INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION AND THE ARIZONA DEPARTMENT OF HEALTH SERVICES FOR THE IMPLEMENTATION OF A.R.S § 36-2930

Whereas A.R.S. § 36-2930 (hereinafter the "SSDI Temporary Medical Coverage Program" or "the Program") provides temporary medical coverage for certain persons who were provided health coverage through Arizona Health Care Cost Containment System Administration (hereinafter "AHCCCS") but who would lose or have lost eligibility as the result of the receipt of Social Security Disability Income payments;

Whereas A.R.S. § 36-2930 provides further that, unless otherwise required by AHCCCS, services under the program include those services listed in A.R.S. § 36-2907 which services include behavioral health services provided through an intergovernmental agreement with the Arizona Department of Health Services (hereinafter "ADHS");

Whereas ADHS currently is under an Intergovernmental Agreement ("IGA")with AHCCCS to serve as a prepaid inpatient health plan to provide behavioral health services to persons eligible for health coverage under Title XIX and Title XXI of the Social Security Act (hereinafter "the AHCCCS Behavioral Health IGA");

Whereas the AHCCCS and ADHS are authorized by A.R.S. § 11-951 et seq. to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies; and

Therefore, the parties have agreed to enter into and be mutually bound by the following terms and conditions;

1. **SCOPE OF WORK –**

   a. The population served under this Agreement are those persons determined by AHCCCS to be eligible pursuant to A.R.S. § 36-2930.

   b. The services covered by this agreement shall be the same as the scope of coverage ADHS provides to other AHCCCS eligible members under the AHCCCS Behavioral Health IGA (AHCCCS # YH08-0002; ADHS #832007) except that services for persons residing in Maricopa County who have been determined by ADHS to have a Seriously Mental Illness are not covered under this Agreement. This Agreement is not intended to relieve ADHS from other obligations it may have under state statute or court order to provide services to persons with Serious Mental Illness residing in Maricopa County.

c. ADHS and AHCCCS shall administer the Program in the same manner and under the same terms as provided in the AHCCCS Behavioral Health IGA, the terms of which are incorporated herein by reference except to the extent this Agreement specifies different requirements.

d. ADHS's obligation to administer the Program is limited to the extent of the funds made available to ADHS by AHCCCS for the Program.

e. Financial data regarding the Program shall be identified and reported separately on any financial statements and any other reports required of ADHS and its subcontractors under this Agreement (and under provisions of the AHCCCS Behavioral Health IGA), the precise manner of which to be determined by mutual agreement of the parties to this Agreement and which may include reporting through supplemental schedules.

f. In addition to the reporting requirements contained in the AHCCCS Behavioral Health IGA, ADHS agrees to provide AHCCCS with information and reports regarding the Program as the parties mutually agree to, so that AHCCCS can monitor expenditures under the Program. Furthermore, ADHS agrees to notify AHCCCS as soon as practicable should ADHS conclude that the funds under this Agreement are or will be inadequate to provide the covered services required under this Agreement to persons eligible under the Program.

2. **REIMBURSEMENT –**

a. The method of compensation under this Agreement shall be as described herein and, to the extent not inconsistent with the terms of this Agreement, in the AHCCCS Behavioral Health IGA. AHCCCSA shall transfer the payments to ADHS, in accordance with General Accounting Office guidelines.

b. AHCCCS shall make a quarterly payment to ADHS based on total estimated member months for persons eligible for the Program during the quarter multiplied by the per-member-per-month (hereinafter "PM/PM") rate of $175.10.

c. AHCCCS shall make the payment by the 15th day after the start of the quarter.

d. At the end of each quarter, AHCCCS will reconcile the payment for the previous quarter by comparing the payment made for the prior quarter to the actual member months for persons eligible for the Program during the previous quarter multiplied by the PM/PM rate of $175.10. Overpayments/under payments will be recouped/paid with the quarterly payment following the reconciliation.

e. AHCCCSA may re-evaluate PM/PM rate up to four times per year. AHCCCSA may make retrospective and prospective adjustments to the PM/PM rates for the Program if there is a total gain or loss of more than five percent (5%) for ADHS.

f. Payments made by AHCCCSA to ADHS are conditioned upon the receipt by AHCCCSA of applicable, timely, accurate and complete reports required to be submitted by ADHS under this Agreement.

g. All funds received by ADHS and the subcontractors pursuant to this Agreement shall be separately accounted for in accordance with generally accepted accounting principles and procedures

3. **TERMINATION FOR CONFLICT OF INTEREST -** AHCCCS may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of AHCCCS is, or becomes at any time while the Agreement or any extension of the Agreement is in effect, an employee of, or a consultant to, any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the ADHS receives written notice of the cancellation unless the notice specifies a later time.

4. **TERMINATION FOR CONVENIENCE -** AHCCCS reserves the right to terminate the Agreement in whole or in part at any time for the convenience of the State without penalty or recourse. The Contracting Officer shall give written notice by certified mail, return receipt requested, to the ADHS of the termination at least 10 days before the effective date of the termination. The ADHS shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

5. **TERMINATION FOR DEFAULT -** AHCCCS reserves the right to terminate this Agreement in whole or in part due to the failure of the ADHS to comply with any term or condition of the Agreement or failure to take corrective action as required by AHCCCS to comply with the terms of the Agreement. The Contracting Officer shall mail written notice of the termination and the reason(s) for it to the ADHS by certified mail return receipt requested. Upon termination under this paragraph, all documents, data, and reports prepared by the ADHS under the Agreement shall be delivered to AHCCCS on demand.

6. **RELATIONSHIP OF PARTIES -** The ADHS under this Agreement is an independent contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

7. **GENERAL INDEMNIFICATION –**

a. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

b. In addition, the ADHS shall cause its subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the subcontractor or any of the directors, officers, agents, or employees or subcontractors of such subcontractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such subcontractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such subcontractor from and against any and all claims. It is agreed that such subcontractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

8. **THIRD PARTY ANTITRUST VIOLATIONS -** ADHS assigns to AHCCCS any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the ADHS toward fulfillment of this Agreement.

9. **NON-DISCRIMINATION -** The ADHS and AHCCCS shall comply with State Executive Order No. 99-4, which mandates that all persons, regardless of race, color, religion, sex, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable Federal and state laws, rules and regulations, including the Americans with

Disabilities Act and Title VI. The ADHS shall take positive action to ensure that applicants for employment, employees, and persons to whom it provides service are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

10. **AUDITS AND INSPECTIONS -** The ADHS shall comply with all provisions specified in applicable AHCCCS Rule R9-22-519, -520 and -521 and AHCCCS policies and procedures relating to the audit of the ADHS's records and the inspection of the ADHS's facilities. The ADHS shall fully cooperate with AHCCCS staff and allow them reasonable access to the ADHS's staff, subcontractors, members, and records. At any time during the term of this Agreement, the ADHS's or any subcontractor's books and records shall be subject to audit by AHCCCS to the extent that the books and records relate to the performance of the Agreement or subcontracts. AHCCCS, or its duly authorized agents, may evaluate through on-site inspection or other means, the quality, appropriateness and timeliness of services performed under this Agreement.

11. **APPLICABLE LAW -** The law of Arizona applies to this Agreement.

12. **DISPUTES -** The exclusive manner for the ADHS to assert any claim, grievance, dispute or demand against AHCCCS shall be in accordance with ARS 36-2903.01.B.4. Pending the final resolution of any disputes involving this Agreement, the ADHS shall proceed with performance of this Agreement in accordance with AHCCCS's instructions, unless AHCCCS specifically, in writing, requests termination or a temporary suspension of performance.

13. **CHOICE OF FORUM** - The parties agree that jurisdiction over any action arising out of or relating to this Agreement shall be brought or filed in a court of competent jurisdiction located in the State of Arizona.

14. **EFFECTIVE DATE** - The effective date of this Agreement shall be October 1, 2006.

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

Arizona Department of Health Services

Signature

Karen Boswell
Typed or Printed Name

Procurement Administrator
Title

In accordance with A.R.S. § 11-952, this Agreement is in the proper form and is within the power and authority granted the County.

Dated this 1st day of Feb, 2007

Attorney for the ~~County~~ State

Arizona Health Care Cost Containment System (AHCCCS)

Signature

Michael Viet
Typed or Printed Name

Administrator, Contracts and Purchasing
Title

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.

Dated this 11th day of Jan, 2007

Legal Counsel for AHCCCS

NO. 28099
Filed with the Secretary of State
Date Filed: 2-1-07
Secretary of State