to fulfill the obligations imposed by the judgment in *Arnold v. Sarn*. The foregoing services shall be provided to the extent that such services are required of the County under A.R.S. §§ 11-297, 11-251(5), and § 36-550, et seq., or under any other state law, statute or regulation in effect during the term of this Agreement.
- 2.1.1.2 Services to Non-SMIs. The County has an obligation to provide certain behavioral health services to indigent residents of Maricopa County who are not Class Members ("Non-SMIs"). In addition, the County has historically provided substance abuse services directly or indirectly at a Community-Based Non-SMI Treatment facility to non-SMI substance abusers. To ensure a unified system, the State shall provide these Non-SMI and Community-Based Non-SMI Treatment services to the extent of the Non-SMI Payment and the Community-Based Non-SMI Treatment Payment as defined in Article 4 of this Agreement.
- 2.1.2 Maintain a Unified System. Under *Arnold v. Sarn* it is the County and the State's responsibility to develop and maintain a unified system of care for the SMI, and to the extent practicable, for the non-SMI population.
- 2.1.3 Compliance With Laws and Audit Findings. All services provided by the State pursuant to this Agreement, either directly or indirectly, or by contract with the RBHA or otherwise, shall be rendered in accordance with applicable law, community professional and ethical standards, and the rulings of the Arizona Supreme Court in *Arnold v. Sarn*.
- 2.1.3.1 The State may utilize up to three percent (3%) of the total IGA for State Administration. The amount shall not exceed \$1.5M each year.
- 2.1.4 State Contracts with RBHA. The State shall incorporate this Agreement and the *Arnold v. Sarn* provisions into any and all contracts between it and the RBHA for behavioral health and mental health care services provided in Maricopa County.

2.1.5 Remanded Juveniles: Definition. For purposes of this Agreement, "Remanded Juvenile" means a person who is under eighteen years of age; has been transferred to the criminal division of the Superior Court pursuant to A.R.S. § 8-327 or who has been charged with an offense pursuant to A.R.S. § 13-501; and has not been sentenced, pursuant to A.R.S. § 13-701 on the charges pending against the juvenile in the criminal division of the Maricopa County Superior Court pursuant to A.R.S. § 8-327 or A.R.S. § 13-501.

2.1.6 Services to Remanded Juveniles. The State agrees to provide to Remanded Juveniles, either directly or through a contract with the RBHA under Section 2.1.4 above, the services of a screening agency, an evaluation agency and mental health treatment agency, when that evaluation is ordered by the Maricopa County Superior Court pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Article 4 and treatment is ordered by the superior court pursuant to Arizona Revised Statutes, Title 36, Chapter 5, Article 5. The State's agreement to provide services to Remanded Juveniles under this subsection is limited by the funding provisions as set forth in Section 3.7, below.

Under the terms of this Agreement the State or its contractors are **not** obligated to provide or pay for:

2.1.6.1 Any behavioral health services except for the screening, evaluation and treatment services described above;

2.1.6.2 Any screening, evaluation or treatment services after the funds described in Section 3.7 have been exhausted;

2.1.6.3 Any screening, evaluation or treatment services when no mental health agency licensed to provide such services in Maricopa County is willing or available to contract for such services;

2.1.6.4 Services provided to Remanded Juveniles under a court order for restoration for competency;

2.1.6.5 Security services outside of the Maricopa County Jail when a Remanded Juvenile remains incarcerated and is not released pursuant to a court order;

2.1.6.6 Services to transport a Remanded Juvenile to or from the Maricopa County Jail and to or from a mental health agency; or

2.1.6.7 Inpatient psychiatric treatment services that are long term (in excess of ten days) and for a purpose other than to stabilize a Remanded Juvenile's condition in order to return the Remanded Juvenile to the Maricopa County Jail.

2.2 Duties of the County. During the term of this Agreement, the County shall fulfill the obligations set forth below in this Section 2.2.

2.2.1 Commitment Proceedings. To the extent obligated by law, the County shall retain financial responsibility for Court proceeding expenses for commitment actions brought under Title 36, including, but not limited to, the costs of independent evaluators and the fees and costs for the attorneys for the prosecution, and the court-appointed defense attorneys. The State will consult with the County regarding any effort to redesign the

Court's commitment and evaluation process, and any such redesign shall consider the financial impact thereof on the County.

- 2.3 Limitations on Scope of Duties. Subject to the provisions of Article 2 of this Agreement, the County and the State have no obligation under this Agreement to provide behavioral health services through the Adult Probation Program, the Superior Courts of Maricopa County, the Maricopa County Public Defender's Office, the Maricopa County Juvenile Court and the Maricopa County Public Fiduciary's Office, or to provide services (other than case management services) at any Maricopa County jail facility; provided, however, nothing in this Agreement shall reduce the statutory obligations of any Party.
- 2.4 Quarterly Meetings. The State and the County agree to meet quarterly to discuss potential strategies for managing the population and to reduce the number of justice involved members of the class and reduce recidivism.

ARTICLE 3

FUNDING

- 3.1 County Funding. The County shall compensate the State for services rendered under this Agreement in accordance with this Article 3.
- 3.2 County Contribution. Subject to the provisions of Sections 3.2.2 and 3.3, the County shall pay the State an annual sum for each fiscal year during the term of this Agreement (beginning with the fiscal year that commenced on July 1, 1998), which shall be the sum of the components set forth in the table below (the "County Contribution"). In arriving at the County Contribution, the Parties agree that the following components were reviewed:
 - 1) Base County funding for services to Class Members;
 - 2) Non-SMI Services;
 - 3) The transition of Class Members from the Arizona State Hospital to the community as required by the Stipulation; and
 - 4) Community-Based Non-SMI Treatment services.
 - 3.2.1 Payment shall be made in twelve equal installments, and shall be prorated for periods of less than one (1) year, if any. Installments shall be made monthly on or before the fifteenth (15th) day of each successive calendar month during the term of this Agreement. The County Contribution under this Agreement for the 2020/2021 fiscal year shall be \$69,171,032 or \$5,764,252.67 per installment.

**RECURRING COUNTY CONTRIBUTION
(For Fiscal Year 2020 / 2021)**

SMI Payment	\$64,314,456	
Non-SMI Payment	\$3,366,705	
	Subtotal	\$67,681,161
Community-Based Non-SMI Treatment Payment	\$1,489,871	
	Total	\$69,171,032

- 3.2.2 Community-Based Non-SMI Treatment Payment. The State and County agree that the County may terminate its obligation to pay the State \$1,489,871 for the Community-Based Non-SMI Treatment services under Sections 3.2 and 2.1.1.2 upon ninety (90)

days' written notice to the State. However, in the event that such payment is terminated, the County shall assure that there will be no material decrease in the level of Community-Based Non-SMI Treatment services provided to members of the class.

- 3.3 Adjustments. The County SMI Payment portion of the County Contribution identified in Section 3.2 above shall be re-computed and adjusted prospectively on an annual basis. The adjustment procedure shall reflect only the change made in accordance with Section 3.4 below, along with any change necessary to correct computational errors. All future payments shall be adjusted upon completion of the annual recalculation. Any payment required as a result of a computational adjustment shall be made by payment of the County to the State, or reimbursement by the State to the County, as appropriate; provided, however, the County may elect to credit any amount due from the State to the County against the next monthly payment of County Contribution due from the County to the State.

The County Non-SMI Payment and the Community-Based Non-SMI Treatment Payment portions of the County Contribution identified in Section 3.2 may be re-computed and adjusted only to correct computational errors.

- 3.4 POST-2001 Funding. The County and the State acknowledge that any increase in the amount of the County's contribution is limited to the increase in inflation in accordance with A.R.S. § 11-297(A)(3).
- 3.5 Federal Matching Funds. Federal matching funds generated by State's use of the County Contribution pursuant to this Agreement shall be spent in Maricopa County for the benefit of Class Members, and are subject to programmatic and financial audits by County, as noted in Section 3.6 and Section 9.1.
- 3.6 Financial Reporting. At the close of each fiscal year quarter, effective with the fiscal quarter ending September 30, 2020, within forty-five (45) working days from the time the RBHA's Financial Statement is received by AHCCCS; AHCCCS will make quarterly financials available through its web address: <https://www.azahcccs.gov/Resources/Reports/index.html>.
- 3.7 Remanded Juvenile Funding. The State and County agree to allocate the sum of \$200,000 from the Non-SMI Payment portion of the County Contribution to be used for screening, evaluation and treatment services provided to Remanded Juveniles pursuant to Section 2.1.6 above (the "funds"). The State shall have the sole discretion to manage and make disbursements from those funds. Payment for services from the funds shall be as a last resort only after all other available payors have been identified and all other payment alternatives have been exhausted. The sum of \$200,000 funds represents the total amount of funds available to perform the services described in Section 2.1.6. If the funds are exhausted prior to the expiration of this Agreement, the State is not obligated to pay for or provide the services described in Section 2.1.6. If funds remain unspent thirty days prior to the expiration of this Agreement, and there are no Remanded Juveniles who qualify for the services described in Section 2.1.6, the State may apply the funds for other purposes as set forth in this Agreement.

ARTICLE 4

DIVERSION

- 4.1 Diversion. The County and the State agree to cooperate, to the extent to which they are legally capable, with the RBHA to develop diversion alternatives for placement of Class Members in appropriate programs and locations outside the judicial and law enforcement system.

ARTICLE 5

INSURANCE

- 5.1 State and County Insurance Obligations. The Parties acknowledge that the State and the County are self-insured, in whole or in part, pursuant to statutory authority. The Parties agree that the general liability coverage and the professional liability coverage afforded by these insurance/self-insurance programs are sufficient to meet the purposes of this Agreement.
- 5.2 RBHA Insurance Obligations. The State will require the RBHA to purchase and maintain adequate general liability coverage and professional liability coverage; furthermore, the State will require the RBHA to name the County as an additional insured on any and all such insurance policies.

ARTICLE 6

INDEMNIFICATION

- 6.1 Mutual 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, cost 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.

ARTICLE 7

TERMINATION

- 7.1 Termination Without Cause. Either Party shall have the right upon ninety (90) days' written notice to the other Party to terminate this Agreement, in whole or in part, without cause.
- 7.2 Termination for Cause. In the event of a material breach of any of the provisions of this Agreement, the non-defaulting Party may terminate this Agreement by delivering written notice to the defaulting Party specifically setting forth the nature of the breach. The Parties agree that all of the conditions set forth herein are material to this Agreement and a breach of any condition is a breach of this Agreement. Upon being served with such notice, the defaulting Party shall have sixty (60) days in which to cure said breach. If said breach has not been cured within the sixty (60) days, then this Agreement shall be deemed terminated as set forth in the notice. The Parties hereto shall perform their respective obligations up to the effective date of such termination.
- 7.3 Termination Under A.R.S. 38-511. The Parties may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511. The State and the County each represent that, as of the date of execution of this Agreement, they are not aware of any facts or circumstances that would give rise to a cancellation right in favor of any Party pursuant to A.R.S. § 38-511.
- 7.4 Payments Upon Termination. In the event of termination of this Agreement, the State shall be paid as provided herein all amounts due through the date of termination.
- 7.5 Impact on Order. Termination of this Agreement for any reason shall not limit the effect of the obligations of the Parties under the March 10, 1994 Order, entered by the Court in *Arnold v. Sarn*, as amended pursuant to the provisions of Section 2.1 of this Agreement.

- 7.6 Miscellaneous. Termination of this Agreement pursuant to this Article does not limit or affect the obligation of any Party under any court order.

ARTICLE 8

NOTICES

- 8.1 Notices. Any and all written notices required or permitted under this Agreement shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a recognized overnight delivery service, addressed as follows:

8.1.1 Notice to State shall be addressed as follows:

Meggan LaPorte, Chief Procurement Officer
Arizona Health Care Cost Containment System
701 East Jefferson Street
Phoenix, AZ 85034
Meggan.LaPorte@azahcccs.gov

8.1.2 Notices to the County shall be addressed as follows:

County Manager
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

and

Maricopa County Board of Supervisors
Attn: Clerk of the Board
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

8.1.3 Notices also to go to:

Charles L. Arnold, Esq.
3101 N. Central, Ste 1600
Phoenix, AZ 85012

Notice shall be deemed received upon hand or courier delivery or three (3) business days after deposit in the United States mail.

ARTICLE 9

RECORD KEEPING AND AUDITS

- 9.1 Record Keeping and Audits. Record Keeping by the RBHA. The State agrees that under A.R.S. § 35-214, its agreement with RBHA shall require that (i) the RBHA shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the RBHA's agreement with the State for a period of five years after completion of that agreement; (ii) all records shall be subject to inspection and audit by the State and where applicable the Federal Government at reasonable times; and (iii) upon request from the State or County, the RBHA shall produce a legible copy of any or all such records.

9.2 Maintenance of Records by the State and County. The State and the County agree to maintain all records regarding the performance of this Agreement for a period of five (5) years after completion of this Agreement.

ARTICLE 10

EXTENSIONS AND AMENDMENTS

- 10.1 Extensions and Amendments. This Agreement contains the entire agreement of the Parties and may not be amended orally. Any change, modification or extension of this Agreement must be in the form of a written amendment to this Agreement signed by duly authorized representatives of both Parties.

ARTICLE 11

NON-DISCRIMINATION

- 11.1 Non-Discrimination. It is understood that each of the Parties shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

ARTICLE 12

MISCELLANEOUS

- 12.1 Grammatical Items. When used in this Agreement, the terms "include" or "including" shall mean without limitation by reason of the enumeration. Whenever the masculine gender has been used herein, the same shall include the feminine if the context so indicates. Also, the singular shall include the plural whenever the context indicates. The term "person" shall include an individual, corporation, limited liability company, partnership, trust, estate or any other entity. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision, section or exhibit.
- 12.2 Waiver. The failure of either Party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other or to take any action permitted as a result thereof shall not be construed as 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 at any time shall not be construed as an accord and satisfaction.
- 12.3 Captions. Captions and section headings used in this Agreement are for convenience of reference purposes only and shall not be used to define, limit or describe the scope or intent of this Agreement.
- 12.4 Construction. The substantive laws of Arizona (without reference to any choice of law principles) shall govern the interpretation, validity, performance and enforcement of this Agreement.
- 12.5 No Third-Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiary rights in any Party and the State and the County expressly state that this Agreement does not create any third Party rights of enforcement.


- 12.6 Recitals. All recitals set forth above are fully incorporated in and made a part of this Agreement.
- 12.7 Further Instrument and Documents. Each Party shall, promptly upon the written request of the other Party, acknowledge and deliver to the other Party all future instructions and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.
- 12.8 Integration Clause. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement, and all prior agreements, if any, entered into between the Parties regarding Remanded Juveniles and the Parties' obligations under the Judgment and any then effective order of the Court in *Arnold v. Sarn* are revoked and superseded by this Agreement. This Agreement is the result of negotiations between the Parties and shall not be strictly construed for or against any Party.
- 12.9 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.
- 12.10 Time Computation. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Time is of the essence of this Agreement.
- 12.11 Mediation. In the event of a dispute regarding the scope or meaning of any provision of this Agreement, or non-compliance of any Party with any provision of this Agreement, the Parties shall meet and confer in an effort to resolve such dispute. In the absence of agreement on the subject, the Parties may jointly submit their differences either to non-binding mediation before a mutually acceptable person or, in the absence of agreement, to a person selected by the Court in *Arnold v. Sarn*. In the event of a dispute, the Parties agree to use arbitration only to the extent required by A.R.S. § 12-1518 (B) or (C).
- 12.12 No Assignment. Except as expressly provided herein, no Party may delegate or assign its rights or responsibilities under this Agreement without prior written approval of the other Party and any purported assignment or delegation in violation of this provision shall be void.
- 12.13 Verification of Compliance regarding Federal and State Immigration Laws and Regulations. Parties verify and warrant compliance with the requirements provided in A.R.S. § 41-4401 and A.R.S. § 23-214.

IN WITNESS WHEREOF, the Parties hereto execute this Agreement:

MARICOPA COUNTY
BOARD OF SUPERVISORS

ARIZONA HEALTH
CARE COST CONTAINMENT SYSTEM

By: 
Clint Hickman, District 4 (Chairman)

By: 
Meggan LaPorte (Jun 5, 2020 10:59 PDT)
AHCCCS Procurement Manager

ATTEST:


JUL 02 2020
Clerk of the Board 042420

Clerk of the Board

APPROVED AS TO FORM:

In accordance with A.R.S §11-952, this Agreement is in the proper form and is within the power and authority granted to AHCCCS under A.R.S. §36-2903 et seq. and §36-2932 et seq.

By: Matthew J. Devlin
Matthew J. Devlin (Jun 5, 2020 09:57 PDT)
AHCCCS Legal Counsel

Matthew J. Devlin

Print Name

Date: Jun 5, 2020

Pursuant to A.R.S. § 11-952(D), the undersigned Attorney has determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted to the County under the laws of Arizona.

Approved as to Form

By: [Signature]
Counsel for the Board of Supervisors

Talia Offord

Print Name

Date: 7/2/20