

INDEMNITY AGREEMENT (“Indemnity”)  
BETWEEN  
HACIENDA HEALTHCARE  
ON BEHALF OF LOS NIÑOS HOSPITAL, AN AFFILIATE OF HACIENDA HEALTHCARE  
 (“Hacienda”)  
And  
CITY OF TEMPE  
 (“Public Entity”)

WHEREAS, A.R.S. § 5-601.02(H)(4)(a), permits the Public Entity to receive funding from the Salt River Pima-Maricopa Indian Community in connection with the distribution of “12% funds” provided for that purpose as set forth in A.R.S. § 5-601.02(I)(4)(l), which Public Entity has done with respect to Hacienda (the “Funds”); and

WHEREAS, A.R.S. § 36-2903.01(P), permits the Public Entity, as a political subdivision of the State of Arizona, to contribute public funds to be used as the Non-Federal share of supplemental Medicaid payments to disproportionate share hospitals (“DSH payments”), contingent upon the approval by the Arizona Health Care Cost Containment System (“AHCCCS”) and the Centers for Medicare and Medicaid Services; and

WHEREAS, Public Entity seeks to provide the Funds on behalf of the Salt River Pima-Maricopa Indian Community to AHCCCS for the benefit of Hacienda; and

WHEREAS, AHCCCS is authorized to make DSH payments under A.R.S. § 36-2903.01(O) and (P); and

WHEREAS, AHCCCS and the Public Entity are authorized by A.R.S. § 11-951 et seq., as well as A.R.S. § 36-2903.01(P), to enter into Intergovernmental Agreements jointly to exercise powers common to the parties or for cooperative action pertaining to reimbursement or advancements of public funds for services performed (an “IGA”); and

WHEREAS, the Public Entity and AHCCCS intend to enter such and IGA to permit the Public Entity to provide the Funds to AHCCCS as a Non-Federal Share of DSH payments for Hacienda, but before it will do so, the Public Entity requires Hacienda to indemnify it with respect to certain provisions contained in the IGA.

NOW, THEREFORE, the Public Entity and Hacienda (collectively, the “Parties”), pursuant to the above and in consideration of the matters hereinafter set forth, seek to enter into this Indemnity, and so agree as follows:

1. **Public Entity’s Warranty to AHCCCS.** By entering the IGA, Public Entity is required to undertake the following (the “IGA Requirements”):

a. Under Section 6.1 of the IGA, warrant that, consistent with 42 C.F.R. Part 433, Subpart B, no portion of the Funds transferred to AHCCCS are derived from (1) direct or

indirect provider-related donations (in cash or in kind), other than bona fide provider-related donations or (2) health care-related taxes other than as permitted in Subpart B.

b. Under Section 6.2 of the IGA, provide AHCCCS with supporting documentation that provides a detailed description (including but not limited to the amount, source, and uses) and the legal basis for (1) each direct or indirect provider-related donation (in cash or in kind) received by the Public Entity including all bona fide and presumed-to-be bona fide donations, and (2) all taxes collected and transferred by the Public Entity to AHCCCS under the IGA.

c. Under Section 6.3 of the IGA, if Public Entity fails to provide supporting documentation required in section 6.2 of the IGA, or if any funds transferred by Public Entity are determined to be derived from provider-related donations or health care-related taxes such that CMS adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS immediately, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the impermissible provider-related donation and/or health care-related tax.

d. Under Section 6.4 of the IGA, Public Entity certifies that, consistent with 42 C.F.R. § 433.51(c), the funds transferred to AHCCCS under the IGA are not federal funds or are federal funds authorized by federal law to be used to match federal funds, and that, if any funds transferred to AHCCCS under the IGA are determined to be federal funds such that the Center for Medicare and Medicaid adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the transfer of federal funds.

2. **Indemnity by Hacienda.** In consideration of the Public Entity agreeing to and entering into the IGA and, thereby, undertaking the IGA Requirements, Hacienda hereby indemnifies and agrees to hold Public Entity harmless from and against any and all obligations to AHCCCS under Sections 6.1 to 6.4 of the IGA, and specifically for any and all obligations with respect to the IGA Requirements.

3. **Notice of Indemnification Request and Opportunity to Defend.** Consistent with Section 2 of this Indemnity, Public Entity shall provide Hacienda with prompt written notice of any claim that would be subject to the provisions of Section 2 of this Indemnity and permit Hacienda to control the defense, settlement, adjustment or compromise of such claim, including the incursion of any related costs or expenses, all of which Hacienda will undertake at its sole cost and expense. Public Entity may employ separate counsel at its own expense to assist it with respect to any such claim.

4. **General Provisions.**

a. **Entire Agreement.** This Indemnity shall constitute the entire agreement between the Parties, and supersedes all other understandings, oral or written with respect to its scope and purpose.

b. Exercise of Rights. Failure to exercise any right, power or privilege under this Indemnity will not operate as a waiver thereof, nor will a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.

c. Contract Term. Notwithstanding the facts that certain AHCCCS or Public Entity obligations under the IGA occur after the term of the IGA, the Parties agree that the term of this Indemnity commences when signed by both Parties and continues through the later of conclusion of: (1) any payment reconciliations required by the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315 applicable to DSH Payments or (2) and audits of DSH payments as required by 42 CFR Part 447, Subpart E.

d. Non-Discrimination. The Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this Indemnity. The Parties shall comply with the provisions of Arizona Executive Order 2009-09, incorporated into this Indemnity by reference, as if set forth in full herein.

e. Choice of Law. The laws and regulations, of the State of Arizona govern the rights of the Parties, the performance of this Indemnity, and any disputes arising from the Indemnity.

f. Amendments. This Indemnity, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as this Indemnity.

g. Notice. Any notice required by this Indemnity and any questions regarding the duties and obligations of this Indemnity shall be directed to:

For the Public Entity: City of Tempe, an Arizona municipal corporation  
31 East 5th Street  
Tempe, Arizona 85281

With a copy to: Tempe City Attorney's Office  
21 Sixth Street, Suite 201  
Tempe, Arizona 85281

For Hacienda: Hacienda HealthCare  
1402 E South Mountain Avenue  
Phoenix, AZ 85042

Notwithstanding anything else in this Indemnity, the Public Entity and Hacienda will give notice by regular mail or any other means reasonably anticipated to provide actual notice to the other Party of any change of the address, telephone number, and name of the authorized signatory.

h. Severability. The provisions of this Indemnity are severable. If any provision of this Indemnity is held by a court to be invalid or unenforceable, the remaining provisions continue to be valid and enforceable to the full extent permitted by law.

i. No Third Party Beneficiaries. Nothing in the provisions of this Indemnity is intended to (1) create duties or obligations to or rights in any other persons or entities not parties to this Indemnity or (2) effect the legal liability of either Party to this Indemnity with respect to any other persons or entities not parties to this Indemnity.

j. No Joint Venture. Nothing in this Indemnity is intended to create a joint venture between or among the Parties, and it will not be so construed. Neither Hacienda’s nor the Public Entity’s employees will be considered officers, agents or employees of the other or be entitled to receive any employment related fringe benefits from the other.

NOW THEREFORE, Hacienda and the Public Entity agree to abide by the terms and conditions set forth in this Indemnity.

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

PUBLIC ENTITY  
City of Tempe

HACIENDA  
Hacienda HealthCare

\_\_\_\_\_  
By: Mark W. Mitchell, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: William J. Timmons, President/CEO  
Date: \_\_\_\_\_

In accordance with A.R.S. § 11-952, undersigned counsel have determined that this Indemnity is in proper form and is within the powers and authority granted under the laws of the State of Arizona, including but not limited to A.R.S. §§ 36-2903 et seq.

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Judith R. Baumann, Counsel for Public Entity  
Date: \_\_\_\_\_