



Resolution No. 09-2006-334

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

**(Appointing a special Tribal Utility Authority Water Policy Working Group)**

**WHEREAS**, in Tribal Council Resolutions 05-2005-148 and 08-2005-230A, attached and referenced herein, the White Mountain Apache Tribe accepted the terms of a \$4.99 million grant/loan package from the USDA Rural Development, as specified and referenced herein in the attached Letter of Conditions dated April 25, 2006, and in 7CFR 1780 and 7 CFR 1777, to construct a new drinking water system for the Greater Whiteriver area that will divert and treat surface water from the North Fork White River in order to minimize the Tribe's dependence on the failing well field at Miner Flat; and

**WHEREAS**, in accepting these terms, the Tribe has agreed to meet the following specific conditions: a) Tribal Utility rates will be consistent with those of other communities with "similar economic conditions" (§1780.3 and §1780.35(b)); b) minimum average monthly charges must equal \$36.81; c) funding for operation and maintenance of the new surface water diversion and drinking water system "...must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment" (§1780.7 (c)); and

**WHEREAS**, the Tribal Council, in Resolution 08-2005-230A bullet 4 directed the Tribal Utility Authority (TUA) Board of Directors, in cooperation with other Tribal staff and consultants and with the assistance of federal and non-governmental support agencies, as needed...to adopt a meter-based rate schedule that will satisfy the terms of this Resolution;" and

**WHEREAS**, the existing TUA bylaws are antiquated and need major revisions, particularly with respect to meter-based rate structures; and

**WHEREAS**, no TUA Board of Directors has existed for several decades but an *ad hoc* group of staff and consultants from I.H.S. and Tribal Utility, Public Works, Engineering, Planning, and Hydrology and Water Resources departments have met several times to discuss an appropriate strategy for moving forward with measures needed to comply with the terms of the RD grant/loan for the North Fork drinking water project and have come to a general consensus on that strategy.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribe's Technical Services Provider to the Tribal Utility Authority, Gerard Charnholm, to appoint and lead a Tribal Utility Authority Water Policy Working Group whose membership may be substantially the same as the *ad hoc* group that has already formed as described above.

**Resolution No. 09-2006-334**

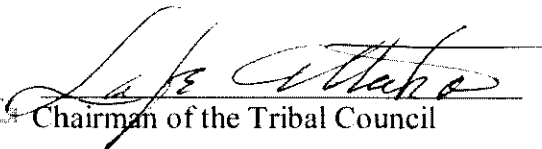
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Tribal Utility Authority Water Policy Working Group shall perform the following tasks:

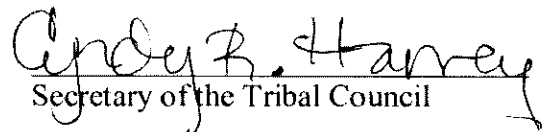
- a) Recommend interim meter-based commercial water use rates for approval by the Tribal Council in lieu of a TUA Board of Directors;
- b) Update existing TUA bylaws to include, among other things, specifications on water meters and water rates, as well as revised provisions for a TUA Board of Directors.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Technical Services Provider to the Tribal Utility Authority has the discretion to maintain or dissolve the Tribal Utility Authority Water Policy Working Group following the accomplishment of the two aforementioned tasks.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Chairman, or in his absence the Vice-Chairwoman, to sign any documents required to effectuate the intent of this Resolution, subject to review by the Legal Department.

The foregoing resolution was on September 26, 2006, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (f), (g), (h), (i), (j), (k), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified 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

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

**(Approving application for U.S.D.A. Rural Development Grant/Loan funds  
for the purpose of constructing a drinking water system for the Greater  
Whiteriver Area and authorizing a utility service rate increase)**

- WHEREAS,** the Miner Flat well field, which is the primary drinking water system for the Greater Whiteriver area, including the communities of Canyon Day, East Fork, and Cedar Creek, continues rapidly to lose its capacity to yield water since its initial development in the late 1990's; and
- WHEREAS,** other known sources of groundwater on the Fort Apache Indian Reservation are very limited, are subject to long-term productivity declines, and are cost prohibitive for delivery to the majority of the Tribal population which lies south of the Miner Flat well field; and
- WHEREAS,** the water that flows freely as baseflow in the North Fork of the White River represents the most reliable long-term source of water for the Tribal population which is in imminent danger of having insufficient drinking water as soon as this summer; and
- WHEREAS,** the Tribal Council has approved the development of a system to divert, treat, and deliver water from the North Fork of the White River for the potable water needs of the Greater Whiteriver area, including East Fork and Canyon Day, as well as Cedar Creek, Carrizo, and possibly other communities in the future; and
- WHEREAS,** the Tribe and IHS have secured \$1.65 million in federal funding for the development of this new drinking water system but the anticipated cost for completion of the system is now \$4.65 million; and
- WHEREAS,** the US Department of Agriculture - Rural Development (RD) FY2005 "Water and Waste Disposal Loans and Grants" (7 CFR §1780) program has grant/loan packages available to tribes for the development of drinking water systems "to alleviate a significant decline in water quantity or quality of water available from the water supplies in rural areas," with the maximum grant amount being 75% and the minimum loan being 25% of the total award amount; and
- WHEREAS,** for a 75% grant/25% loan package totaling \$3million, \$2.25 million in grant funds would require an associated \$750,000 in loan funds; and
- WHEREAS,** additional Rural Development grant funds for tribal water-related projects are available under 7 CFR § 1777; and
- WHEREAS,** these Rural Development funds are awarded on a competitive first-come, first-served basis and are anticipated to be significantly reduced or eliminated in FY2006; and

**WHEREAS,** the Tribe and IHS have exhausted other avenues for recruiting federal funds for completion of this critical drinking water project, including a request for a direct Congressional appropriation; and

**WHEREAS,** among other conditions for funding of this project, Rural Development requires that: a) that the Tribal utility rates be consistent with those of other communities with "similar economic conditions" (§1780.3 (a) and §1780.35 (b)) (eg, \$30 per month per household for domestic users), b) the project "... must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment" (§1780.7 (c)), and c) that the Tribe demonstrate that it "...is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms" (§1780.7 (d)); and

**WHEREAS,** the Tribal Utility Authority currently charges approximately 1682 domestic users \$20 per month, so that an increase of \$10 per month per household, levied gradually by increasing rates \$2.50 per month each year for the next four years, would generate approximately \$50,460, \$102,720, \$158,580, and \$229,440 in additional revenues in years 1, 2, 3, and 4, respectively, given a modest anticipated increase in the number of service connections of 50 per year and not including any revenues generated from increased rates for commercial users; and

**WHEREAS,** the White Mountain Apache Tribe would qualify for Rural Development's lowest loan interest rate of 4.5% with a maximum repayment period of 40 years, such that payments would be \$3371.72 per month for a total of \$40,461 per year; and

**WHEREAS,** with the proposed rate increase for domestic service connections outlined above, the additional revenue to the Tribal Utility Authority would exceed the required debt repayment on a 40-year RD loan of \$750,000 by \$10,000 in the first year and by at least \$188,979 in 4 years, and should provide sufficient funds for the operation and maintenance of the new treatment facility as well as reasonable reserves.

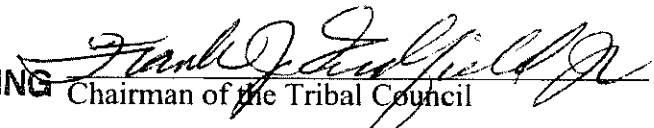
**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that:

1. Tribal staff from the Planning, Hydrology and Water Resources, and other Tribal departments, in coordination with consulting hydrologist, Dr. Laurel Lacher and the U.S. Indian Health Service, are hereby authorized to develop and submit an application for \$3,000,000, structured as \$2,250,000 in grant funds and \$750,000 in loan funds, to RD under the Water and Waste Disposal Grants and Loans program (7 CFR §1780 and §1777) and for FY2005 in order to complete the diversion and drinking water treatment facility on the North Fork of the White River; and
2. The Tribal Council hereby pledges that revenues generated by a slow but systematic rate increase to bring monthly rates for domestic utility users up to \$30 per month over the next four years will be dedicated to the repayment of debt and operation and maintenance related to the North Fork drinking water project; and

3. That the Tribal Utility Authority, in cooperation with the U.S. Indian Health Service and other government agencies and programs, is directed to initiate a program of water meter installation on commercial and domestic hook-ups to aid in the Tribe's long-term effort to reduce costs and encourage water conservation throughout the Fort Apache Indian Reservation.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, and in his absence, the Vice Chairman, to sign any applications or documents required to carry out the purposes of this Resolution, subject to review by the Legal Department.

The foregoing ordinance was on MAY 17, 2005 duly enacted by a vote of EIGHT for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (f), (h), (i), (j), (k), (l), (o), (s), (t) and (u) of the Constitution of the Tribe, ratified 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).

  
ACTING Chairman of the Tribal Council

  
Secretary of the Tribal Council



Resolution No. 08-2005-230A

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

**(Amending Resolution 05-2005-148 approving application for U.S.D.A. Rural Development Grant/Loan funds for the purpose of constructing a drinking water system for the Greater Whiteriver Area and authorizing a utility service rate increase)**

**WHEREAS**, the Tribal Council, with Resolution 05-2005-148, authorized Tribal staff to work with the Tribe's consulting hydrologist and the U.S. Indian Health Service (I H S) to develop and submit an application for funding to USDA Rural Development (RD) for the construction of a surface water diversion and water treatment plant to serve the Greater Whiteriver area; and

**WHEREAS**, a preliminary application was submitted to RD in June 2005, but engineering estimates for the cost of construction have increased sharply since that time primarily due to a modified treatment plant location and increased raw material costs; and

**WHEREAS**, RD program requirements stipulates that the ratio of grant to loan funds awarded under RD programs 1780 (Water and Waste Disposal) and 1777 (Indian Set-aside) is governed by available funding and by the applicant's ability to generate revenue from its water utility program, and that the maximum grant proportion is 75%; and

**WHEREAS**, RD requires that: a) that the Tribal utility rates be consistent with those of other communities with "similar economic conditions" (§1780.3(a) and §1780.35(b))(eg, \$30 per month per household for domestic users), b) the project "...must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment"(§1780.7 (c)), and c) that the Tribe demonstrates that it "...is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms"(§1780.7 (d)); and

**WHEREAS**, a review of water rate structures for other similar communities reveals that meter-based rates are the industry standard; and

**WHEREAS**, metering is a central requirement for RD funding as well as a key element in water conservation and revenue generation for the White Mountain Apache Tribal Utility Authority (TUA), and I H S estimates that \$1 million will be required to purchase and install meters for the remaining un-metered residential hook-ups and for 15 commercial hook-ups in the TUA service area; and

**Resolution No. 08-2005-230A**

**WHEREAS**, the Tribal Council supports the development of a self-sustaining TUA; and

**WHEREAS**, the Tribe and I H S have secured \$1.65 million in federal funding for the development of this new drinking water system but the anticipated cost for construction of the system and the purchase and installation of meters now exceeds \$6.6 million.

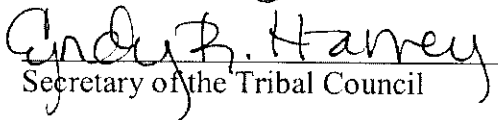
**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that:

1. Tribal staff from the Planning, Hydrology and Water Resources, and other Tribal departments, in coordination with consulting hydrologist, Dr. Laurel Lacher, the I H S, and other cooperating federal agencies, are hereby authorized to revise the Tribe's application for funding to RD under programs 1780 and 1777 for the construction of a new surface water diversion and drinking water treatment plant and the purchase and installation of water meters to reflect the most recent cost estimates; and
2. The Tribal Council supports a meter-based water rate structure designed: a) to encourage water conservation; b) support the TUA in its progress toward a self-sustaining condition; c) avoid imposing excessive hardship on low-income TUA customers; and d) satisfy the RD requirements for conforming with rates in communities with similar economic conditions within the next four years; and
3. The Tribal Council hereby pledges that revenues generated by TUA under this rate structure will be dedicated to: a) the repayment of TUA water-system debt; and b) operation and maintenance of TUA water systems; and
4. The TUA Board of Directors, in cooperation with other Tribal staff and consultants and with the assistance of other federal and non-governmental support agencies, as needed, is hereby directed to adopt a meter-based rate schedule that will satisfy the terms of this Resolution.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, and in his absence, the Vice Chairman, to sign any applications or documents required to carry out the purposes of this Resolution.

The foregoing resolution was on August 10, 2005, duly adopted by a vote of FIVE for, ZERO against and TWO abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (f), (h), (i), (j), (k), (l), (o), (s), (t) and (u) of the Constitution of the Tribe, ratified 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



United States  
Department of  
Agriculture  
Rural Development

658 N. Bisbee Avenue  
Willcox, AZ 85643  
(520) 384-3529 FAX: 384-5207  
(602) 280-8705 TDD

April 25, 2006

Dallas Massey, Tribal Chairman  
White Mountain Apache Tribe  
PO Box 1150  
Whiteriver, AZ 85941

RE: Letter of Conditions (North Fork Water Diversion Project)

Dear Chairman Massey:

This letter establishes the conditions which must be understood and agreed to by the White Mountain Apache Tribe (hereinafter referred to as Applicant) before further consideration may be given to the application for financial assistance on the North Fork Water Diversion Project. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or your organization must be reported to and approved by the United States Department of Agriculture - Rural Development by written amendment to this letter. The actual agency that will make the loan and grant and will provide the financial assistance is the United States Department of Agriculture - Rural Utilities Service (RUS). Additional funding is to be provided by the Environmental Protection Agency (EPA) and the Indian Health Service (IHS).

Any changes not approved by RUS shall be cause for discontinuing processing of the application.

This letter is not to be considered as approval of the loan application or as a representation as to the availability of funds. The docket may be completed on the basis of an RUS loan not to exceed \$ 1,243,000, an RUS Grant not to exceed \$ 3,441,000, an EPA grant in the amount of \$ 945,300, an IHS contribution of \$ 750,000 and an applicant contribution of \$ 315,000 for a total of \$ 6,694,300 in assistance.

If RUS makes the loan, the Applicant may make written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form RD 1940-1 - "Request for Obligation of Funds", is mailed to you. If you want the lower of the two rates, your written request should be submitted to USDA - Rural Development as soon as possible. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form RD 1942-46 - "Letter of Intent to Meet Conditions", and Form RD 1940-1 - "Request for Obligation of Funds", if you desire that further consideration be given your

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202)720-6382 (TDD)



application. Also, submit a schedule showing completion dates of the final plans and specifications and a schedule for completion of the final bidding documents, start of construction and project completion.

The completion and execution of these forms, or any other form required by RUS, must be authorized by an appropriate resolution.

If conditions set forth in this letter are not met within 150 days from the date hereon, RUS reserves the right to discontinue processing the application.

In signing Form RD 1942-46 - "Letter of Intent to Meet Conditions", you are agreeing to the following:

### 1. REPAYMENT SCHEDULE

The Loan will be scheduled for repayment over a period not to exceed 40 years from the date of the "Promissory Note". The interest rate will be 4.375 %. Interest only payments will be due 12 and 24 months after loan closing, thereafter, principal and interest payments in the approximate amount of \$5,606.00 will be due monthly. The interest and principal payments will be made on the due dates to the USDA - Rural Development by your participation in the pre-authorized debit (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. A PAD authorization form is attached for your signature.

### 2. PROJECT FUNDING

Funds will be used as follows:

	EPA	IHS	RUS LOAN	RUS Grant	Applicant	Total
Development	252,245		1,243,000	2,299,490	315,000	\$4,109,735
Legal Services	473,151					\$ 473,151
Arch, Eng	219,904	595,000				\$ 814,904
Equip.				767,500		\$ 767,500
Eng Inspections		155,000				\$ 155,000
Contingency				374,010		\$ 374,010
<b>Totals</b>	<b>945,300</b>	<b>750,000</b>	<b>1,243,000</b>	<b>3,441,000</b>	<b>315,000</b>	<b>\$6,694,300</b>

The Applicant must provide written evidence of EPA and IHS committed funds prior to loan closing.

### 3. PRIORITY OF FUNDING EXPENDITURES

The Applicant's, EPA and IHS funds shall be considered as the first funds expended. USDA - Rural Development Loan funds shall be considered as the second funds expended. RUS Grant funds will be the last.

funds expended. After providing for all authorized costs, any remaining USDA - Rural Development project funds will be refunded to USDA - Rural Development.

#### 4. NUMBER OF USERS

The Applicant must certify that there will be at least 2837 equivalent dwelling units at completion of the project.

#### 5. RATES AND CHARGES

A. The Applicant must adopt an Operating Budget that establishes rates and charges that are adequate to meet the cost of maintaining and operating the system and meeting the required debt and reserve payment requirements. Minimum average charges must be established to equal at least \$ 36.81 per month. A copy of the final approved operating budget must be submitted to and approved by Rural Development prior to loan/grant closing. The White Mountain Apache Tribe, by appropriate resolution will also be required to pledge funds from the general fund to cover any shortfall in the debt payments.

#### 6. SECURITY REQUIREMENTS

Security for repayment of the loan will consist of the following:

- A. Form RD 440-22, "Promissory Note".
- B. Form OGC-38 (A)(AZ) "Assignment of Income and Assessments", (sample copy attached).
- C. RUS Bulletin 1780-28 - "Loan Resolution Security Agreement", (copy attached), will be signed at loan closing. This form repeats some covenants contained in this Letter of Conditions, as well as establishing several additional requirements. The Applicant should carefully review this document and if questions arise, should contact USDA - Rural Development for clarification before its adoption. A copy of the Tribal Resolutions authorizing the execution of the necessary closing documents will be attached thereto. The opinion of your Tribal Counsel as to the legal validity of the Instruments will be required.
- D. By appropriate Tribal Council Resolution, the Applicant will pledge its "Full Faith and Credit" as additional security for the loan portion of this project.
- E. Form UCC-1, "Financing Statement", and Form RD 440-4, "Security Agreement" will be executed at loan closing. The Financing Statement is to be recorded with the Bureau of Indian Affairs Records Office and the Arizona Secretary of State.
- E. Attached is a copy of RUS Bulletin 1780-12, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.
- F. Additional security requirements may be required by our Office of General Counsel which must be met.

The completion and execution of these forms or any other forms required by USDA - Rural Development must be authorized by an appropriate Tribal Council Resolution.

## ORGANIZATION

Applicant will furnish documentation and a legal opinion regarding the organization and that it includes the legal authority necessary for construction, operating, and maintaining the proposed facility and for obtaining, giving security for, and repaying the proposed loan prior to loan closing.

### 8. BUSINESS OPERATION

A. **Audit Requirements:** The following management data will be required from you on an annual basis and be submitted to RUS as specified below:

1. A borrower that expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal financial assistance per fiscal year shall submit an audit performed in accordance with the requirements of OMB Circular A-133. As described above, the total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Projects financed with interim financing are considered federal expenditures. OMB Circular A-133 audits shall be submitted no later than 9 months after the end of the fiscal year. In addition to submitting two (2) copies of the audit report to RUS, the borrower is also required to submit copies of OMB Circular A-133 audits, accompanying audit letters (the "reporting package"), and the Data Collection Form to the Federal clearinghouse designated by OMB to retain as an archival copy. The Federal clearinghouse address is: Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, Indiana 47132. RUS Bulletin 1780-31, outlines the requirements of OMB Circular A-133 audits.

A Reserve Account will be established in an amount equal to 10% of each monthly payment so that by the end of 10 years one full year of installments will have been accrued. This reserve will be maintained throughout the life of the loan, except that it may be used for emergency purposes when approved by the USDA - Rural Development.

C. Prior to loan closing, the Applicant will be required to furnish a prior approved management plan to include, as a minimum, provisions for management, maintenance, miscellaneous services, billing, collection, bookkeeping, making and delivering required reports and audits. USDA - Rural Development will review and approve the accounting system prior to loan closing.

D. Applicant must utilize technical assistance programs available through RUS.

### 9. INSURANCE AND BONDING

A. **Property Insurance:** As provided in RUS Instruction 1780, Section 1780.39 (g), fire and extended coverage will be carried on all above ground structures, including the Applicant owned equipment, machinery, and furnishings housed therein. This includes pumps and electrical equipment, but it does not include water reservoirs, standpipes, elevated tanks, and other noncombustible materials used in treatment plants, clarification units and the like.

B. **Workers Compensation:** The Applicant will be required to carry suitable Workers Compensation insurance for all its employees in accordance with applicable Arizona Laws.

Liability and Property Damage Insurance. The Applicant will be required to carry suitable insurance in an amount acceptable to USDA -- Rural Development. The insurance company must provide USDA -- Rural Development with a 10-day notice of cancellation.

D. Fidelity bonds. The Applicant will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage required by USDA - Rural Development will normally approximate the total annual debt service requirements for the USDA - Rural Development loans. Form RD 440-24, "Position Fidelity Schedule Bond" (copy attached) may be used.

E. Flood insurance. The Applicant will carry flood insurance on any above ground structures located in designated flood prone areas. Evidence of insurance coverage must be provided prior to loan closing.

F. Insurance Approval by USDA - Rural Development. The Applicant will be required on an annual basis to provide to this office evidence of the above insurance coverage(s). The proposed coverage must be approved in advance by USDA - Rural Development.

#### 10. OBTAINING ADEQUATE, CONTINUOUS, AND VALID RIGHTS-OF-WAY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF ITS FACILITIES

The Applicant will submit the following documentary evidence to the USDA -- Rural Development:

A copy of the form of right-of-way instrument to be used if it differs from Form RD 442-20 - "Right-of-way Easement" (copy attached). Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances. Whenever the form of the instrument differs from Form RD 442-20 or contains special provisions that are required by either the Applicant or the grantor, copies of such instruments will be submitted to the USDA - Rural Development for review prior to acceptance and recording. Either specific rights-of-way containing a centerline description of the rights-of-way, or general rights-of-way containing only a description of the tract or parcel of land affected may be used.

B. A certificate by a duly authorized official of the Applicant that it has obtained and presently holds adequate and sufficient legal title to all rights-of-way, permits, licenses, and other authorizations deemed necessary by the Applicant, its engineer and its attorney for an uninterfered right-of-way for the construction, operation and maintenance of the facilities. Please use Form RD 442-21 - "Right-of-Way Certificate", (copy attached).

C. An opinion of the Applicant's attorney relating to the adequacy and legal sufficiency of the rights-of-way covered by the "Right-of-Way Certificate" and the right-of-way map. Use Form RD 442-22 - "Opinion of Counsel Relative to Rights-of-Way" (copy attached), to the extent possible. Counsel for the Applicant is hereby advised that USDA - Rural Development requires written consent for the granting of easements across private land from prior lienholders. The Applicant will be responsible for obtaining all such documentation. This will be required on all planned construction.

A right-of-way map showing the location of all structures, pipelines, ditches, and the like. When completed, the map should show that the rights-of-way are continuous with no gaps. Rights-of-way acquired by use or adverse possession will be shown by some distinctive color. This map will be prepared by the Applicant's engineer, and it will bear the signature of the engineer.

## 11. PLANNING AND PERFORMING DEVELOPMENT

A. Performance of Construction Services will be authorized by use of the Funding Agency Edition of the Engineers Joint Contract Document Committee (EJCDC) standard contract documents. Sample copies can be found in the Rural Development website at <http://www.usda.gov/rus/water/ees/englib/contract.htm>. The actual copies of the EJCDC documents must be purchased in electronic format from one of EJCDC sponsor organizations listed in the website. The consulting engineer should refer to the RUS Bulletin 1780-26 for instructions on any modifications for construction contracting. We encourage you to contact Rural Development should any questions arise on the use of these documents.

B. The project shall not be advertised for construction bids until all easements and enforceable options have been obtained, final design and specifications have been approved by USDA - Rural Development and total funds are committed or available for the project.

C. The following documents will be submitted to USDA - Rural Development for review and must be concurred in by USDA - Rural Development prior to advertisement for construction bids. Revision in these documents will be subject to USDA - Rural Development concurrence.

1. Final plans and specifications.
2. Contract documents and bid documents, with the Applicant's letter on efforts to encourage small business and minority-owned business participation.
3. Legal Service Agreements.
4. Engineering Service Agreements.

D. Contracts will not be awarded for at least a week from the date bids are opened. During this week, the consulting engineer will tabulate and review bids, investigate the successful bidder, and submit a written recommendation. This information will be reviewed by USDA - Rural Development, which must concur in writing before the award of contract is made.

E. **PRIOR** to issuance of the **NOTICE TO PROCEED**, the applicant shall obtain all required construction reviews, approvals, and permits required by jurisdiction of the local government, county, state, or other federal agencies. The applicant through its consulting engineer shall provide a written certification to Rural Development that all reviews, approvals and permits for construction have been issued and are currently in effect.

F. Resident Inspection. Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's

qualifications to the project engineer for comments and the Agency for acceptance in writing prior to the construction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) Inspector's daily diary. The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780-18 is available from the Agency for preparing daily inspection reports or the reports can be provided in other formats approved by the State staff engineer.

## 12. DISBURSEMENT OF PROJECT FUNDS

A. During construction, the Applicant shall disburse project funds in a manner consistent with Section 1780.45 (e), of RUS Instruction 1780. Form RD 1924-18, "Partial Payment Estimates" or similar form approved by USDA - Rural Development, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to USDA -- Rural Development for review and acceptance. Prior to disbursement of funds the Applicant and USDA - Rural Development will review and approve each payment estimate. All bills and vouchers must be approved by USDA - Rural Development prior to payment by the Applicant.

B. Monthly audits of the Applicant's construction account records may be made by USDA - Rural Development representatives.

C. The Applicant will be expected to acknowledge receipts of wire transfers as requested by USDA - Rural Development /Arizona. If not acknowledged, funds control tracking may be affected, and processing of future pay estimates/reimbursements by USDA -- Rural Development may be delayed.

D. A supervised bank account will not be used. However, USDA - Rural Development must monitor the use of funds during development of this project.

E. It should be understood that USDA - Rural Development is under no obligation to provide additional funds to meet an overrun in construction costs.

## 13. OTHER CONDITIONS

A. Interim financing will not be required from a private lender for the construction period of this project.

B. Prior to closing, the Applicant must have a legally enforceable mandatory hook-up ordinance passed by the Tribal Council. Applicant shall charge appropriate connection fees that will encourage all potential future users to utilize the system.

C. An Environmental Report has been reviewed by the USDA - Rural Development in accordance with RUS Instruction 1794 and the National Environmental Policy Act. USDA - Rural Development has determined that an Environmental Impact Statement is not needed.

In the event that an item of archaeological significance is encountered during the project, the Applicant is to comply with the National Historic Preservation Act of 1966.

E. The Applicant will be required to conform with any and all state and local laws and regulations affecting this type of project. It is the Applicant's responsibility to work with other regulatory agencies in obtaining their approvals. Any additional financing cost that may result from the failure to timely obtain these approvals will have to be borne by the Applicant.

F. Engineering & Inspection services are being provided by the Indian Health Service (IHS) in part by "in-kind" services. All contracts and agreements must be submitted to USDA - Rural Development.

G. The Applicant will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 US 794), which provided that no handicapped individual, solely by reason of their handicap, be excluded from use of any facility receiving USDA - Rural Development assistance.

H. Additional forms and requirements (copies attached).

1. Form RD 400-1 - "Equal Opportunity Agreement"
2. Form RD 400-4 - "Assurance Agreement"
3. Form RD 1910-11 - "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts".
4. Form AD-1049 - "Certification Regarding Drug-Free Workplace requirements (Grants) Alternative I - For Grantees Other Than Individual".
5. Form AD-1047 - "Certification Regarding Debasement, Suspension, and Other Responsibility Matters - Primarily Covered Transaction".
6. Exhibit A-I to RD Instruction 1940-Q, "Certification for Contracts, Grants and Loans" (copy attached). Certification required in connection with lobbying activities.

J. This loan will be subject to the provisions of equal opportunity and nondiscrimination in employment for construction, in accordance with Title VI of the Civil Rights Act of 1964.

K. RD Instruction 1780 and 1777 outline the policies and procedures for making the proposed loan and grant. Additional requirements not specifically required in the Letter of Conditions must also be met. (Copies attached) The applicant should review the attached instructions and, should questions arise, contact USDA-Rural Development before loan closing.

J. Vulnerability Assessments and Emergency Response Plans (VA & ERP)

In accordance with the Bioterrorism Preparedness and Response Act of 2002, Public Law 107-188 (Bioterrorism Act), you are required to assess your system for vulnerability to an act of bioterrorism and to develop an emergency response plan to secure the public's health in the event of terrorism. A certificate of the completion of the assessment and the development of an emergency response plan must be provided to USDA/Rural Development prior to loan closing.

14. GRADUATION REQUIREMENTS

USDA - Rural Development loans are meant to be a temporary source of credit. If at some future date, it appears that the Applicant is able, the Applicant will be requested to refinance the loan with other lenders. The Applicant will be expected to comply with this requirement as evidenced by the legally enforceable clause contained in the RUS Bulletin 1780-28 - "Loan Resolution Security Agreement" (copy attached).

15. CLOSING INSTRUCTIONS

This loan and grant will be closed subject to the availability of funds, applicable USDA - Rural Development Instructions, this Letter of Conditions, and closing instructions from the USDA - Rural Development Office of General Counsel.

Respectfully yours,

  
LEONARD GRADILLAS  
Community Programs Director

Attachments:

- Form 1940-1, "Request for Obligation of Funds"
- Form RD 1942-46 - "Letter of Intent to Meet Conditions"
- Form RD 400-1 - "Equal Opportunity Agreement"
- Form RD 400-4 - "Assurance Agreement"
- Form FHA 440-24 - "Position Fidelity Schedule Bond Declarations"
- Form RD 442-20 - "Right-of-Way Easement"
- Form RD 442-21 - "Right-of-Way Certificate"
- Form RD 442-22 - "Opinion of Counsel Relative to Rights-of-Way"
- Form RD 440-11 - "Estimate of Funds Needed"
- Form RD 1924-18 - "Partial Payment Estimate"
- Form RD 442-2 - "Statement of Budget, Income and Equity"
- RUS Instruction 1780 and RUS Instruction 1777 along with RUS Bulletins 12, 13 and 14
- Form AD-1047 - "Certification Regarding Debarment"
- Form AD-1049 - "Certification Regarding Drug-Free Workplace"
- Form RD 1910-11 - "Applicant Certification Federal Collection"
- Exhibit A-I to RD Instruction 1940-Q, "Certification for Contracts, Grants and Loans"
- RUS Bulletin 1780-28 - "Loan Resolution Security Agreement"
- PAD Authorization Form
- Form RD 440-22, "Promissory Note"
- Form RD 440-4, "Security Agreement"
- Form OGC - 38 "Assignment of Income and Assessments"
- Form RD 1910-11, "Financing Statement"