



INDEPENDENT CONTRACTOR AGREEMENT

2015-16 Utility Assistance Programs

Contract No. 07012015-16

This INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into as of the Effective Date set forth below by and between **Gila County Community Action Program, A Department of the Gila County Community Services Division** (hereinafter "Contractor") and Arizona Community Action Association, an Arizona nonprofit corporation (hereinafter "ACAA").

RECITALS:

A. ACAA is a nonprofit organization that, as part of its mission to promote economic self sufficiency for low-income Arizonans, administers energy program funding to provide weatherization services, utility repair and replacement, utility deposits and bill assistance.

B. ACAA is receiving or expects to receive during the term of this Agreement funding from the fund sources listed in ***Section 1*** (the "Fund Sources") pursuant to Program Documents (as defined in ***Section 4***).

C. ACAA desires to subcontract with Contractor to obtain assistance with fulfilling ACAA's obligations under the Program Documents and Contractor desires to receive the funding described herein and use it to provide services in accordance with the Program Documents and this Agreement. **The total amount of the contract is \$137,834.00.**

THEREFORE, in consideration of the terms and conditions set forth in this Agreement and intending to be bound, ACAA and Contractor hereby agree as follows:

1. Services and Programs.

1.1 **Services.** Contractor agrees, under the terms and conditions of this Agreement, to perform the following services for the programs listed in ***Section 1.2***: (i) conduct application intake services, (ii) make eligibility determinations, and (iii) where applicable, conduct weatherization work, utility deposits, repair and replacement work, and (iv) bill assistance. Contractor shall perform the foregoing services during the term set forth in ***Section 2***. ACAA will not exercise control over the specific methods used by Contractor or the specific manner in which Contractor performs services under this Agreement, but Contractor shall follow ACAA's instructions as to the result to be achieved. Contractor will receive ACAA's instructions through an employee of ACAA who is appointed to manage the program ("Program Manager"). Contractor may also received instructions from an ACAA employee designated to serve as a liaison between ACAA and Contractor ("Monitor").

Advocating, Educating and Partnering to Prevent and Alleviate Poverty.

1.2 Fund Sources. For purposes of this Agreement, the programs, Fund Sources and amount of funding to be allocated to Contractor will be as set forth in the following summary:

Fund Source(s)	Direct Service Amount (A)	Program Delivery (B)	Total Allocation (A+B)	Allowable Activities	Additional Information No credits can be given to accounts.
Utility Repair Replacement Deposit (URRD)	\$68,464.56	\$5,953.44	\$74,418.00	Utility/Appliance Repair or Replacement Utility Deposit	Refer to Exhibit A: Utility Repair Replacement Deposit Policy Manual Refer to Exhibit B: Instructions for Verifying Citizenship and Non-Legal Permanent Resident (LPR) Status (6/2014 Edition) Agency makes guarantees and payments to utility companies and repair/replacement vendors. Service costs and program delivery costs are then reimbursed based on activity reports and invoices.
Southwest Gas (SWG) LIEC Bill Assistance Program	\$5,000.00	\$0	\$5,000.00	Utility assistance for SWG customers	Refer to Exhibit C: Southwest Gas LIEC Bill Assistance Summary. No more than twenty-five percent (25%) of total allocation can be used for deposits. Of total allocation, \$1,250.00 can be used for deposits. Agency makes guarantees and payments to utility company. Service costs and program delivery costs are then reimbursed based on activity reports and invoices.
Home Energy Assistance Fund (HEAF)	\$1,712.70	\$190.30	\$1,903.00	Utility assistance and deposits	Refer to Exhibit D: Home Energy Assistance Policy Manual Agency makes guarantees and payments to utility companies. Service costs and program delivery costs are then reimbursed based on activity reports and invoices.
HEAF/Tribal	\$6,000.30	\$666.70	\$6,667.00	Utility assistance and deposits for Native Americans living on the reservation.	
APS Crisis Bill Assistance	\$44,861.40	\$4,984.60	\$49,846.00	Utility assistance for APS customers	Refer to Exhibit E: APS Crisis Bill Assistance Program Summary Agency makes guarantees and payments to utility company. Service costs and program delivery costs are then reimbursed based on activity reports and invoices.
Total:	\$126,038.96	\$11,795.04	\$137,834.00		

The summary above of certain provisions of the Program Documents is provided for Contractor’s convenience and is not intended to be an exhaustive description of all material terms of the Program Documents. Contractor is advised to carefully review the Program Documents in their entirety. In the event of any conflict between this summary and the Program Documents, the terms of the Program Documents will control.

1.3 Training. Contractor will participate in any training provided by ACAA on dates and times selected by ACAA.

1.4 Program Modification. ACAA and the Fund Sources reserve the right to modify program eligibility guidelines and Program Documents. Contractor agrees to implement and comply with any and all modifications immediately after receipt of written notice of such modifications.

2. Term and Termination.

2.1 Term. Unless sooner terminated pursuant to *Section 2.2*, the term of this Agreement will be for one year beginning on the later of full execution of this Agreement on **July 1, 2015** (the "Effective Date") and ending on **June 30, 2016**.

2.2 Termination. Either ACAA or Contractor may terminate this Agreement at any time, for any or no reason, by giving thirty (30) days written notice to the other party of its election to terminate. If a Fund Source terminates a program or otherwise discontinues funding to ACAA, then this Agreement will automatically terminate as to any services to be provided for that Fund Source.

2.3 Effect of Termination; Survival. Upon termination, Contractor's obligation to perform further services for ACAA shall terminate and ACAA's obligation to provide funding to Contractor for such services shall terminate, but the remainder of this Agreement shall continue in full force and effect.

3. Funding; Expenses; Nature of Relationship.

3.1 Funding; Payments to Contractor. Not later than the 15th day of each month, Contractor will submit an invoice to ACAA for all services Contractor performed during the prior month as required by *Section 4*. ACAA will endeavor to review Contractor's invoices and give notice to Contractor of any disallowed items within ten (10) business days after ACAA receives the invoice. ACAA will submit all approved portions of Contractor's invoice to the applicable Fund Sources. Contractor acknowledges and agrees that all invoices are subject to approval by the Fund Sources and ACAA's approval does not bind any Fund Source or constitute a guarantee by ACAA of payment to Contractor.

3.2 Request for Additional Funds. Contractor may submit in writing a request for additional funds to ACAA no earlier than November 30 of the current contract year. Requests for additional funds will be submitted to the Home Energy Assistance Fund Advisory Board of Directors on the next available agenda. Approval of request(s) will be based on: a) there are adequate funds available; b) agency is at an expenditure rate to ensure any additional funds will be expended; c) request is not being used to cover over expenditures. All approved requests will be submitted to the ACAA Board of Directors on the next available agenda for final review and approval.

3.3 Reimbursement of Expenses. ACAA may provide certain materials and supplies to Contractor for use in performing services under this Agreement. Except for such materials and supplies, and except to the extent the Program Documents permit reimbursement of expenses from the Fund Sources, Contractor shall be responsible for expenses that it incurs in performing services under this Agreement, and shall not be entitled to reimbursement from ACAA.

3.4 Expenditures. ACAA reserves the right to terminate, reduce, or reallocate funds to another Contractor within the service territory, if Contractor's expenditure rate, is not at a percentage to ensure one hundred percent expenditure of funds within the contract period. ACAA will conduct a review of agency expenditures on a quarterly basis, and will notify the Contractor of any concerns. It is the responsibility of the Contractor to monitor all contract expenditures and to ensure no over expenditures occur. If an over expenditure occurs, the Contractor is responsible for absorbing and/or returning the amount of the payment.

3.5 Advance Payments. Contractor may request a one-time advance in accordance with the established One-Time Advance Payment Policy approved by the Home Energy Assistance Advisory Board of Directors and the ACAA Board of Directors. Contractor may request the Advance Request Form through ACAA, if needed.

3.6 Nature of Relationship. As between ACAA and Contractor, ACAA shall have the same rights as the Funding Sources have under the applicable Program Documents. Contractor shall have only those rights expressly provided to Contractor under this Agreement. The relationship between ACAA and Contractor shall be that of independent contractors for purposes including tax law purposes and employment law purposes and not that of employer-employee, partners, joint venturers, or otherwise. Contractor acknowledges and agrees that Contractor shall have no right or opportunity to participate in any employee benefits plans, compensation plans, or other benefits that ACAA may offer to its employees, and that Contractor will not be treated as an employee for purposes of workers compensation laws, employment laws, or tax laws, including without limitation federal and state income tax laws, social security tax laws and unemployment contribution laws. Contractor agrees to comply with all laws applicable to independent contractors including, but not limited to, professional and tax licensing requirements and reporting and payment of applicable federal, state and local taxes, including without limitation income taxes and self-employment taxes.

3.7 Indemnification. Contractor agrees to indemnify, defend and hold ACAA and its directors, officers, employees and agents harmless for, from and against any tax or other liabilities, losses, costs, expenses (including attorneys' fees and court costs), penalties, claims, demands resulting from or arising out of a breach of this Agreement by Contractor or Contractor's employees or agents, or resulting from or arising out of rendering services under this Agreement by Contractor or Contractor's employees or agents or to the extent caused by the negligence or intentional misconduct of Contractor or Contractor's employees or agents. ACAA agrees to indemnify, defend and hold Contractor and its directors, officers, employees and agents harmless for, from and against any liabilities, losses, costs, expenses (including attorneys' fees and court costs), penalties, claims, demands to the extent caused by the negligence or intentional misconduct of ACAA or ACAA's employees or agents.

3.8 Insurance.

3.8.1 Contractor and any subcontractors shall procure and maintain, until all of their obligations have been satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services hereunder by Contractor or Contractor's agents, representatives, employees or subcontractors. Contractor shall also procure and maintain all additional insurance coverage required by the Program Documents.

3.8.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit Contractor's indemnity obligations contained in this Agreement. ACAA makes no representation or warranty that the minimum limits contained herein are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under this contract by Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

3.8.3 Contractor shall provide coverage with limits of liability not less than those stated below.

1. *Commercial General Liability – Occurrence Form*

General Aggregate: The policy will have a combined single limit of \$2,000,000 for each occurrence for bodily injury and property damage. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

15. The policy shall be endorsed to include the following additional insured language: "*Arizona Community Action Association,*

shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor”.

b. The policy shall contain a waiver of subrogation against Arizona Community Action Association and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

15. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$ 1,000,000

15. The policy shall be endorsed to include the following additional insured language: *“Arizona Community Action Association shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor”.*

15. Worker’s Compensation and Employers’ Liability

The policy will cover all obligations imposed by federal, state and local statutes with jurisdiction over Contractor’s employees.

15. The policy shall contain a waiver of subrogation against Arizona Community Action Association and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3.8.4 Wherever additional insured status is required, such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Agreement. The Contractor’s insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

3.8.5 Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to ACAA.

3.8.6 Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an “A.M. Best” rating of not less than A- VII. ACAA makes no representation or warranty that the above-required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency. If Contractor utilizes the Social Service Contractors Indemnity Pool (SSCIP) or other approved insurance pool for insurance coverage, SSCIP or the other approved insurance pool is exempt from the A.M. Best’s rating requirements listed in this Agreement. If Contractor chooses to use SSCIP or another approved insurance pool as its insurance provider, Contractor would be considered in full compliance with insurance requirements relating to the A.M. Best rating requirements.

3.8.7 Contractor shall furnish ACAAA with certificates of insurance (ACORD form or equivalent approved by ACAAA) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by ACAAA before services commence. Each insurance policy required by this Agreement must be in effect at or prior to commencement of services under this Agreement and remain in effect for the duration of the term of this Agreement. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

3.8.8 Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to ACAAA separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

4. Compliance with Terms of Funding. Contractor acknowledges that Contractor's services will be part of the programs funded by the Funding Sources listed in *Section 1* pursuant to the Program Documents. Contractor agrees it will be bound by and will comply with all terms and conditions of the Program Documents, including without limitation all indemnification and insurance obligations. The "Program Documents" consist of the documents attached hereto as *Exhibits A* through *F* and any written policies and procedures that ACAAA may send to Contractor from time to time, all of which are incorporated herein by this reference. The Program Documents require ACAAA to submit certain periodic reports to the Fund Sources. Contractor agrees to cooperate with ACAAA in preparing these reports. In addition, Contractor shall submit monthly reports to ACAAA on forms prescribed by ACAAA and comply with all other reporting obligations under the Program Documents. Such invoices and reports shall be submitted no later than fifteen (15) days after the end of each month.

4.1 Grant Management System Database (GMS). Contractor will ensure, all fund sources will be directly inputted into the GMS Database system, CAP60, or transferred electronically.

5. Confidential Information.

5.1 Contractor's Obligation of Confidentiality. Contractor recognizes that as a result of this Agreement and Contractor's performance of services hereunder Contractor will have access to confidential information ("Confidential Information"). Contractor will keep the Confidential Information it receives confidential at all times and will not, without the prior written consent of ACAAA, disclose Confidential Information to any person other than its legal counsel and other parties authorized by ACAAA in writing prior to the disclosure of the Confidential Information (such legal counsel and other authorized parties will hereinafter be collectively referred to herein as the "Representatives") who need to know the Confidential Information. Contractor agrees to inform its Representatives of the confidential nature of the Confidential Information and to obtain their agreement to be bound by the terms of this *Section 5* for the benefit of ACAAA. Contractor agrees to treat and use Confidential Information in a manner that is consistent with protecting such information. Contractor agrees that it will be responsible for any unauthorized use or disclosure of Confidential Information or other non-compliance with this Agreement by any Representative or other agents, or by any other person who obtains access to Confidential Information from, or due to the fault of, Contractor. Any such non-compliance will constitute a breach of this Agreement by Contractor.

5.2 Definition of Confidential Information. Confidential Information includes without limitation any information in whatever form, whether documents, computer disks, computer drives, computer chips, audio tapes or video tapes, that are marked with the legend "confidential" or other notice of similar meaning or are otherwise treated as confidential by ACAAA. Whether or not indicated to be confidential, the following information shall be deemed to constitute Confidential Information: all data collected from applicants for assistance and program participants including without limitation names, addresses, and any other information of a personal or intimate nature, and all trade

secrets, proprietary data, financial information, business information and other proprietary information disclosed by ACAAA to Contractor, and further including without limitation any copies, summaries, indexes or abstracts of Confidential Information and any information or materials derived from Confidential Information. In addition to the foregoing, any information that is otherwise protected by law as confidential without regard to this Agreement shall constitute Confidential Information. The term "Confidential Information" as used herein does not include any information which (a) is already known to the public prior to disclosure to Contractor; (b) is subsequently made known to the public without any violation of this Agreement; or (c) is rightfully received by Contractor from a third party without similar restriction and without breach of this Agreement. Notwithstanding the foregoing, Contractor will not be deemed in violation of this Agreement in the event Contractor discloses Confidential Information in response to a duly issued court order or subpoena if Contractor provides prompt advance notice thereof to ACAAA or if Contractor discloses data regarding applicants for assistance and program participants to the extent required by Contractor's reporting obligations under other agreements pursuant to which Contractor receives funding.

6. **Audit and Inspection.** ACAAA will have the right to audit and inspect Contractor's work to verify compliance with this Agreement. Contractor agrees to provide ACAAA and its Fund Sources with access, upon reasonable advance notice and during normal business hours, to all of Contractor's books and records that relate to this Agreement. Contractor will maintain copies of all books and records that relate to this Agreement for at least 3 years after the expiration of this Agreement.

7. **Notices.** All notices given in connection with this Agreement shall be in writing and sent by: (i) hand delivery (ii) nationally recognized courier, (iii) facsimile, (iv) United States certified mail with return receipt requested, postage paid, or (v) e-mail. All notices shall be deemed given and received when (a) if given by facsimile, upon confirmed transmission during normal business hours (before 5:00 p.m. Arizona time), if confirmed transmission is after normal business hours it will be deemed given and received the next business day, (b) if hand delivered, when delivered (as confirmed by receipt executed by the recipient or delivery confirmation executed by the courier), (c) if given by a nationally recognized courier, on the day the notice is actually delivered (as confirmed by receipt executed by the recipient or delivery confirmation by the courier), (d) if given by certified mail, return receipt requested, postage paid, when actually delivered to the addresses specified herein as evidenced by return receipt or refusal or failure to accept delivery. All notices will be given at the address or by use of the facsimile number or e-mail address specified for a party on the signature page hereof. A party may change its mailing address, e-mail address and/or facsimile number for notice by giving notice to the other parties in accordance with this Section.

8. **Limitation of Liability.** Contractor acknowledges that all funds to be provided pursuant to this Agreement will be provided by the Fund Sources, and Contractor agrees to look solely to funds actually paid by the Fund Sources for Contractor invoices approved by the Fund Sources for all compensation and reimbursement hereunder. ACAAA's obligations under this Agreement are subject to the Fund Sources actually providing the funds (either to ACAAA or directly to Contractor) pursuant to the Program Documents. ACAAA intends to allocate the funds from each Fund Source to multiple contractors. If one or more Fund Sources reduces their funding to ACAAA, then ACAAA reserves the right to reduce Contractor's funding under this Agreement and to allocate the reduced funding among Contractor and other contractors as determined by ACAAA in its sole discretion.

9. **Assignment; Subcontractors.** Contractor may not assign Contractor's rights or obligations under this Agreement without ACAAA's prior written consent, which consent ACAAA may withhold in its sole discretion. Contractor may not use a subcontractor to perform any of Contractor's obligations under this Agreement without ACAAA's prior written consent, which consent ACAAA will not unreasonably withhold ACAAA's consent to an assignment or subcontractor will not release Contractor from any obligations hereunder.

10. **Choice of Law and Forum.** This Agreement has been entered into in Maricopa County, Arizona and its application and interpretation shall be governed exclusively by its terms and by the laws of the State of Arizona without regard to its choice of law rules. The exclusive and proper venue for any dispute arising out of this Agreement will be the state and federal courts located in Maricopa County Arizona.

11. **Integration; Modification; Waiver.** This Agreement reflects the entire agreement of the parties relating to the subject matter hereof. All recitals and exhibits to this Agreement are incorporated herein by this reference. No provision of this Agreement shall be deemed waived, amended, or modified by any party unless both parties sign a written amendment or the party against whom the waiver is asserted signs a written waiver.

12. **Legal Arizona Workers Act Compliance.** Firm hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Firm's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Firm shall further ensure that each subcontractor who performs any work for Firm under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Firm and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Firm's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Firm to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Firm shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

Firm shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Firm. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Firm's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Firm shall be entitled to an extension of time, but not costs.

13. **Cancellation.** This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

14. **Counterparts; Facsimile.** This Agreement may be executed in counterparts and delivered by facsimile.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement, effective as of the Effective Date.

CONTRACTOR

Gila County Board of Supervisors

Arizona Community Action Association,
an Arizona nonprofit corporation

By: _____

By: _____

Name: Michael A. Pastor

Name: Cynthia Zwick

Title: Chairman, Gila County

Title: Executive Director

Date: _____

Date: _____

Approved as to Form:

Address:

By: _____

2700 North 3rd Street, Suite 3040

Phoenix, Arizona 85004

Fax No.: 602-604-0644

E-mail: czwick@azcaa.org

Name: Bryan B. Chambers

Title: Deputy Attorney Principal

Date: _____

Address:

5515 S. Apache Avenue, Suite 200
Globe, Arizona 85501



List of Attached Exhibits:

- Exhibit A Utility Repair, Replacement and Deposit Policy Manual
Effective July 1, 2015 – June 30, 2016

- Exhibit B Instructions for Verifying Citizenship and Non-Citizen
Legal Permanent Resident (LPR) Status (Revised by
DES in 6/2014)

- Exhibit C Southwest Gas (SWG) LIEC Bill Assistance Program

- Exhibit D Home Energy Assistance Fund Policy Manual
July 1, 2015 – June 30, 2016

- Exhibit E APS Crisis Bill Assistance Program Summary

- Exhibit F Federal Poverty Income Guidelines effective July 1, 2015 –
June 30, 2016