

Agreement for Energy Assistance for Renewable Neighborhoods Implementation between Gila County Community Action/Housing Services and Arizona Public Service Company

This Agreement for Energy Assistance for Renewable Neighborhoods ("EARN") Implementation (the "Agreement") is entered into as of this 1st day of July, 2010 (the "Effective Date") by and between Gila County Community Action/Housing Services (the "Contractor") and Arizona Public Service Company, an Arizona corporation ("APS") (Contractor and APS are individually referred to herein as "Party" and collectively referred to herein as "Parties").

RECITALS

Whereas, on January 11, 2010, the Arizona Corporation Commission ("ACC") approved the APS Distributed Public Assistance Program ("Program") in Decision No. 71459, now known as the Energy Assistance for Renewable Neighborhoods;

Whereas, APS and the Contractor desire to have the Contractor coordinate and implement the Program;

Now, therefore, for and in consideration of the recitals set forth above, the respective agreements of the Parties herein set forth, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. TERM/TERMINATION

This Agreement is effective on the Effective Date and terminates on March 31, 2011 (the "Term"). Notwithstanding the foregoing, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

2. SCOPE OF SERVICES

Contractor will provide the following services (collectively, the "Services"):

A. Contractor will provide for the installation of a solar water heating system (SWHS) in a Customer's Qualified Home.

1. For purposes of this Agreement, an individual is a "Customer" if he or she meets the following requirements:
 - a. the individual resides in a Qualified Home;
 - b. the Qualified Home is served by APS; and
 - c. the individual has a maximum gross household income of 200% of the Federal poverty guideline as defined by the Arizona Department of Economic Security ("DES"), as adjusted by DES on a yearly basis every July 1st. (Income determination guidelines will be based on the countable income definition in the Contractor's Weatherization Assistance Program guidelines.)
2. For purposes of this Agreement, a "Qualified Home" may be any of the following:
 - a. an owner-occupied single family dwelling unit, which may be detached or attached to other owner-occupied dwelling units (e.g., duplex, triplex), including stationary mobile homes that have had the wheels removed and are supported by foundation or blocking;
 - b. on a case-by-case basis and with APS' prior written consent, which consent APS may withhold in its sole and absolute discretion, a multi-family dwelling located in a structure

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containing more than dwelling unit (multi-family housing) provided that each unit is individually metered for its electricity usage;

- c. a rental property, provided that the renters provide the Contractor with the property owner's written permission for the property to receive a SHWS, and the property owner agrees in writing to not increase the rent for 12 months after completion of the installation. A copy of the owner's consent and written agreement must be provided to Contractor prior to installing the SHWS.
3. Contractor will obtain verification of ownership of housing. The following documents will be acceptable forms of verification:
 - a. Homeowner: Deed or property tax statement; and
 - b. Renter: Proof that the property owner is the owner of the rental property (deed or property tax statement).
- B. All SHWS installation services will be implemented by the Contractor. Contractors performing installation of SHWS are required under Arizona law to hold an appropriate and active license issued by the Arizona Registrar of Contractors.
- C. Requirements applicable under this program, include, but are not limited to, the following:
1. The project must comply with all applicable local, state, and federal regulations.
 2. Installations must meet applicable governmental statutes, codes, ordinances, and accepted engineering and installation practices.
 3. Systems must be permitted with and pass inspection by the Authority Having Jurisdiction (AHJ) over construction projects in the Customer's locale, or, if the site is not governed by an AHJ, the Participant must provide a certification in lieu of AHJ clearance.
 4. APS may request copies of any documents to assure compliance with government, institutional, or DE program requirements that are either explicitly or implicitly described by this program.
 5. APS may request/require construction/as-built drawings of the system.
 6. All major components of the solar water heating system must be new and must not have been previously placed in service in any other location or for any other application.
 7. Meet the equipment specifications as stated in **Appendix A**
- D. SHWS must be eligible for the incentives available under the APS Solar Residential Renewable Energy Program (http://www.aps.com/main/green/choice/choice_2.html)
- E. Contractor must obtain the APS customer's signature on the APS Small Solar Water Heating System Reservation Application and Credit Purchase Agreement, including the Assignment of Payment. The APS customer may assign the incentive payment either to the SHWS installer or to the Contractor. These documents shall be provided to the SHWS installer prior to the installation of the system. If the property on which the SHWS is to be installed is a rental property (as noted in Section 2.a.2.b and c, the property owner, rather than the customer, must sign the Credit Purchase Agreement.
- F. For each installation, a complete Reservation Packet must be submitted to APS no later than **December 31, 2010**. A Reservation Packet consists of: a quote from an installer providing an itemized cost of the system; a completed and signed Reservation Application and Credit Purchase Agreement; a copy of the manufacturer's product specification sheet for the collector. Either the Contractor or the SHWS installer can submit this packet.
- G. SHWS installations must begin by **December 31, 2010**. Failure to begin installations by this date may result in the forfeiture of the EARN funds.

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H. Case Management

1. Customer caseworkers may refer clients to APS Customer Service for information about and enrollment in suitable rate and billing programs, such as Time of Use rates, Equalizer payment, and APS' Energy Support Program (E-3) which is a discount program for low-income customers.

I. Program Coordination

1. APS may, at its option, retain a third party manager to coordinate the Program. If APS elects to retain a third party, the third party will serve as the coordinator for all APS EARN Implementation Services and bill assistance activities that are within APS' service territory. In this capacity, the coordinator will:
 - a. act as liaison between APS and the Contractor for program coordination and implementation;
 - b. serve as a central point for invoicing, tracking, validating and reporting SWHS installation activities to APS; and
 - c. identify technical assistance needs and develop and coordinate training.
2. All household SWHS services and bill assistance related data will be entered into a database approved by APS and made available to APS on a monthly and as-needed basis. The database is to be kept current and confidential.

J. Documentation - The following documentation will be kept on file in the Customer file at the Contractor's offices and will be available for review by APS until such a time that APS deems it unnecessary for audit purposes:

1. Community action client application form with appropriate documentation attached. This application is currently being used for DES LIHEAP program.
2. Energy assistance program fuel information release form. Indicates the energy supplier is APS.
3. Documentation required by Section 2.A.2 with respect to a Qualified Home.

3. COMPENSATION/TAXES.

- A. APS shall reimburse Contractor for Authorized Expenditures in an amount not to exceed \$79,200 for the Term (the "Allocation"). Unused portions of the Allocation are not carried over beyond the Term. The Allocation may be adjusted by APS.

1. The "Authorized Expenditures" consist of the following:

- a. Solar Water Heater System Installation: Expenditures for the Contractor's direct costs of providing SWHS installation, including:
 - i. Preparation and performance of the Assessment;
 - ii. Visual inspection of the property;
 - iii. Contractor labor;
 - iv. Materials; and
 - v. Contract labor
- b. Program Delivery Expenditures - Reasonable out-of-pocket costs incurred by the Contractor to provide SWHS installation to Customers that would not be incurred if those Services were not provided, including: vehicle mileage; tools; employee related expenses such as social security, Medicare, etc.; equipment rental; cost allocated shares of office and management expenses; expenses for technical training of field technicians.

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- B. In addition, the following limitations apply to the distribution of the Allocation among the Authorized Expenditures:
1. SWHS installation: maximum of 100% of the Allocation.
 2. Program Delivery Expenditures: maximum of 20% of the SWHS installation expenditures. Program Delivery Expenditures are funded from the Allocation and are not in addition to the Allocation.
- C. The Contractor will submit to APS within 30 days of the Effective Date, a budget for the Term showing a projected best estimate of how funds will be spent month by month. The budget will include allocations to each of the Authorized Expenditures. The Contractor will make a good faith effort to manage expenditures to meet the budgeted amounts on a monthly basis.
- D. The Contractor will submit all invoices to APS or the third party contractor within 30 working days following the last day of the month in which work is completed.
- E. The Contractor will submit with the invoice the APS reservation number and proof of clearance for each customer SWHS installation for which it is requesting a reimbursement. The installer can provide the Contractor with both the APS reservation number and proof of clearance.
- F. APS, or the Third Party Coordinator if so designated, will review the SWHS installation expenditures for compliance with the Program and will process the invoice and APS will make payment to the Contractor within 30 days of receipt of the invoice. The payment will be net of the APS renewable energy incentive. SWHS installation expenditures for items that are not within the scope of this Agreement or not covered by a pre-approved waiver will be disallowed and the invoice will be returned to the Contractor with the specific items highlighted. The Contractor may resubmit the invoice with further explanation for review by APS. If the SWHS expenditures are deemed to comply with the terms of this Agreement, APS will reimburse the Contractor for those items; otherwise, they will be disallowed and ineligible for reimbursement.
- G. Until further notice, the Contractor will send invoices to:
- Ms. Shirin Naghavi
Renewable Energy
PO Box 53999, MS 9649
Phoenix, AZ 85072
Shirin.Naghavi@aps.com
- H. Each invoice shall include itemized expenditures by APS Customer account number, broken into the following categories: SWHS installation costs (without consideration of the incentive), Program Delivery Expenditures, and APS Renewable Energy Incentive.
- I. As between APS and the Contractor, the Contractor shall be responsible for any taxes that may be levied or imposed upon the transactions contemplated by this Agreement.

4. GENERAL TERMS AND CONDITIONS.

A. Warranties

1. Contractor's Warranties - The Contractor warrants that the Services shall: (a) be performed and completed in a thorough, safe and workmanlike manner; (b) be free from defects in design, workmanship, and title; (c) otherwise conform to this Agreement; (d) be of the standard and quality generally recognized and accepted within its industry or profession throughout the United States; (e) be performed in compliance with all applicable laws, rules, regulations, codes, standards, ordinances and orders of regulatory authorities having jurisdiction over the activities contemplated by this Agreement.
2. Disclaimer of Warranties by APS - APS is only providing funding to the Contractor to enable it to afford and provide the Services to the Customers. APS is not involved in the selection or

implementation of the Services provided. **Accordingly, all warranties of any kind or nature are hereby disclaimed by APS whether statutory, express or implied, including, without limitation, the warranty of merchantability, fitness for purpose or arising from course of dealing or usage of trade.**

- B. Independent Contractor - The Parties will act as independent contractors and neither Party will act as agent for or partner of the other Party for any purpose whatsoever, and the employees of one will not be deemed employees of the other. Nothing in this Agreement will grant to either Party, the right to make commitments of any kind for or on behalf of the other Party without prior written consent of the other Party.
- C. Limitation of Liability
1. **The total cumulative liability of APS for all claims of any kind arising from or relating to this Agreement, whether such claims are based on contract, warranty, tort (including negligence), strict liability, contribution or otherwise, shall not exceed the unused portion of the Allocation.**
 2. Neither Party, nor its respective officers, directors, employees, agents, advisors, representatives, affiliates, or successor or assigns shall be liable to the other Party for any indirect, consequential, special, punitive or exemplary damages for any actions resulting from or arising out of this Agreement, whether based on contract, tort (including, but not limited to, negligence), strict liability, professional liability, contribution, or otherwise, provided, however, that this limitation of liability shall not apply to the extent: (a) that APS is entitled to indemnification from the Contractor as a result of a third party action as set forth in Section 4.D, Indemnification, or (b) losses arise from a breach of Contractor's obligations of confidentiality under Section 4.E, Confidentiality and Advertising.
 3. The Contractor assumes all risks with respect to the selection of contractors and subcontractors who will perform SHWS installation services as contemplated by this Agreement.
- D. Indemnification - To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless APS and its officers, directors, employees, agents, advisers, representatives, and affiliates (collectively, an "APS Indemnitee") for, from and against any and all liabilities, losses, damages, fines, penalties, and costs and expenses of any kind or nature, whether or not covered by insurance, including reasonable attorneys' fees and expenses, that any APS Indemnitee may incur in connection with any claim, action, dispute, demand, or right of action, whether in law or in equity, of every kind and character arising out of, or resulting from (either directly or indirectly) Contractor's (including its employees, agents, subcontractors, and installers) performance or non-performance under this Agreement, including, but not limited to, Contractor's transactions with customers and all activities related to the installation, operation, and maintenance of SWHS's. If a third party asserts a claim against an APS Indemnitee, the APS Indemnitee will give written notice to the Contractor promptly after the APS Indemnitee has actual knowledge of any claim as to which indemnity may be sought. The failure to give notice of the claim as required by the preceding sentence will not relieve the Contractor of its indemnification obligations except to the extent that the Contractor is materially damaged as a result of such failure. The APS Indemnitee will permit the Contractor (at the expense of the Contractor) to assume the defense of any claim or any litigation resulting therefrom, provided that (a) the counsel for the Contractor who conducts the defense of such claim or litigation is reasonably satisfactory to the APS Indemnitee, and (b) the APS Indemnitee may participate in such defense at their own expense. If the APS Indemnitee determines in good faith that the conduct of the defense of any claim might adversely affect any APS Indemnitee's ability to conduct its business, or that the APS Indemnitee may have available to it one or more legal defenses that are different from, additional to, or inconsistent with those that may be available to the Contractor, the APS Indemnitee will have the right to participate in the defense of such action at the Contractor's expense. Neither the Contractor nor the APS Indemnitee may settle or compromise any claim without the prior written consent of the other party, which consent shall not be unreasonably withheld. The APS Indemnitee will have the right to defend any claim, at the Contractor's expense, if the Contractor does not undertake the defense of the claim. In any event, the Contractor and the APS Indemnitee will cooperate in the defense of any claim and the records of each will be available to the other with respect to such defense.
- E. Confidentiality and Advertising - All nonpublic information that APS provides to the Contractor or that the Contractor acquires from any source in connection with this Agreement shall be deemed to be APS'

confidential information ("APS Confidential Information"). APS Confidential Information includes, but is not limited to: (a) Customer specific information, including Customer's utility bill information history; (b) any reports, specifications, know-how, strategies or technical data, processes, business documents or information, market research or other data, customer or client lists, and all other information concerning the business and affairs of APS that are owned, used, or possessed by or for the benefit of APS; (c) APS intellectual property; and (d) confidential information or materials obtained by the Contractor from a third party in connection with performance of its obligations under this Agreement.

The Contractor shall not make copies, reproductions, abstracts or excerpts of the APS Confidential Information in whole or in part, except as authorized by APS. All copies, reproductions, excerpts or abstracts are deemed to be APS Confidential Information to the same extent as any originals. Upon APS' request at any time or upon the expiration of the Term, the Contractor shall promptly return to APS all APS Confidential Information and all copies thereof or other physical embodiments of the APS Confidential Information.

The Contractor agrees that any and all of the APS Confidential Information shall be maintained in confidence by the Contractor indefinitely. APS Confidential Information may not be disclosed by the Contractor to any person other than the Contractor's personnel, employees or agents who require knowledge of the APS Confidential Information in order to perform its obligations under this Agreement. The Contractor further agrees that such APS Confidential Information shall be used solely in connection with the Contractor's performance of its obligations hereunder, and for no other purpose, and that all persons to whom the Contractor discloses the APS Confidential Information shall be advised of its confidential nature and of the Contractor's obligations of confidentiality and non-use under this Agreement. The Contractor shall be responsible for any disclosure or use of APS Confidential Information by persons to whom Contractor provided the APS Confidential Information that is not in accordance with this Agreement.

Unless otherwise approved by APS, all advertising or other promotional material that references the Services or the Program shall include appropriate references to APS' support of the Service or the Program, and Contractor shall not distribute such materials without APS' prior written approval and review. The name of APS or any of its affiliates shall not be used in any advertising or other promotional context, including press releases, public meetings or hearings, or other public communications by the Contractor or its contractors or subcontractors without the prior written consent of APS (which may be withheld by APS in its sole discretion).

- F. **Dispute Resolution/Attorneys Fees** - If a dispute arises concerning this Agreement, a meeting of the Parties shall be held within 10 business days after either Party gives the other Party written notice of the dispute (the "Dispute Notice"). The Dispute Notice shall set forth in reasonable detail the aggrieved Party's position and its proposal for resolution of the dispute. A representative of each Party who has authority to resolve the dispute shall be in attendance at all meetings. If the dispute is not resolved within 30 calendar days after the first meeting of the Parties, either Party is free to use any other available remedy, including litigation. The Dispute Notice and 30-day discussion period are conditions precedent to each Party's right to resort to any other method. A Party's failure to comply with this Section shall entitle the other Party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision. The prevailing Party in any proceedings instituted by either Party regarding a dispute concerning this Agreement shall be entitled to recover its reasonable attorney's fees, costs, and expenses.
- G. **Severability** - If any term or condition of this Agreement is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, that holding shall not affect the validity or enforceability of any other term or condition of this Agreement, unless enforcing the balance of this Agreement would deprive either party of a fundamental benefit of its bargain.
- H. **Disclaimer of Third Party Beneficiaries** - There are no persons or entities other than those who are signatory to this Agreement that are intended to be benefited by the terms contained herein and except to the extent a person or entity is entitled to indemnification pursuant to Section 4.D, all third party beneficiaries are hereby disclaimed.
- I. **Survival - Termination of this Agreement shall not relieve either Party of any obligation under this Agreement which expressly or by implication survives termination of this Agreement, including its obligations under the following section headings: Insurance Coverages, Indemnification, Limitation of**

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Liability, Warranties, Records and Auditing, Confidentiality and Advertising, Governing Law, Dispute Resolution/Attorney's Fees.

- J. Entire Agreement - This Agreement contains the final and complete agreement between the Parties for performance of the Services specified herein and supersedes all prior and contemporaneous conduct, agreements, statements, representations, negotiations, course of conduct, course of dealing, and communications pertaining to those Services, whether written or oral.
- K. Governing Law - This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona and of the United States without giving effect to the doctrine of conflict of laws. This Agreement shall be deemed made and entered into in Maricopa County, Arizona. Any suit to enforce this Agreement shall be instituted only in the Superior Court of Maricopa County, Arizona, or the Federal District Court for the District of Arizona, and such Courts shall have the exclusive jurisdiction.
- L. Preservation of Rights - The Parties further agree that this Agreement shall not in any way be deemed a waiver, abrogation, impairment or amendment of any other agreement between the Contractor and APS, including but not limited to (i) lease(s) entered into by APS, either alone or as a co-tenant with others, and the Contractor, and (ii) federal grant(s) of rights-of-way issued to APS, either alone or as a co-tenant with others, by the United States. Except as expressly provided in this Agreement, this Agreement and the actions of the Parties contemplated under such Agreement are not intended, nor shall they be deemed, to constitute any waiver, consent or admission with respect to the existence or lack of regulatory, taxing, or adjudicatory authority or jurisdiction of the Contractor over APS.
- M. Notices and Designated Representatives - All notices required to be given by this Agreement will be given in person, by certified United States Mail, postage prepaid, return receipt requested, or by telecopier (confirmed by the mailing of the original in the manner as abovementioned). All notices shall be deemed given when received. Notices shall be directed to the Parties as follows:

If to APS:
Arizona Public Service Company
P.O. Box 53999
Phoenix, Arizona 85072-3999
Designated Representative:
Shirin Naghavi, MS 9649
Phone: (602) 250-2306
Fax: (602) 250-4830

If to Contractor:

Gila County Community Action/Housing Services
5515 S. Apache Ave., Suite 200
Globe, Arizona 85501
Designated Representative:
Malissa Buzan
Phone: (928) 425-7631, ext. 8693
Fax: (928) 425-9468

Notices shall be effective: (a) on the date delivered by personal delivery, facsimile, or electronic mail; (b) three (3) business days following the date deposited in the United States mail; or (c) the next business day following delivery to a reputable overnight delivery service. Notices and communications shall be delivered or mailed to the Parties' designated representatives named above.

Designated representatives of either Party may be changed at any time upon providing the other Party prior written notice of such change.

- N. Assignment - Neither Party will assign, transfer or otherwise dispose of its rights or obligations under this Agreement or any interest therein, without the other Party's prior written consent, which will not be unreasonably withheld or delayed.

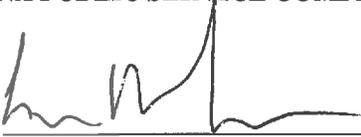
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- O. Amendments and Modifications - This Agreement can be modified or rescinded only by a writing signed by both parties or their duly authorized agents. No course of dealing or oral changes between the parties will be effective or legally binding as an amendment to this Agreement.
- P. Records and Auditing - Contractor shall maintain accurate and complete records relating to its performance of this Agreement, including accounting records in support of all billings to Company. These records shall be retained by Contractor and be reasonably available for Company's inspection and audit for 4 years after completion or termination of this Agreement.
- Q. Waiver - A Party's failure or delay in enforcing the terms and conditions of this Agreement or in insisting upon strict performance of any of the other Party's obligations shall not be interpreted as a waiver thereof. Waiver of any provision of this Agreement by either Party shall only be effective if in writing and shall not be interpreted as a waiver of any subsequent breach or failure under the same or any other provision of this Agreement. No conduct, statement, course of conduct course of dealing, oral expression, or other action shall be construed as a waiver.
- R. Waiver of Jury Trial - THE PARTIES WAIVE TRIAL BY JURY AND AGREE THAT ANY ACTION TO ENFORCE THIS AGREEMENT SHALL BE TO THE JUDGE WITHOUT A JURY.
- S. Cancellation - Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

ARIZONA PUBLIC SERVICE COMPANY

CONTRACTOR

By: 
Eran Mahrer
Title: Director, Renewable Energy
Date: 1/3/2011

By: _____
Michael A. Pastor
Title: Chairman, Gila County Board of Supervisors
Date: _____

APPROVED AS TO FORM:

By: _____
Bryan A. Chambers
Title: Chief Deputy Gila County Attorney
Date: _____

Appendix A

EARN Program Solar Water Heating (SWH)
Equipment Specifications
8/17/2010

This document will list the APS equipment and installation specifications for the EARN Program.

Equipment Specifications:

High elevations climates (2,000 feet and above)

System Type: The SWH system must meet the APS Renewable Energy incentive program requirements. The systems must also be an indirect liquid circulation system, utilizing an antifreeze solution such as glycol as the thermal medium. The SWH system must be certified and rated by the Solar Rating and Certification Corporation (SRCC) OG-300.

Collector Type: The SWH collector must be glazed and roof mounted.

Sizing: The system must be sized based on the available home occupancy.

Low elevation climates (below 2,000 feet)

System Type: The SWH system must meet the APS Renewable Energy incentive program requirements. The systems must be SRCC OG-300 certified.

Collector Type: The SWH collector must be glazed and roof mounted.

Sizing: The system must be sized based on the available home occupancy.

Installation Specifications:

The SWH system must be installed per the SRCC OG-300 installation guidelines and meet all local building codes, in addition to passing all applicable inspections. The solar tank must be installed indoors.

For questions, contact: Ms. Cyndi Newman
Engineer
APS Renewable Energy – Technical Services
Office: 602.250.4954
cyndi.newman@aps.com

Appendix A

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For questions, contact:

Mr. Mark Ibarra
Engineer
APS Renewable Energy – Technical Services
Office: 602.250.2049
mark.ibarra@aps.com