

Agreement for Energy Wise Low Income Weatherization Program Implementation between the Gila County Community Action Agency and Arizona Public Service Company

This Agreement for Energy Wise Low Income Weatherization Program Implementation (the "Agreement") is entered into as of this 1st day of January, 2008 (the "Effective Date") by and between the Gila County Community Action Agency (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 April 12, 2006, the Arizona Corporation Commission ("ACC") approved the APS Energy Wise Low Income Weatherization Program ("Program") in Decision No. 68647;

Whereas, the Contractor and APS desire to implement a comprehensive approach to affordable energy, including weatherization activities, crisis bill assistance, and energy education for APS customers;

Whereas, APS and the Contractor desire to have the Contractor coordinate and implement the Program in conjunction with existing activities for the Federal Weatherization Assistance Program ("WAP"), the Low Income Home Energy Assistance Program ("LIHEAP"), and other programs as appropriate;

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 December 31, 2008 (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 repairs, reconditioning, replacement or restoration of deficiencies in a Customer's Qualified Home in order to make such homes energy efficient (collectively, the "Weatherization Services").

1. For purposes of this Agreement, an individual is a "Customer" if he or she meets the following requirements:

- a) the individual resides in Qualified Home;
- b) the Qualified Home is served by APS; and
- c) the individual has a maximum gross household income of 150% 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 Contractors 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;

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- 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 containing more than dwelling unit (multi-family housing);
 - c) a rental property, provided that the renters provide the Contractor with the property owner's written permission for the property to receive Weatherization Services, and the property owner agrees in writing to not increase the rent for 12 months after completion of the Weatherization Services. A copy of the owner's consent and written agreement must be provided to Contractor prior to performing the Weatherization Services. For rental properties, structurally attached appliances or systems (e.g., evaporative cooler, water lines) are not eligible for the Program. Such appliances or systems are the responsibility of the property owner.
- 3. Contractor will obtain verification of ownership of housing, appliance and/or system. The following documents will be acceptable forms of verification:
 - a) Homeowner: Deed or property tax statement; and
 - b) Renter: Receipt of purchase for the specific appliance or notarized affidavit signed by the property owner confirming that the renter is owner of the specific appliance (with serial number noted) AND proof that the property owner is the owner of the rental property (deed or property tax statement).
- B. All Weatherization Services will be implemented by the Contractor in accordance with the WAP rules as administered by the Arizona Department of Commerce Energy Office (the "Energy Office") with the following exceptions:
 - 1. Weatherization Services will be limited to those that conserve primarily electric energy;
 - 2. Waivers for exceptions in special cases not specifically addressed in ACC Decision No. 68647, docketed April 12, 2006, will not be eligible for reimbursement unless the exceptions are reviewed and approved by APS prior to commencing the work outlined in the waiver; or
 - 3. General Repairs to membranes to stop roof leaks, repairs to or replacement of non-repairable window units, repairs to or replacement of non-repairable exterior doors, restoration or replacement of ceiling areas which cannot support ceiling insulation and restoration or replacement of floor areas over "crawl spaces" which are not structurally strong enough to remain part of a building "envelope" and other similar general repairs may be done as part of Weatherization Services, provided that the entire project per individual residence is cost effective and yields at least a 1.0 benefit to cost ratio using the WAP program manual.
- C. Health and Safety Services: Install, repair, or replace window unit air conditioners or heat pumps that are prescribed by a medical doctor's order.
- D. Repair/Replacement Services: Repairs or replacements of existing utility related electric appliances/systems. When repair costs would exceed replacement costs, or when an appliance would be inoperable or unsafe even with repairs, or when an appliance is of such a vintage that it is economical to replace with an energy efficient model in accordance with guidelines established by the Energy Office, then the item shall be replaced instead of repaired. This service is available only for Customer's in a Crisis Situation, therefore an Assessment is not required prior to performing this Service. Appliances eligible for Repair/Replacement Expenditures are limited to air conditioners, heat pumps, evaporative coolers, refrigerators, and water heaters. The Allocation may not be used to provide for maintenance of these appliances/systems. Inspection of the repair or replacement after completion of the work is to be made by a Contractor representative.

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- E. WAP Coordination (Piggyback Program Component). Where possible, the Program will be coordinated by Contractor with or piggybacked onto WAP to achieve maximum cost effectiveness and expand the scope of Weatherization Services to be performed on each Qualified Home.
- F. Parallel Weatherization (Stand Alone Program Component). A stand alone program will be utilized by Contractor for those Customers who cannot otherwise be served due to lack of federal or local program funding or who are ineligible for WAP due to being previously weatherized, but who are in need of Weatherization Services.
- G. Energy Education.
 - 1. Contractor shall provide energy education which shall be designed to educate, promote, and assist the Customers on the efficient use of electricity and the benefits of Weatherization Services.
 - 2. Any energy education program will inform the Customers on how their behavior affects energy consumption, efficiency, cost, health and safety so the Customers can make better choices regarding the management of energy usage and its impact on their electric bill.
 - 3. The Contractor may designate energy educators (the "Energy Educator") as responsible for delivering energy education by visiting homes participating in the Weatherization portion of the Program. The Energy Educators may be intake workers, case managers, and/or weatherization crew members.
 - 4. When called upon by the Weatherization Program representative to provide the education services set forth above, the Energy Educator will perform a "walk through" review of the residence to discover the particular sources of energy waste in the home, explain the results of the review to all household members present at the time of the review, and provide recommendations for improving efficiencies in energy usage.
 - 5. If the Energy Educator provides an in-home "walk through" educational visit for a home participating in the Weatherization portion of the Program, the Contractor may invoice APS for a one-time per home fee of \$25 to cover costs associated with energy education. This fee will be deducted from the Allocation.
- H. Program Promotion.
 - 1. The Contractor may, with the Customer's prior written consent, place a sticker provided by APS on the Qualified Home's door or front window that will identify the home as having received Weatherization Services.
 - 2. With the Customer's prior written consent, the Contractor may place signage provided by APS in the front of the property during the Weatherization Services. Contractor will remove the sign when the workers leave the property for more than 24 hours.
- I. Implementation.
 - 1. The Contractor will obtain the Customer's prior written consent and approval for APS to provide the Customer's utility bill history information, including the historic usage of energy by kilowatt hours or therms, to the Contractor.

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2. The Contractor will conduct the on-site energy audit and detailed inspection of the Qualified Home and appliances using current building science technologies, such as blower doors, duct blasters, flow hoods, infrared heat sensors; analysis of appliances using amp meters and refrigerant pressure gages, and will prepare a report that delineates any deficiencies (the "Assessment") and analyze cost effectiveness in accordance with the Arizona Department of Commerce Energy Office Weatherization Assistance Program Rules.
3. The Contractor will prioritize the Weatherization Services for each Qualified Home based on cost effectiveness and will implement as many Weatherization Services on each Qualified Home, up to a maximum of \$6,000.00 per Qualified Home in any 12-month period, not including Program Delivery Expenditures, subject to the overall cap of the Allocation.

J. Bill Assistance. The Contractor will pay electric bills for eligible Customers who are in a Crisis Situation. Contractor shall not pay electric bills for any other Customer.

1. A Customer is in a "Crisis Situation" if the Customer meets all of the following criteria:
 - a) must be a resident of Arizona;
 - b) must not be a resident of an institution. Institutions include:
 - i) hospitals;
 - ii) licensed domiciliary care facilities (family care homes, homes for the aged and family care homes for developmentally disabled adults);
 - iii) intermediate care facilities;
 - iv) skilled nursing facilities or homes;
 - v) alcohol and drug rehabilitation centers or treatment program;
 - vi) dormitories;
 - vii) temporary protective facilities, such as domestic violence shelters, etc.; or
 - viii) prisons;
 - c) for a resident of public housing, the individual must have an obligation to pay the utility bill directly to APS on an ongoing basis; and
 - d) the individual must have had: (i) a loss or reduction of income; (ii) unexpected or unplanned expenses that caused a lack of resources; or (iii) a condition has occurred or exists that endangers the health or safety of the household.
2. A group of individuals in a single residence for which energy is purchased in common is defined herein as a "Household." A Household is eligible for bill assistance for one payment during any 12-month period.
3. A Household may receive up to \$400 to cover a current or past due APS bill, but may not receive funds to pay APS bills from former residences.

K. Case Management.

1. APS may refer payment troubled and high use low-income customers to the Contractor for participation in the Program.
2. 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.

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L. 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 Weatherization 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 weatherization program activities to APS; and
 - c) identify technical assistance needs and develop and coordinate training.
 - d) Encourage the dissemination of energy education information by the Energy Educator to all Customers participating in the weatherization portion of the Program.
 - e) Assist APS in developing and delivering communications to promote the Program.
2. All household Weatherization Services and bill assistance related data will be entered into a database approved by APS. The database is to be kept current and confidential.

M. 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. Weatherization Services application-specific information form.
3. Energy assistance program fuel information release form. Indicates the energy supplier is APS.
4. Documentation required by Section 2.A.2 with respect to a Qualified Home.
5. Household Characteristics Form.
6. Pressure Diagnostic Report (where applicable).
7. Combustion Safety Report (where applicable).

3. COMPENSATION/TAXES.

A. APS shall reimburse Contractor for Authorized Expenditures in an amount not to exceed \$60,000.00 for the Term (the "Allocation"). Unused portions of the Allocation are not carried over beyond the Term. The Allocation is based on an estimate of the number of low-income customers living in the areas served by APS. The Allocation may be adjusted by APS as the number of qualified customers served by APS changes and as the Contractor demonstrates its ability to manage the funds provided by APS.

1. The "Authorized Expenditures" consist of the following:
 - a) Weatherization Expenditures. Expenditures for the Contractor's direct costs of providing Weatherization Services, including:

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- (i) Preparation and performance of the Assessment;
 - (ii) analysis of appliances using amp meters and refrigerant pressure gages;
 - (iii) visual inspection of the property;
 - (iv) Contractor labor;
 - (v) materials;
 - (vi) contract labor;
 - (vii) General Repairs; and
 - (viii) Energy Education fee as specified in Section 2.G.5.
 - b) Expenditures for Health and Safety Services.
 - c) Expenditures for Repair/Replacement Services.
 - e) Program Delivery Expenditures. Reasonable out-of-pocket costs incurred by the Contractor to provide Weatherization Services, Health and Safety Services, and Repair/Replacement Services 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.
 - f) Bill Assistance expenditures provided under Section 2.J.
 - g) Bill Assistance Program Delivery Expenditures. Reasonable out-of-pocket costs incurred by the Contractor to provide Bill Assistance that would not be incurred if those Services were not provided, including: vehicle mileage; tools; employee related expenses such as social security, Medicare, etc.; cost allocated shares of office and management expenses.
- B. In addition, the following limitations apply to the distribution of the Allocation among the Authorized Expenditures:
- 1. Weatherization Expenditures: maximum of 100% of the Allocation.
 - 2. Health and Safety Expenditures: maximum of 2% of Weatherization Expenditures.
 - 3. Repair/Replacement Expenditures: maximum of 10% of Weatherization Expenditures.
 - 4. Bill Assistance: maximum of \$15,707.00. If other agencies participating in the Program under spend their Bill Assistance allowance, APS may authorize additional expenditures for this Program component.
 - 5. Program Delivery Expenditures: maximum of 20% of the combined Weatherization Expenditures, Health and Safety Expenditures, and Repair/Replacement Expenditures. Program Delivery Expenditures are funded from the Allocation and are not in addition to the Allocation.
 - 6. Bill Assistance Delivery Expenditures: maximum of 10% of Bill Assistance. Bill Assistance Delivery Expenditures are funded from the Bill Assistance 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 Weatherization budget shall include Weatherization Expenses, Health and Safety Expenses, Repair/Replacement Expenses, and the Weatherization portion of the program delivery expense. The Bill Assistance budget shall include the bill assistance and the bill assistance portion

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of the program delivery expense. 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. APS or the Third Party Coordinator if so designated will review the weatherization 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 from the Third Party Coordinator. Weatherization 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 weatherization 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 monthly invoices to:

Arizona Community Action Association
Executive Director
2700 N 3rd Street, Suite 3040
Phoenix, AZ 85004
- H. Each invoice shall include itemized expenditures by APS Customer account number broken into the following categories: Weatherization Expenditures; Health and Safety Expenditures; Repair/Replacement Expenditures; Bill Assistance costs and Bill Assistance Delivery Expenditures; Program Delivery Expenditures costs by category; and Energy Education fees.
- 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. 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.**

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- 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. 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.F, Confidentiality and Advertising.
 2. The Contractor assumes all risks with respect to the selection of contractors and subcontractors who will perform Weatherization Services as contemplated by this Agreement and the sale and/or distribution of Weatherization.
- 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): (a) any bodily injury, including death, to any person, or any damage or destruction of any tangible property, to the extent caused by any willful, wanton or reckless misconduct or any negligent or intentional act or omission (including acts or omissions resulting in strict liability) of Contractor, its officers, employees, agents (including, any contractors or subcontractors of the Contractor), and suppliers; or (b) any actual or alleged infringement, misuse, derogation, or violation of any third party intellectual property. 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.

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- 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 Contractors 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.

The name of APS or any of its affiliates shall not be used in any advertising or other promotional context 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.

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- 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 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:
Jerry Mendoza, Mail Station 8666
Phone: (602) 250-2243
Fax: (602) 250-3371

If to Contractor:
Gila County Community Action Agency
5515 S Apache Ave., Suite 200
Globe, AZ 85501
Designated Representative:
Malissa Buzan
Housing Services Program Manager
Phone: (928) 425-7631, ext. 8693
Fax: (928) 425-9468

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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.

- O. 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.
- P. 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.
- Q. 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.
- R. 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.
- S. 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.

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

ARIZONA PUBLIC SERVICE COMPANY

CONTRACTOR

By: *Teresa A. Arbet*
Title: Director - Customer Information Programs

By: *Joe M. Lynch*
Title: Chairman of Gila County Board of Supervisors

Approved as to form:

Bryan Chambers
Bryan Chambers
Chief Deputy County Attorney

