# WEATHERIZATION TRAINING AGREEMENT

## EW-ESA-14-4181-12

**Between the**

## STATE OF ARIZONA,
## GOVERNOR'S OFFICE OF ENERGY POLICY

**And the**

## GILA COUNTY GOVERNMENT

This Weatherization Training Agreement ("Agreement" or "Contract") is entered into by and between the State of Arizona, Governor's Office of Energy Policy ("Grantor"), located at 1700 West Washington, Suite 250, Phoenix, Arizona 85007 and Gila County, Office of Community Services ("Grantee"), located at 5515 S. Apache Avenue, Suite 200, Globe, Arizona 85501.

**WHEREAS**, A.R.S. § 41-101.01 and Executive Order 2011-02 authorizes the Governor's Office of Energy Policy ("Grantor") to execute and administer contracts.

**WHEREAS**, A.R.S. §§ 11-201 and 11-251 authorize the Gila County Government to execute and administer contracts.

**WHEREAS**, the Grantor desires to engage the Grantee to render certain services, hereinafter described, in connection with Weatherization Training programs funded with donations from Arizona utility companies

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties enter into this agreement as follows:

### I. PURPOSE OF AGREEMENT

The Grantor hereby grants funding to the Grantee solely for the project and in the following amount set forth herein. The Grantee shall use the funds for specialized trainings identified and approved by the Grantor. The trainings will assist the Grantee with the implementation of the Weatherization program.

The Grantee agrees to comply with all applicable Federal and State statutes, regulations, policies, guidelines, and requirements, including administrative requirements with the use of this funding. The Grantor will provide the financial, programmatic and administrative guidelines and statutory program purposes for the grant program funding. The Grantee agrees to comply with all lawful requirements imposed by the Grantor in the administration of these grant funds.

### II. TERM OF AGREEMENT/ EFFECTIVE DATE

The term of the Agreement shall commence upon signature by both parties and shall remain in effect until June 30, 2014, contingent upon final Utility funding, unless terminated, canceled or extended as otherwise provided herein.

## III. DESCRIPTION OF SERVICES

**The Grantee shall:**

A. Be required to send at least one manager and one crew member to the *Success with Weatherization* training, provided by the Southwest Building Science Training Center. The course curriculum is a set of standards for the state to follow to improve the quality of workmanship in the weatherization program.

B. Be required to send at least one member of the weatherization program from their staff to the *Energy OutWest Conference* to be held April 2014.

C. Obtain prior approval for the *Success with Weatherization* and *Energy OutWest Conference* trainings.

D. Obtain prior approval from the Governor's Office of Energy Policy for any additional Weatherization trainings that might be needed by the Grantee.

## IV. MANNER OF FINANCING

**Grantor shall:**

A. Provide up to, and not exceed, $5,000 to the Grantee, as authorized by the Weatherization Training Program, administered by the Grantor, for costs associated with the activities listed in Section III.

B. Pay the Grantee on a cost reimbursement basis only, conditioned upon receipt of applicable, accurate and complete reimbursement Payment Request and Training and Technical Assistance Forms to be submitted by the Grantee.

C. Reimburse travel expenses in accordance with the Grantee's travel policies, but shall not exceed the Domestic Per Diem rates allowed under the Federal Travel Management Policy and the prevailing Federal standard mileage rates.

D. Expend payments to the Grantee from the Utilities Admin Fund, State Funding.

E. Provide master templates for the Payment Request and Training and Technical Assistance Forms upon receipt of the signed Agreement.

**Grantee shall:**

A. Obtain prior written approval from the Grantor for every training session or workshop prior to the event. A Training and Technical Assistance Form must be completed and submitted to the Governor's Office of Energy Policy for signed approval prior to the event. Failure to get the required pre-approval will disallow the cost to be reimbursed through this Agreement.

B. Be paid on a cost reimbursement basis. The reimbursement amount is to be determined on the cash basis of accounting. The reimbursement request on the Payment Request Form should be submitted with the approved Training and Technical Assistance Form to the Grantor no later than the twelfth (12th) working day of the following month (excluding state observed holidays).

C. Submittal Address

- All Payment Request Forms and Report Forms must be directed to:

**Governor's Office of Energy Policy**
**1700 W. Washington, Suite 250**
**Phoenix, Arizona 85007**

## V. PUBLIC AGENCY LANGUAGE ONLY-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, 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.

## VI. INSURANCE REQUIREMENTS

In the event the Grantee or sub-contractor(s) is/are a public entity, then such public entity shall provide a Certificate of Self-Insurance.

## VII. ARIZONA LAW

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

## VIII. SEVERABILITY

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

## IX. NO WAIVER

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## X. RECORDS

Under A.R.S. § 35-214 and § 35-215, the Grantee shall retain and shall contractually require each sub-grantee to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Grantee shall produce a legible copy of any or all such records.

## XI. NON-DISCRIMINATION

The Grantee 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.

## XII. AUDIT

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Grantee's or any sub-grantee's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subgrant.

## XIII. ADVERTISING, PUBLISHING AND PROMOTION OF CONTRACT

The Grantee shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Grantor.

## XIV. FEDERAL IMMIGRATION AND NATIONALITY ACT

The Grantee shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Grantee shall flow down this requirement to all sub-grantees utilized during the term of the Contract. The State shall retain the right to perform random audits of the Grantee and sub-grantees records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Grantee and/or any sub-grantees be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default and suspension and/or debarment of the Grantee.

## XV. E-VERIFY

In accordance with A.R.S. §41-4401, the Grantee warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. §23-214, Subsection A.

## XVI. OFF-SHORE PERFORMANCE OF WORK PROHIBITED

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by sub-grantees at all tiers. The Grantee shall declare all anticipated offshore services to the Grantor.

## XVII. AVAILABILITY OF FUNDS

Funds may not presently be available for performance under this Contract beyond the current State fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current State fiscal year until funds are made available for performance of this Contract.

## XVIII. AMENDMENTS

The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized in writing by the Grantor or made unilaterally by the Grantee are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Grantee shall not be entitled to any claim under this Contract based on those changes.

## XIX. SUB-GRANTEES

The Grantee shall not enter into any sub-grant under this Contract for the performance of this Contract without the advance written approval of the Grantor. The Grantee shall clearly list any proposed sub-grantees and the sub-grantee's proposed responsibilities. The sub-grant shall incorporate by reference the terms and conditions of this Contract.

## XX. ASSIGNMENT AND DELEGATION

The Grantee may not assign any right or delegate any duty under this Contract without the prior written approval of the Grantor.

## XXI. COMPLIANCE WITH APPLICABLE LAWS

The Grantee shall comply with all applicable federal, state and local laws, and shall maintain all applicable licenses and permit requirements.

## XXII. RIGHT TO ASSURANCE

If the State in good faith has reason to believe that the Grantee does not intend to, or is unable to perform or continue performing under this Contract, the Grantor may demand in writing that the Grantee give a written assurance of intent to perform. Failure by the Grantee to provide written assurance within the number of Days

specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.

**XXIII. STOP WORK ORDER**

The Grantor may, at any time, by written order to the Grantee, require the Grantee to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the Grantor after the order is delivered to the Grantee. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Grantee shall immediately comply with its terms and take reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of the work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Grantee shall resume work. The Grantor shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

**XXIV. NON-EXCLUSIVE REMEDIES**

The rights and remedies of the State under this Contract are not exclusive.

**XXV. NONCONFORMING TENDER**

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the Grantor may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

**XXVI. RIGHT OF OFFSET**

The Grantor shall be entitled to offset against any sums due the Grantee, any expenses or costs incurred by the Grantor, or damages assessed by the Grantor concerning the Grantee's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

**XXVII. CANCELLATION FOR CONFLICT OF INTEREST**

In accordance with A.R.S. §38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Grantee receives written notice of the cancellation unless the notice specifies a later time. If the Grantee is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. §38-511.

**XXVIII. SUSPENSION OR DISBARMENT STATUS**

The State may, by written notice to the Grantee, immediately terminate this Contract if the State determines that the Grantee has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a Contract shall attest that the Grantee is not currently suspended or debarred. If the Grantee becomes suspended or debarred, the Grantee shall immediately notify the State.

**XXIX. TERMINATION FOR CONVENIENCE**

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Grantee shall stop all work, as directed in the notice, notify all sub-grantees of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Grantee under the Contract shall become the property of and be delivered to the State upon demand. The Grantee

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. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

## XXX. TERMINATION FOR DEFAULT

In addition to the rights reserved in the Contract, the Grantor may terminate the Contract in whole or in part due to the failure of the Grantee to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Grantor shall provide written notice of the termination and the reasons for it to the Grantee.

Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Grantee under the Contract shall become the property of and be delivered to the Grantor on demand.

The Grantor may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Grantee shall be liable to the Grantor for any excess costs incurred by the Grantor in procuring materials or services in substitution for those due from the Grantee.

## XXXI. ARBITRATION AND ATTORNEYS' FEES

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41). Venue shall be in Maricopa County, Arizona. Each party shall bear their own fees and costs in any litigation or arbitration.

## XXXII. NOTICES

Any and all notices, requests, demands or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing and shall be delivered in person or shall be sent by the United States Postal Service, certified mail, return receipt requested, to the respective parties at the following addresses:

Correspondence to Grantee:
Gila County Government
Office of Community Services
5515 S. Apache Avenue, Suite 200
Globe, Arizona 85501

Contractual/Financial Contact
Malissa Buzan
Director of Community Services
PHONE 928-402-8693
FAX 928-425-9468
EMAIL mbuzan@co.gila.az.us

Program/Technical Contact
Malissa Buzan
Director of Community Services
PHONE 928-402-8693
FAX 928-425-9468
EMAIL mbuzan@co.gila.az.us

Correspondence to Grantor:
The Governor's Office of Energy Policy
1700 W. Washington, Suite 250
Phoenix, Arizona 85007

Contractual/Financial Contact
Evelyn Billings
Grants Administrator
PHONE 602-771-1141
FAX 602-771-1203
EMAIL ebillings@az.gov

Program/Technical Contact
GOEP Assigned Auditor

**IN WITNESS WHEREOF**, the parties hereto agree to execute this Agreement.

GRANTEE:
Gila County Government
5515 S. Apache Avenue, Suite 200
Globe, Arizona 85501

GRANTOR:
Governor's Office of Energy Policy
1700 West Washington, Suite 250
Phoenix, Arizona 85007

Michael A. Pastor — Date
Chairman
Gila County Board of Supervisors

Leisa B. Brug — 11/7/13 — Date
Director
Or Authorized Signatory

Bryan B. Chambers — Date
Deputy Attorney Principal

Travis Price — 11/7/13 — Date
Compliance Finance and Procurement Manager
Office of the Governor

ATTEST:

Marian E. Sheppard — Date
Clerk of the Board