

**Grant-in-Aid
Fiscal Agent Agreement
between
the Tohono O’odham Nation
and
Cochise County
On behalf of
The Elfrida Water Improvement District**

THIS GRANT-IN-AID Fiscal Agent Agreement, (“Grant”) is entered into as of the _____ day of _____, 2013, by and between the Tohono O’odham Nation, a federally recognized Indian tribe (the “Nation”), Cochise County, a [describe FLOW THROUGH MUNICIPALITY], and the Elfrida Water Improvement District, a [describe GRANTEE].

RECITALS

A. The Constitution of the Tohono O’odham Nation, Article VI, Section 1(f) provides that the Tohono O’odham Legislative Council is authorized to negotiate and conclude agreements on behalf of the Tohono O’odham Nation with Federal, State and local governments.

B. The Constitution of the Tohono O’odham Nation Article VII, Section 2(f) provides that the Chairman of the Nation is the official representative of the Tohono O’odham Nation; and as such, upon passage of a Resolution by the Legislative Council approving of any agreement with Federal, State and local governments, the Chairman is authorized to sign such agreement on behalf of the Nation.

C. [Authorizing language for FLOW THROUGH MUNICIPALITY].

D. [Authorizing language for GRANTEE].

Now, therefore, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

PROVISIONS

1. **Purpose.** The purpose of this Grant is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the Contribution, as hereinafter defined.

2. **Acceptance of Duties; Monies Held in Trust.** Cochise County agrees to perform the duties of fiscal agent, paying agent and registrar for all monies the Nation deposits with Cochise County for the benefit of the Elfrida Water Improvement District. Cochise County

shall hold this funding separate from all other monies in the possession or control of Cochise County. Cochise County shall notify the Nation, at the address set forth in Paragraph 11, that the Contribution monies are provided to the Elfrida Water Improvement District within 5 business days after the distribution is made.

3. **Contribution.** The Nation shall make a payment to Cochise County in the amount described in Exhibit "A" (the "Contribution") on or about November 29, 2013. Cochise County shall then make this funding available to the Elfrida Water Improvement District as quickly as is feasible. The Grantee may not change the scope of the project or use the funds for a project other than that explained in Exhibit "A" without the written consent of the Nation.

4. **Funding.** The Contribution payment shall be delivered to Cochise County, without any further notice or invoice required, at the address set forth in Paragraph 11 below, upon the complete execution of this Grant.

5. **Disbursement of Contribution.** In accordance with Cochise County's policies and procedures and upon satisfactory documentation, as quickly as is feasible Cochise County will distribute the funds to the Elfrida Water Improvement District.

6. **Money Unclaimed.** In the event that Cochise County is unable to distribute the funding to the Elfrida Water Improvement District on or before January 1, 2014, Cochise County shall immediately notify the Nation and the Nation will arrange for the funding to be returned. Any interest earnings on the Contribution funding between the time the Nation deposits the Contribution with Cochise County and the time Cochise County disburses the Contribution to the Elfrida Water Improvement District shall be paid to the Elfrida Water Improvement District.

7. **Consideration and Reliance.** It is acknowledged that Cochise County's promise to accept and disburse the funds received by Cochise County pursuant to this Grant is full and adequate consideration and shall render this promise to provide funding irrevocable.

8. **Fees.** Cochise County shall not charge the Elfrida Water Improvement District and shall waive any applicable administrative or other fees related to this Grant and shall not deduct any funds from the amount designated for contribution to the Elfrida Water Improvement District.

9. **Dispute Resolution.** The parties mutually agree that any disputes arising between either 1) the Nation or Cochise County or 2) the Elfrida Water Improvement District and Cochise County pursuant to this Grant shall be resolved through informal dispute resolution. Nothing herein is intended to be or shall be construed as a waiver of sovereign immunity by either party. In the event of a dispute between the Elfrida Water Improvement District and Cochise County, both the Elfrida Water Improvement District and Cochise County must notify the Nation within five business days. All disputes that cannot be resolved through informal dispute resolution shall be resolved in the Courts of the Nation, subject to the laws of the Nation.

10. **Reports:** Unless otherwise extended by the Nation upon request of the Elfrida Water Improvement District, no later than July 31, 2014, the Elfrida Water Improvement District shall provide a report to the Nation explaining how and when the funds provided under this Grant were used. This report may be in the form of an affidavit signed by an officer of the

Elfrida Water Improvement District and may be accompanied by supporting documentation. The report shall address: (i) changes in the scope of the project or purchase funded under this grant, (ii) the total expenses under the project or purchase funded by the Grant, (iii) a brief description of who has benefited from this Grant, and (iv) the Grantee's next steps with regard to the project or purchase made under this Grant. The Grantee will submit a final report to the Nation within 30 days of the end of this Agreement.

11. **Notices.** Any notice, consent or other communication required or permitted under this Grant shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to the Nation: Dr. Ned Norris, Jr.
 Chairman
 P.O. Box 837
 Sells, Arizona 85634
 Fax: 520-383-3379

and

 Special Counsel
 P.O. Box 837
 Sells, Arizona 85634
 Phone: 520-383-2028
 Fax: 520-383-3379

If to Cochise County:

(Name, Title)
(Address)
Phone:
Fax:
Email:

If to the Elfrida Water Improvement District:

 Michael J. Coyle, Manager
 P.O. Box 356
 Elfrida, AZ 85610
 Phone: 520-642-1290
 Email: elfridawater@yahoo.com

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

12. **Term of Grant.** The term of this Grant shall begin on the date of execution and shall terminate on the one-year anniversary of this Grant.

13. **Entire Grant, Waivers and Amendments.** This Grant is executed in three (3) duplicate originals, each of which is deemed to be an original. This Grant constitutes the entire understanding and agreement of the parties. This Grant integrates all of the terms and conditions mentioned herein or incident hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Grant and all amendments hereto must be in writing and signed by the appropriate authorities of each of the parties to this Grant.

14. **No Waiver.** Except as otherwise expressly provided in this Grant, any failure or delay by any party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

15. **Severability.** If any provision of this Grant shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Grant shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

16. **Sovereign Immunity.** Nothing in this Grant shall be deemed a waiver of any party's applicable sovereign immunity in any forum or jurisdiction.

TOHONO O'ODHAM NATION

COCHISE COUNTY

Dr. Ned Norris, Jr., Chairman
Tohono O'odham Nation

Title

Dated _____

Dated _____

ELFRIDA WATER IMPROVEMENT DISTRICT

Title

Dated _____

Attest:

Approved as to form and found to be
within the powers and authority of the
Tohono O'odham Nation

Approved as to form and found to be
within the powers and authority of
Cochise County under the laws of
the State of Arizona.

Jonathan L. Jantzen, Attorney General
Tohono O'odham Nation

Attorney/Rep
Cochise County

Additional Signatures Required

Dated _____

Dated _____

Secretary

Clerk of the Board

EXHIBIT "A"

<u>Program</u>	<u>Contribution</u>
Water Meters	\$25,000.00
TOTAL	\$25,000.00