



Arizona Community Action Association
Advocating, Educating and Partnering to Prevent and Alleviate Poverty

INDEPENDENT CONTRACTOR AGREEMENT

2013-14 Utility Assistance Programs

Contract No. 10012013-14

This INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into as of the Effective Date set forth below by and between **Pima County, on behalf of the Pima County Community Action Agency**, 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 \$33,750.00.**

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) 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").

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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.
Tucson Electric Power (TEP) Bill Assistance	\$26,250.00	\$7,500.00	\$33,750.00	Utility Assistance for TEP customers	Refer to Exhibit A: TEP Bill Assistance Program Summary (Effective 10/1/2013) Refer to Exhibit B: FY2013 Federal Poverty Guidelines ***** 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.
Total:	\$26,250.00	\$7,500.00	\$33,750.00		

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 **October 1, 2013** (the "Effective Date") and ending on **June 30, 2014**.

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. If for any reason there are insufficient appropriated and available funds for the purpose of maintaining Contractor's performance under this Agreement, this Agreement will automatically terminate. The parties further agree that this Agreement is subject to termination for conflict of interest pursuant to A.R.S. § 38-511.

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 ACAAA receives the invoice. ACAAA 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 ACAAA's approval does not bind any Fund Source or constitute a guarantee by ACAAA of payment to Contractor.

3.2 Reimbursement of Expenses. ACAAA 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 ACAAA.

3.3 Expenditures. ACAAA 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. ACAAA 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.

3.4 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 ACAAA Board of Directors. Contractor may request the Advance Request Form through ACAAA, if needed.

3.5 Nature of Relationship. As between ACAAA and Contractor, ACAAA 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 ACAAA 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 ACAAA 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.

3.6 Indemnification. To the extent allowed by law, Contractor agrees to indemnify, defend and hold ACAAA 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. ACAAA 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 ACAAA or ACAAA's employees or agents.

3.7 Insurance.

3.7.1 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,

3.7.2 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.

1. *Commercial General Liability – Occurrence Form*

a. 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.

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

a. 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"*.

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

a. 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.

10/16/2013

available sources. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

3.7.5 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 ACAAA.

3.7.6 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. ACAAA 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.

3.7.7 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.

3.7.8 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.

3.7.9 ACAAA acknowledges that Contractor is a self-insured government entity and accepts that such self-insurance satisfies all insurance requirements set forth in this Agreement.

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 *B* 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.

5.3 Public Information. The parties acknowledge and agree that Contractor is subject to A.R.S. §§ 39-121 *et seq.* and that public records in the custody of Contractor are subject to inspection by the public, unless otherwise protected by law. Nothing in this Agreement shall be construed as attempting to limit Contractor's obligations under A.R.S. §§ 39-121, *provided, however*, that in the event a public records request seeks the release of personally identifiable information (including, without limitation, names, addresses, birthdates, social security numbers and other household or financial information) that is gathered by Contractor during the course of its intake, eligibility review and/or reporting processes, or otherwise from clients or program beneficiaries (or the members of their households) in connection with Contractor's performance of its duties under this Agreement, Contractor shall be responsible for seeking a protective order or other relief necessary to enjoin the release of such personally identifiable information. All costs associated with the seeking of a protective order or other relief described in the preceding sentence shall be borne by Contractor.

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; Remedies.** 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. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy, and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

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

13. **Non-Discrimination.** Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09, including flow down of all provisions and requirements to any subcontractor. During the term of this Agreement, Contractor agrees not to discriminate against any employee, client, program beneficiary or other individual in any way because of the person's age, race, creed, color, religion, sex, disability or national origin.

14. **Authority to Contract.** ACAAA warrants that it has authority to enter into this Agreement and perform its obligations hereunder. If any court or administrative agency determines that Contractor does not have authority to enter into this Agreement, Contractor shall not be liable to ACAAA or any third party by reason of such determination, except that Contractor shall immediately return to ACAAA (or directly to the applicable Fund Source as directed by ACAAA) any funds received by Contractor pursuant to this Agreement that have not yet been used for the purpose for which such funds were intended.

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

CONTRACTOR
Pima County Board of Supervisors

Chair, Board of Supervisors

Date: _____

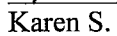
Attest:

Clerk of the Board

Date: _____

Approved as to Form:

 **TOBIN ROSEN**

 Karen S. Friar, Deputy County Attorney

10/18/13
Date: _____

Approved as to Content:

Pima County Employment & Training Dept.


Director

10/31/13
Date: _____

Address;
2797 E. Ajo Way, 3rd Floor
Tucson, Arizona 85713

Arizona Community Action Association,
an Arizona nonprofit corporation

By 

Name: Cynthia Zwick

Title: Executive Director

Date: 09.25.2013

Address:

2700 North 3rd Street, Suite 3040

Phoenix, Arizona 85004

Fax No.: 602-604-0644

E-mail: czwick@azcaa.org



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Arizona Community Action Association
Advocating, Educating and Partnering to Prevent and Alleviate Poverty

List of Attached Exhibits:

Exhibit A TEP Bill Assistance Program Summary

Exhibit B Federal Poverty Income Guidelines effective July 1, 2013 –
June 30, 2014

TUCSON ELECTRIC POWER (TEP) BILL ASSISTANCE PROGRAM

Exhibit A

This program was funded as a result of the June, 2013 TEP Rate Case Settlement. Funds were allocated for bill assistance to households that fall at or below the 150% of the Federal Poverty Guidelines.

CAN PAY	TEP utility bills on client's present address ONLY and must be a customer of record. <u>Cannot pay deposits, reconnect fees or establishment charges.</u>
MAXIMUM GRANT AMOUNT:	\$400.00 for current and past due amounts. No credit can be given on an account.
SERVICE CODES:	UTA
PROGRAM YEAR	A household may be assisted only once in a 12-month period.
ELIGIBILITY CRITERIA	<p>Client household must be a current TEP customer. Clients with disconnected accounts are NOT considered current customers.</p> <p>Household income for the most recent 30 days, including the date of application</p> <p>Households must be at or below 150% of the federal poverty guidelines. All income (within the past 30 days, including the date of application) must be verified.</p>
CRISIS:	An acceptable crisis reason must be documented on the application.
CLIENT FILES MUST CONTAIN:	<ol style="list-style-type: none">1. Application for benefits.2. Most recent TEP utility bill.3. Income verification for the most recent 30 days including application date.4. Printed, signed copy of the GMS application.

EXHIBIT B

FEDERAL POVERTY GUIDELINES
Effective July 1, 2013 - June 30, 2014

Arizona Community Action Association
Home Energy Assistance Fund
Percent of Poverty Display - Monthly Gross Income

Information based on the Federal Register published on January 24, 2013

Household Size											
Percent of Poverty	1	2	3	4	5	6	7	8	9	10	For each additional member add:
0% to 74%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	\$709	\$956	\$1,204	\$1,453	\$1,700	\$1,948	\$2,196	\$2,444	\$2,692	\$2,940	
											\$248
75% to 100%	\$710	\$957	\$1,205	\$1,454	\$1,701	\$1,949	\$2,197	\$2,445	\$2,693	\$2,941	
	\$958	\$1,293	\$1,628	\$1,963	\$2,298	\$2,633	\$2,968	\$3,303	\$3,638	\$3,973	
											\$335
101% to 125%	\$959	\$1,294	\$1,629	\$1,964	\$2,299	\$2,634	\$2,969	\$3,304	\$3,639	\$3,974	
	\$1,198	\$1,617	\$2,034	\$2,454	\$2,872	\$3,291	\$3,710	\$4,128	\$4,547	\$4,966	
											\$419
126% to 150%	\$1,199	\$1,618	\$2,035	\$2,455	\$2,873	\$3,292	\$3,711	\$4,129	\$4,548	\$4,967	
	\$1,436	\$1,939	\$2,441	\$2,944	\$3,446	\$3,949	\$4,451	\$4,954	\$5,456	\$5,959	
											\$503
151% to 200%	\$1,438	\$1,940	\$2,442	\$2,945	\$3,447	\$3,950	\$4,452	\$4,955	\$5,457	\$5,960	
	\$1,915	\$2,585	\$3,255	\$3,925	\$4,595	\$5,265	\$5,935	\$6,605	\$7,275	\$7,945	
											\$670
Annual	11,490	15,510	19,530	23,550	27,570	31,590	35,610	39,630	43,650	47,670	4020