

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

**(Approves an Agreement Between the White Mountain Apache Tribe  
and Zonge Engineering and Research Organization)**

- WHEREAS,** water for domestic, municipal, and industrial uses on the Fort Apache Indian Reservation [Reservation] in the vicinity of Hondah and McNary along the Mogollon Rim [Rim] is presently derived solely from groundwater in shallow and intermediate-depth aquifers; and
- WHEREAS,** some of the existing wells have experienced failures related to water quality and/or quantity in the past several years; and
- WHEREAS,** the Tribal population is anticipated to continue to grow at a rapid rate, with much future development slated for the Mogollon Rim area on the Reservation; and
- WHEREAS,** exploratory drilling in 2003 revealed that groundwater supplies from shallow and intermediate-depth aquifers overlying the deep Coconino Aquifer are not of sufficient capacity to sustain future Tribal growth along the Rim; and
- WHEREAS,** the deep Coconino Aquifer has sufficient water to sustain growing Tribal domestic, industrial, and municipal needs for many years to come; and
- WHEREAS,** installing a large-capacity well in the Coconino Aquifer is anticipated to cost more than \$500,000 and every effort must be taken to ensure the best possible drilling site and methodology; and
- WHEREAS,** surface geophysics has proven to be an effective tool for locating fracture zones that produce groundwater in other areas of the Coconino Aquifer off Reservation; and
- WHEREAS,** Zonge Engineering and Research Organization has submitted a highly competitive and technically sound proposal for conducting a surface geophysics survey of the Hondah-McNary area to attempt to identify water-bearing fracture zones in the Coconino Aquifer and, thereby, to locate the best drilling site for a new Tribal well in the Coconino Aquifer; and
- WHEREAS,** Zonge Engineering has demonstrated the success of its method in recent surveys in other areas of the Coconino Aquifer west of Show Low; and
- WHEREAS,** the U.S. Indian Health Service, under project number PH 02-B89, has committed to funding the work described in the Scope of Work section of the attached PSA.
- BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the attached Professional Services Agreement [PSA] incorporated by reference herein between the White Mountain Apache Tribe and Zonge Engineering and Research Organization for

**Resolution No. 07-2005-186**

the execution and completion of a surface geophysics survey in the Hondah-McNary area designed to identify water-bearing fracture zones in the Coconino Aquifer.

The foregoing resolution was on JULY 13, 2005 duly adopted by a vote of SIX 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), (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

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE  
WHITE MOUNTAIN APACHE TRIBE  
AND  
ZONGE ENGINEERING & RESEARCH ORGANIZATION**

This Agreement is entered into by the White Mountain Apache Tribe (the "WMAT") of Post Office Box 700, Whiteriver, Arizona 85941, and ZONGE ENGINEERING & RESEARCH ORGANIZATION, 3322 E. Fort Lowell Rd., Tucson, Arizona 85716 (the "Consultant"). The parties agree to the following:

1. **Scope of Work to Be Provided.** Consultant will perform a surface geophysical survey using the Controlled Source Audio-frequency Magnetotellurics (CSAMT) method in an effort to identify water-bearing fracture zones within the Coconino Sandstone near Hondah on the Fort Apache Indian Reservation.
  - B. **Survey.** The Consultant shall conduct a two-part survey to first identify likely fracture zone areas and then to develop a more a more detailed understanding of the size and scope of the fracture system(s). The survey lines should be designed to resolve fracture zones on the order of 100 feet long/wide in the Coconino Sandstone at approximately 800 to 1400 feet below ground surface.
    1. **PHASE I - Reconnaissance Survey.** Consultant shall conduct a preliminary "reconnaissance-level" survey with a maximum dipole spacing of 200 feet and an approximate length of 7000 feet on a north-west bearing across the study area. This work will include the installation of all necessary equipment for the survey as well as data collection and field-level analysis. If the reconnaissance survey reveals no subsurface anomalies that the Consultant considers to be likely fracture zones, a second reconnaissance-level survey will be conducted at a north-east bearing across the study area. Phase I
    2. **PHASE II - Detailed Survey.** Following the identification of one or more subsurface anomalies that indicate the likely presence of water-bearing fracture zones, the Consultant will conduct a detailed survey targeted at identifying the size and scope of the fracture zone in at least two (2) dimensions. Maximum dipole length on the detailed survey will be 100 feet.
- B. **Report.** Consultant will provide five (5) copies of a final written report including, but not limited to:
  - 1) cross sections for each survey line;

- 2) a site map showing all survey lines;
- 3) 3-dimensional/fence diagrams is sufficient data exits;
- 4) all raw and processed data in digital form;
- 5) background explanation of survey method and data processing techniques used, including equipment specifications;
- 6) discussion of findings and any complications that arose during the field survey or at any other time during the project;
- 7) all field notes and other pertinent site-specific information collected by the Consultant.

The report shall describe and locate, in three (3) dimensions, all subsurface anomalies identified as likely water-bearing fracture zones or other water-bearing features (i.e., drilling targets). The report shall include graphical illustrations and should be tailored to a lay audience.

- C. **Meetings.** Subsequent to delivery of the final report to WMAT, the Consultant shall participate in a telephone conference with WMAT to discuss the reported findings.
- D. **Schedule.** Consultant agrees to commence work within four (4) weeks of notification of award as indicated by a written letter from the WMAT's Contracting Officer's Representative, Dr. Laurel Lacher. Barring any unexpected or unusual circumstances, the Consultant agrees to complete the scope of work outlined in Attachment A within ten (10) days after the start of work. Consultant agrees to deliver a draft written report to WMAT within three (3) weeks of the completion of all field work, and to deliver the final written report within ten (10) days of receiving review comments from WMAT. Total project time for work described in Attachment A shall not exceed eight (8) weeks in addition to time for WMAT review of draft report.

## 2. **Fees and Expenses.**

- A. **Fee.** The Consultant agrees to perform tasks described in Attachment A (Bid Schedule) for a maximum of \$28,970. Subject to its right to terminate this Agreement as set forth in Paragraph 14 (c), WMAT shall pay the Fee to Consultant upon submission of its report. Consultant shall bill for any additional work requested by WMAT at the rate of \$ 250 per hour for crew and survey equipment.
- B. **Expenses.** The WMAT shall not be responsible for any expenses incurred by Consultant except in the case of additional work requested by WMAT. WMAT agrees to reimburse Consultant for expenses (meals, lodging, etc.) related to any

work outside the scope of that described in Attachment A.

- C. **Limitations.** Except upon prior authorization of WMAT, WMAT shall have no liability for fees or expenses which exceed the budget amount. The Consultant shall have no obligation to provide services or incur expenses in excess of such budget limitation, except to the extent required to satisfy professional responsibilities. The Consultant shall keep WMAT informed of their estimate of the funds necessary to perform the services contemplated in this Agreement.
  - D. **Statements.** The Consultant shall submit a billing statement to WMAT's Contract Officer's Representative, Dr. Laurel Lacher, for approval. Consultant's statement shall summarize the nature of the services rendered and the disbursements for which reimbursement is sought. Approved fees and expenses shall be payable within thirty days following receipt of the statement.
3. **Professional Liability.** The Consultant warrants that it will maintain adequate professional liability insurance coverage during the term of this Agreement for the type of services contemplated hereunder. The Consultant shall provide WMAT with proof of such insurance prior to WMAT's execution of this Agreement.
  4. **Confidentiality and Ownership of Data.** All data, analysis, reports and presentations compiled by Consultant for the purposes of this Agreement are the sole property of WMAT regardless of custody or location. Services performed by Consultant and any related findings or other information compiled in connection with this Agreement are confidential and shall not be disclosed by Consultant to anyone other than designated representatives of WMAT, without prior written authorization by WMAT. Consultant agrees to terms of Confidentiality Agreement included by reference herein as Attachment B.
  5. **Relationship Between the Parties.** It is understood that the Consultant shall be an independent contractor, as distinguished from employees of WMAT, and shall not be entitled to receive any benefit to which employees are entitled by virtue of their employment with WMAT. Except as otherwise expressly provided herein, WMAT shall not be responsible for the payment of any taxes, permit fees or licenses incurred or required by the Consultant in order to perform services under this Agreement. It is understood that Consultant is free to contract for similar services to be performed for other persons or entities while under this Agreement with WMAT.
  6. **Assignment.** Due to the unique nature of the Services rendered pursuant to this Agreement, the parties agree that no assignment of rights and/or delegation of duties shall be permissible. The Consultant shall not subcontract any phase or portion of work for WMAT without the prior written approval of WMAT.

7. **Modifications.** Modifications or amendments of this Agreement shall be in writing and become effective only upon the execution of both parties.
8. **Indemnification.** The Consultant agrees to defend, hold harmless, and indemnify WMAT against any and all losses, costs, damages, claims, expenses, or other liability whatsoever, including but not limited to accident or injury to persons or property, to the extent caused by the Consultant's negligence or intentional misconduct in the performance of this Agreement, provided that nothing herein shall be construed as an indemnification of WMAT for its own negligence or intentional misconduct.
9. **Drafting.** This Agreement has been arrived at by the mutual negotiations of the parties and no rule of law requiring the Agreement to be construed in favor of or against a party because of drafting shall be applicable.
10. **Entire Agreement.** This Agreement, which includes any attachments, contains the entire agreement of the parties and cannot be changed except by writing signed by the parties. No waiver shall occur unless such waiver is in writing. No waiver shall constitute a waiver of any subsequent breach.
11. **Severability.** If for any reason any provision of this Agreement shall be determined by a court or arbitrator(s) of competent jurisdiction to be invalid, unenforceable, illegal, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.
12. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
13. **Attorney's Fees.** In the event any claim is filed, the prevailing party shall be awarded reasonable attorney's fees, together with all costs of expert witnesses, costs of mediation and suit, costs of investigation and other related expenses incurred in connection with the proceedings.
14. **Effective Date.** This Agreement shall be effective as the last date of execution by the parties.
15. **Term.**

- A. This Agreement shall commence on the effective date prescribed in Paragraph 14 and shall continue in force for one-hundred-twenty (120) days, subject to renewal pursuant to subParagraph B or earlier termination accordance with subParagraph C. In the event if termination by either party, the Consultant shall be entitled to retain that portion of any advance payment which equals the amount due for unpaid services which have been performed and expense which have been incurred. Such retention by the Consultant shall be supported by an account summary and report, consistent with the requirements set forth in Paragraphs 1 and 2.
  - B. This Agreement may be extended by the parties for such additional terms as may be mutually agreeable.
  - C. Upon 30 days prior written notice to the other party, (i) this Agreement may be terminated, with or without cause, and/or (ii) the scope of work provided hereunder may be modified.
16. **Applicable Law and Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the White Mountain Apache Tribe. Any dispute arising under this Agreement shall be resolved in the White Mountain Apache Tribal Court, provided that nothing herein shall be interpreted as an express or implied waiver of the Tribe's immunity from suit.

IN WITNESS WHEREOF, this Agreement has been executed and approved by the parties and persons whose signatures appear below.

<p><b>ZONGE ENGINEERING AND RESEARCH ORGANIZATION</b></p> <p>By: _____ (Date)</p> <p>Name: _____</p> <p>Position: _____</p>	<p><b>WHITE MOUNTAIN APACHE TRIBE</b></p> <p>By: _____ Dallas Massey, Sr. (Date) Chairman</p>
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**ATTACHMENT A**

**BID SCHEDULE**

**SURFACE GEOPHYSICS SURVEY  
FORT APACHE INDIAN RESERVATION**

## HONDAH, ARIZONA

Item No.	Description	Estimated Quantity	Units	Unit Price	Extended Price
101	Mobilization/Demobilization.	1	Lump Sum	1250	1250
102	Phase I reconnaissance survey - 7000 linear feet; installation of all necessary equipment	1	Lump Sum	6500	6500
103	Phase II detailed survey – per line mile	3	Line Mile	6500	16500
104	Final report (5 copies) and follow-up conference call to discuss report	1	Lump Sum	4720	4720

SCHEDULE BID PRICE (total of above): \$28,970



## Attachment B

### Confidentiality Agreement between White Mountain Apache Tribe and Natural Resources, Environmental, or other Consultant

#### DEFINITIONS:

- “Reservation” refers to the Fort Apache Indian Reservation of the White Mountain Apache Tribe.
- “Tribal information” may take the form of any verbal, visual, pictorial, graphic, electronically-stored, printed, recorded, or written material acquired from the Tribe or other person or entity or obtained in any other way and includes, but is not limited to, reports, summaries, data, maps, photographs, correspondence, phone call records, audio and video recordings, and any other form of information pertaining to the Tribe or its property, assets, or interests, including information in the custody of the Trustee United States.
- Tribal information may contain proprietary, privileged, commercial, confidential, religious, cultural, and ceremonial information that the TRIBE would not customarily release to the general public. Such information may include, but is not limited to:
  - sensitive and/or federally listed (*eg*, threatened, endangered, or candidate) species that may exist on the Reservation.
  - specific habitat or ecosystem conditions on the Reservation.
  - quality of Reservation water resources, including groundwater.
  - quantity and inventory of Reservation water resources, including groundwater, stream flow data, rating curves, water levels, number and locations of gaging stations, methods and frequency of data collection, or any other information pertinent to quantification of water resources on the Reservation.
  - geologic, soils, and other natural resources data or information pertaining to Reservation resources.
  - commercial activities on the Reservation.
  - natural resource management practices or plans on the Reservation.
  - location and nature of sites of cultural or religious significance.

#### GENERAL RULE:

- Any and all Tribal information shall remain the property of, and in the custody of, the TRIBE.

STATEMENT OF CONSENT:

As a consequence of my status as CONSULTANT to the TRIBE, I will have access to information not generally known to the general public. I will not, without authorization from the TRIBE, during or after the term of this Agreement, directly or indirectly use, disseminate, or disclose to any person, firm or other business entity for any purpose whatsoever, any Tribal information which was disclosed to me or known by me as a consequence of rendering services specified in this Agreement.

\_\_\_\_\_  
CONSULTANT (for Zonge Engineering & Research Organization)

\_\_\_\_\_  
Date

\_\_\_\_\_  
CONSULTANT (for HydroSystems, Inc. (HSI))

\_\_\_\_\_  
Date

\_\_\_\_\_  
CONSULTANT (Dennis Sundie)

\_\_\_\_\_  
Date