



INDEPENDENT CONTRACTOR AGREEMENT

2023-24 Utility Assistance Programs

Contract No. 07012023-24

This INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into as of the Effective Date set forth below by and between **City of Glendale – Community Action Program** (hereinafter "Contractor") and Arizona Community Action Association DBA Wildfire, an Arizona nonprofit corporation DBA Wildfire (hereinafter "Wildfire").

RECITALS:

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

C. Wildfire desires to subcontract with Contractor to obtain assistance with fulfilling Wildfire'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.

THEREFORE, in consideration of the terms and conditions set forth in this Agreement and intending to be bound, Wildfire 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**. Wildfire 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 Wildfire's instructions as to the result to be achieved. Contractor will receive Wildfire's instructions through an employee of Wildfire who is appointed to manage the program ("Program Manager"). Contractor may also receive instructions from a Wildfire employee designated to serve as a liaison between Wildfire and Contractor ("Monitor").

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 table on the following pages.

Fund Source(s)	Direct Service Amount (A)	Program Delivery (B)	Total Allocation (A+B)	Allowable Activities	Additional Information
APS Crisis Bill Assistance	\$23,008	\$4,602	\$27,610	Utility assistance for APS customers	Refer to Exhibit A: Arizona Public Service (APS) Crisis Bill Assistance Program Summary
Salt River Project (SRP) Bill Assistance	\$22,345	\$2,235	\$24,580	Utility assistance and deposits for SRP customers only (including M-Power customers)	Refer to Exhibit A: Salt River Project (SRP) Bill Assistance Program Summary
Southwest Gas Energy Share – Bill Assistance	\$9,000	\$900	\$9,900	Utility assistance and deposits for SWG customers	Refer to Exhibit A: Southwest Gas Energy Share – Bill Assistance Program Summary.
Southwest Gas Low Income Energy Conservation/LI EC Bill Assistance	\$5,000	\$0	\$5,000	Utility assistance and deposits for SWG customers	Refer to Exhibit A: Southwest Gas Low Income Energy Conservation Bill Assistance Program Summary. No more than twenty-five percent (25%) of total allocation can be used for deposits.
Utility Repair Replacement Deposit (URRD)	\$21,325	\$4,265	\$25,590	Utility/Appliance Repair or Replacement and/or Utility Deposits	Refer to Exhibit A, Appendix A: URRD Refer to Exhibit A, Appendix C: Instructions for Verifying Citizenship and Non-Legal Permanent Resident (LPR) Status
Total Funding	\$80,678	\$12,002	\$92,680		

Contractor makes guarantees and payments to utility companies and repair/replacement vendors. Service costs and program delivery costs are then reimbursed based on activity reports.

The table above, which highlights 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 Wildfire on dates and times selected by Wildfire.

1.4 Program Modification. Wildfire 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 or **July 1, 2023** (the “Effective Date”) and ending on **June 30, 2024**.

2.2 Termination. Either Wildfire 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 Wildfire, 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 Wildfire shall terminate and Wildfire'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 ensure that all services performed during the prior month are represented correctly in the Wildfire Grants Management System (GMS) as required by **Section 4**. After the 15th day of each month, Wildfire will endeavor to review Contractor's activities from the prior month and give notice to Contractor of any disallowed items within ten (10) business days. Wildfire will submit all approved portions of Contractor's activities to the applicable Fund Sources. Contractor acknowledges and agrees that all activities are subject to approval by the Fund Sources and Wildfire's approval does not bind any Fund Source or constitute a guarantee by Wildfire of payment to Contractor.

3.2 Request for Additional Funds. Contractor may submit in writing a request for additional funds to Wildfire 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 Wildfire Board of Directors on the next available agenda for final review and approval.

3.3 Reimbursement of Expenses. Wildfire 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 Wildfire.

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

3.6 Nature of Relationship. As between Wildfire and Contractor, Wildfire 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 Wildfire 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 ventures, 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 Wildfire 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 Wildfire 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. Wildfire 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 Wildfire or Wildfire'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. Wildfire 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.

a) 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.

- The policy shall be endorsed to include the following additional insured language: *“Arizona Community Action Association (dba Wildfire) shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor”.*
- The policy shall contain a waiver of subrogation against Arizona Community Action Association (dba Wildfire) and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b) 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
- The policy shall be endorsed to include the following additional insured language: *“Arizona Community Action Association DBA Wildfire 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”.*

c) 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.

- The policy shall contain a waiver of subrogation against Arizona Community Action Association (dba Wildfire) 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 Wildfire.

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. Wildfire 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 Wildfire with certificates of insurance (ACORD form or equivalent approved by Wildfire) 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 Wildfire 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 Wildfire 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.

4.1 Contractor's Compliance with Terms of Funding. Contractor acknowledges that Contractor's services will be part of the programs funded by the Funding Sources 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 Attachments and Exhibits hereto and any written policies and procedures that Wildfire may send to Contractor from time to time, all of which are incorporated herein by this reference. The Program Documents require Wildfire to submit certain periodic reports to the Fund Sources. Contractor agrees to cooperate with Wildfire in preparing these reports. In addition, Contractor agrees to comply with all other reporting obligations under the Program Documents.

4.2 Grants Management System Database (GMS). Contractor will ensure that applications from all fund sources will be directly entered into the GMS Database, or transferred electronically, in accordance with the policies outlined in the Program Documents.

5. Confidential Information.

- (a) The Contractor, City of Glendale, is a municipal corporation, subject to the requisites of Arizona law found in A.R.S. § 39-121 *et seq.* With the exception of personal identifying information prohibited by state law and the duty to safeguard the client's confidentiality imposed by the Department of Housing and Urban Development (HUD), the records of contracts and other items are required to be open for public inspection upon request.

- (b) In order to protect the confidentiality of applicants and participants in Contractor-administered HUD programs, recipients can request public records pertaining to its relationship with the Arizona Community Action Association dba Wildfire. Contractor will promptly notify Wildfire of the request in order to allow Wildfire (or its funding partners) to seek protection of those records in the Arizona Courts. Absent action by Wildfire (or its funding partners) to promptly apply for a Protection Order (or other appropriate relief) from a proper Arizona Court, Contractor will be required to submit records for public inspection in accordance with applicable law. Subject to the foregoing, Contractor will otherwise maintain the confidentiality of the records relating to the arrangement contemplated by this Agreement, and under no circumstances shall this Section 5 be interpreted as permitting Contractor to disclose any information relating to such arrangement except as required by applicable law.
- (c) **Audit and Inspection.** Wildfire will have the right to audit and inspect Contractor's work to verify compliance with this Agreement. Contractor agrees to provide Wildfire 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.
- (d) **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.
- (e) **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. Wildfire's obligations under this Agreement are subject to the Fund Sources actually providing the funds (either to Wildfire or directly to Contractor) pursuant to the Program Documents. Wildfire intends to allocate the funds from each Fund Source to multiple contractors. If one or more Fund Sources reduces their funding to Wildfire, then Wildfire 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 Wildfire in its sole discretion.
- (f) **Assignment; Subcontractors.** Contractor may not assign Contractor's rights or obligations under this Agreement without Wildfire's prior written consent, which consent Wildfire may withhold in its sole discretion. Contractor may not use a subcontractor to perform any of Contractor's obligations under this Agreement without Wildfire's prior written consent, which consent Wildfire will not unreasonably withhold. Wildfire's consent to an assignment or subcontractor will not release Contractor from any obligations hereunder.
- (g) **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.

INDEPENDENT CONTRACTOR AGREEMENT

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Signature Page

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

CONTRACTOR
City of Glendale – Community Action Program

Arizona Community Action Association (dba
Wildfire), an Arizona nonprofit corporation

By: _____

By: _____

Name: _____

Name: Kelly McGowan

Title: City Attorney

Title: Interim Executive Director

Date: _____

Date: _____

By: _____

Address:
340 E Palm Lane, Suite 315
Phoenix, Arizona 85004
Fax: 602-604-0644
E-mail: kmcgowan@wildfireaz.org

Name: _____

Title: City Clerk

Date: _____

By: _____

Name: Jean Moreno

Title: Director, Community Services

Date: _____

Address:
5850 W Glendale Ave
Glendale, AZ 85301

Email: jmoreno@glendaleaz.com