

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

**(Approving Amendment No. 2 to PSA with Laurel Lacher, Ph.D.)**

**WHEREAS**, the White Mountain Apache Tribe has employed Laurel Lacher as a consultant; and

**WHEREAS**, over the past year, Dr. Lacher, as the Contracting Officer's Representative (COR) between the Tribe, Indian Health Service, and Environmental Protection Agency, has been involved in efforts to secure a reliable, long-term domestic water supply for the greater Whiteriver area, investigations of viable options for redeveloping the Tribe's iron mine in a way protective of Tribal interests, and provided essential expertise to the Tribe's Water Rights Team for furtherance of Tribal Council's goal of protecting and asserting the Tribe's aboriginal and reserved water rights; and

**WHEREAS**, the Tribal Council would like to continue to employ Dr. Lacher's assistance through an Amendment No. 2 of her Professional Services Agreement providing hydrology-related consulting services to the Tribe, as attached and incorporated by this reference; and

**WHEREAS**, the source of funding for Dr. Lacher's professional services has been and will continue to be, depending on the nature of the work performed, from (a) BIA Miner Flat Dam 638 Contract, (b) BIA Water Resources Planning, Management and Predevelopment Contract Services grants, (c) BIA Water Rights Litigation and Negotiation Program grants, (d) BIA Minerals grant, (e) IHS EA 43-03, and (f) EPA Pesticides Grant; and

**WHEREAS**, the Tribal Council has reviewed the Professional Service Agreement and the proposed Amendment No. 2.

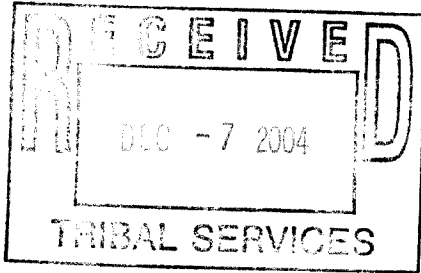
**NOW, THEREFORE, BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves renewal of the prior existing Professional Services Agreement between Dr. Laurel Lacher, Consulting Hydrologist and the White Mountain Apache Tribe through Amendment No. 2 as attached and incorporated by this reference.

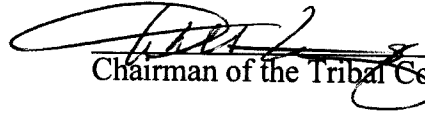
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, or in his absence, the Vice-Chairman, to execute the Amendment on behalf of the Tribe.

The foregoing resolution was on NOVEMBER 3, 2004 duly adopted by a vote of SEVEN for and ONE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (i), (s), (t), and (u) of the Constitution of the Tribe, ratified

**Resolution No. 11-2004-258**

by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

**Amendment Number 2  
Professional Service Agreement**

WHEREAS, the White Mountain Apache Tribe and Laurel Lacher, PhD, entered into a professional services agreement, the "Agreement," for hydrology consulting as authorized under Tribal Council Resolution 09-2002-246; and

WHEREAS, the Agreement authorized services for a one-year term, subject to renewal for one-year terms; and

WHEREAS, the parties wish to renew the Agreement for a one-year term.

THEREFORE, the parties agree as follows:

1. The Professional Service Agreement between the White Mountain Apache Tribe and Laurel Lacher, PhD, dated October 1, 2002 and attached herein, is hereby renewed for an additional one-year term, beginning October 1, 2004 and ending September 30, 2005.
2. The parties understand that the Tribe's Hydrologist set forth in paragraph 2 of the Agreement is Cheryl Pailzote.
3. All other terms and conditions in the Agreement remain unchanged and in effect.

DATED this 3<sup>rd</sup> day of November, 2004.

**WHITE MOUNTAIN APACHE TRIBE**

By \_\_\_\_\_  
Dallas Massey, Sr., Tribal Chairman

By \_\_\_\_\_  
Laurel Lacher, PhD, Consultant

## PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is entered into this 1 day of October, 2002 ("effective date") by and between the WHITE MOUNTAIN APACHE TRIBE, hereinafter referred to as "**TRIBE**", and Laurel Lacher, Ph.D., hereinafter referred to as "**CONSULTANT**".

WHEREAS, TRIBE desires CONSULTANT to perform certain professional technical services on its behalf, and CONSULTANT desires to perform the same for compensation in accordance with the terms and conditions set forth herein.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. **IDENTIFICATION OF THE PROJECT:**

The Project is identified as Hydrology Consulting.

2. **IDENTIFICATION OF PARTIES**

TRIBE is identified as **WHITE MOUNTAIN APACHE TRIBE**  
P.O. Box 700  
Whiteriver, AZ 85941

Contact person: Emery Holkins Tribal Hydrologist  
(Acting)

CONSULTANT is identified as: Laurel Lacher, Ph.D.

Either party may change the address, phone number, fax number or name of the contact person by written notice to the other party.

3. **DESCRIPTION OF SERVICES AND COMPENSATION**

- a) **SCOPE OF WORK.** CONSULTANT shall perform the services identified in Attachment A, Scope of Work and Payment. Billable services shall not exceed 40 hours in any one week period, except with prior consent of TRIBE.
- b) **PAYMENT.** CONSULTANT shall be paid for services and reimbursed for authorized expenses as provided in Attachment A, Scope of Work and Payment.
- c) **CONTRACT TERM.** Services to be performed by CONSULTANT under this Agreement will commence upon the effective date of this Agreement and continue for one year, subject to renewal for additional one-year terms upon Agreement of the

parties.

4. **TERMINATION AND CESSATION OF EFFORTS**

- a) **TERMINATION FOR CAUSE.** If either party shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if either party shall violate any of the covenants, agreements or stipulations of this Agreement, the other party shall have the right to terminate the services provided under this Agreement if such default or violation is not corrected within fifteen (15) days after submitting notice to the breaching party.
- b) **TERMINATION FOR CONVENIENCE.** Either party may terminate the services provided under this Agreement in whole or in part for its own convenience. Such termination shall require written notice to the other party.
- c) **CESSATION OF EFFORTS.** If CONSULTANT receives written notice of termination pursuant to this Section, CONSULTANT and all subcontractors shall immediately cease all efforts under this Agreement and shall be compensated for approved services performed and reimbursable expenses through the date of termination. CONSULTANT shall turn over to TRIBE all documents, data, studies, surveys, drawings, maps, or other information collected or generated in furtherance of the work. In the event the termination only requires termination on part of the work, the necessary cessation shall only apply to the part of the work terminated.

5. **MODIFICATION AND ENFORCEMENT**

- a) **MODIFICATION.** Changes to this Agreement shall not be made except as mutually agreed upon in writing and included as an amendment to this Agreement.
- b) **SUBCONTRACTING.** Work or services required by this Agreement may not be subcontracted by CONSULTANT without the prior written consent of TRIBE.
- c) **ASSIGNMENT.** CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in same, by assignment or novation, without the prior written consent of TRIBE. This provision shall extend to and include any assignment of monies due or to become due to CONSULTANT under this Agreement. Any such assignment shall be void without TRIBE'S written consent.
- d) **WAIVER.** The waiver of either party hereto of any breach, condition or provision of this Agreement by the other party shall be limited to the particular instance, and shall not operate or be deemed to waive any further breach or breaches of said condition or provision. The failure of either party to insist in any one instance, or more, upon the performance of any of the conditions or provisions of this Agreement, or to exercise

any right or privilege herein conferred, shall not be construed as waiving any such condition, provision, right or privilege, but the same shall continue and remain in full force and effect. Any provision, to the extent it is found to be unlawful or unenforceable, shall be ineffective without affecting any other provision of the Agreement, so that the Agreement will be deemed to be valid, binding and enforceable in accordance with its terms.

- e) **STANDARD OF PROFESSIONAL CARE.** Services performed by CONSULTANT shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by other members of the profession currently practicing in the United States. All services required hereunder shall be performed by CONSULTANT.
- f) **CONFIDENTIALITY AND OWNERSHIP OF DATA.** Services performed by CONSULTANT and any related findings or other information compiled in connection with this assignment are confidential and shall not be disclosed by CONSULTANT to anyone other than designated representatives of TRIBE, without prior written authorization by TRIBE. All data compiled is the property of TRIBE regardless of custody or location.
- g) **INDEMNIFICATION AND INSURANCE.** CONSULTANT shall indemnify and hold TRIBE harmless from any claims, demands, liabilities, actions, suits, or proceedings arising out of any negligence, omission, or breach of any condition, of this Agreement by CONSULTANT or any of CONSULTANT'S employees, agents or representatives. Such indemnity shall include not only any ultimate judgment, but any and all expenses, including reasonable attorney's fees, incurred by the indemnified part in conjunction with any threatened or actual proceeding or legal proceeding arising hereunder. CONSULTANT shall maintain adequate insurance to cover any liability arising from the acts and omissions of CONSULTANT'S agents and employees arising out of the performance of this Agreement. CONSULTANT shall not be responsible for maintaining insurance coverage of liability arising from the acts and omissions of TRIBE'S employees or agents.
- h) **RELATIONSHIP OF PARTIES.** CONSULTANT is an independent contractor to TRIBE and shall not be considered an employee of TRIBE for any purpose. CONSULTANT shall be supervised by TRIBE only as to the result to be accomplished, not as to the means of achieving the result. Nothing in this Agreement shall be construed to create a joint venture or partnership between the Parties. Except as may be expressly provided herein, TRIBE and CONSULTANT shall have no power to control the activities or operations of the other, or to bind or commit the other party. CONSULTANT shall be responsible for the safety of its own employees or anyone else who may be affected by operations which are under CONSULTANT'S control.
- i) **JURISDICTION.** The courts of the White Mountain Apache Tribe shall have exclusive

jurisdiction over any claims by CONSULTANT arising out of this agreement.

6. **CONTRACT PERFORMANCE**

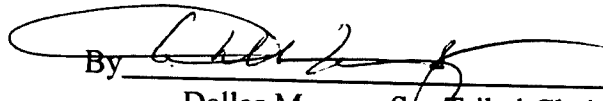
The performance of this Agreement shall take place within the exterior boundaries of the Fort Apache Indian Reservation. TRIBE shall provide right of entry for CONSULTANT, in order to complete the work under this Agreement.

7. **COMPLETE TERMS OF AGREEMENT**

This Agreement with all appendices represents the entire agreement between TRIBE and CONSULTANT. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreements not incorporated herein nor any other alteration or variation of the terms hereof, unless made in writing between the parties hereto, shall be binding. The captions or headnotes in this Agreement are intended for convenience and reference only and in no way define, limit or describe the scope of intent thereof, or of this Agreement. Nothing in this contract shall be construed as a waiver of the sovereign immunity of the White Mountain Apache Tribe.

Done in Whiteriver, Arizona on the Fort Apache Indian Reservation as of the date first indicated above.

WHITE MOUNTAIN APACHE TRIBE

By:   
Dallas Massey, Sr, Tribal Chairman

Date: October 1, 2002

By: 

Date: October 2, 2002

PROFESSIONAL SERVICE AGREEMENT  
WHITE MOUNTAIN APACHE TRIBE  
AND  
LAUREL LACHER, PH.D.

ATTACHMENT A

SCOPE OF WORK  
AND PAYMENT

Scope of Work

CONSULTANT shall be available to provide the following services to TRIBE upon request:

1. Technical support to Tribal Hydrology Program, including assistance as needed with grant-writing.
2. Technical hydrological support to other Tribal Departments, Programs, and Enterprises.
3. Technical hydrological non-testifying consulting and support to Tribe's water rights attorneys and water rights consultants.
4. Contract management for Miner Flat Dam project.
5. Contract support for Source Water Protection grant.
6. Technical support for Tribal groundwater-pesticides management plan.
7. Assistance with Environmental/Natural Resources code development
8. Educational outreach and training.
9. Technical support for natural resources management and development.
10. Technical liaison to USGS and National Weather Service, and other government agencies on water related issues.
11. Technical support for BAER Plan and burn area rehabilitation implementation and monitoring.
12. Other related activities as agreed.

Payment

CONSULTANT shall be paid at a rate of \$55.00 per hour for services rendered, except as may be otherwise agreed for specific projects of limited duration. CONSULTANT shall provide TRIBE with a written invoice of services provided before payment is made.

CONSULTANT shall be reimbursed at actual cost, following delivery of receipts, for pre-approved expenses incurred by CONSULTANT in performance of services, provided that reimbursement for pre-approved travel expenses shall be as follows:

1. CONSULTANT shall be reimbursed at prevailing Tribal mileage reimbursement rates for travel in CONSULTANT's personal vehicle
2. CONSULTANT shall be reimbursed at prevailing Tribal per diem rates for meals for each travel day, or portion thereof.
3. CONSULTANT shall be reimbursed for actual cost of lodging, except that CONSULTANT, at her option, may be reimbursed at a rate of \$50 per day for meals and lodging during visits by CONSULTANT to Whiteriver and vicinity, in lieu of reimbursement for hotel lodging cost.