

**OLDAKER & HARRIS, LLP**

818 CONNECTICUT AVENUE, N.W.  
SUITE 1100  
WASHINGTON, D.C. 20006

TELEPHONE: (202) 728-1010  
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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Nov 1 2 48 PM '99

October 29, 1999

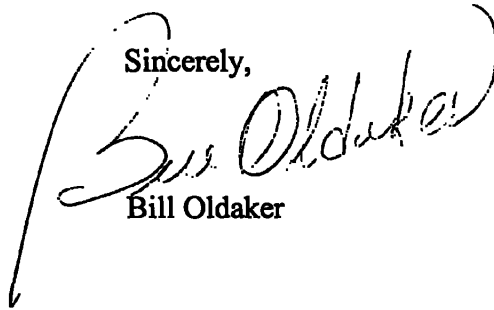
Mr. Brad Litchfield  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1999-32

Dear Brad:

Mark Curry, an attorney with the Tohono O'odham Nation's attorney general office has recently informed us that the billing of federal agencies by the Tohono O'odham Utility Authority constitutes approximately 10% of total billing. We are submitting a copy of the billing format for your review. This should satisfy all outstanding questions raised in our initial discussion. Let's try and discuss the Nation's situation next week. Thanks again for all your help.

Sincerely,



Bill Oldaker

**ORDER FOR SUPPLIES OR SERVICES**

PAGE 1 OF 2 PAGES

**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

1. DATE OF ORDER July 10, 1998		2. CONTRACT NO. (if any) Buy Indian		8. SHIP TO:	
3. ORDER NO. H54250I009		4. REQUISITION/REFERENCE NO.		a. NAME OF CONSIGNEE USDI, Bureau of Indian Affairs, Papago Agency	
5. ISSUING OFFICE (Address correspondence to) BIA, Papago Agency, P.O. Box 578		7. TO: Sells, AZ 85634		b. STREET ADDRESS Circle Drive, BIA Building No. 49	
a. NAME OF CONTRACTOR (520) 383-2236		b. COMPANY NAME Tohono O'odham Utility Authority		c. CITY Sells	
c. STREET ADDRESS P.O. Box 816		d. STATE AZ		e. ZIP CODE 85634	
d. CITY Sells		f. ZIP CODE 85634		i. SHIP VIA	
9. ACCOUNTING AND APPROPRIATION DATA See Below.		10. REQUISITIONING OFFICE Administration			

11. BUSINESS CLASSIFICATION (Check appropriate box(es))

a. SMALL     b. OTHER THAN SMALL     c. DISADVANTAGED     d. WOMEN-OWNED

12. F.O.B. POINT Destination		14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) 06/30/98		16. DISCOUNT TERMS Net	
13. PLACE OF		a. INSPECTION		b. ACCEPTANCE			

**17. SCHEDULE (See reverse for Rejections)**

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
1.	Telephone service charges for various offices at Papago Agency during the month of July 1998.					
	<u>ADMINISTRATION</u>					
	Local Calls H54200 98 99 39820 233C	1	MO		263.40	
	Long Distance H54200 98 99 39820 233D	1	MO		9.32	
	Telefax H54200 98 99 39820 233E	1	MO		77.95	
	<u>FACILITY MANAGEMENT</u>					
	Local Calls H54260 98 99 31061 233C	1	MO		582.19	

18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOT. (Cont. pages)
21. MAIL INVOICE TO:						
a. NAME BIA, Papago Agency, Attn: Property & Supply.						1,268.82
b. STREET ADDRESS (or P.O. Box) P.O. Box 578						
c. CITY Sells		d. STATE AZ		e. ZIP CODE 85634		
SEE BILLING INSTRUCTIONS ON REVERSE						17(i) GRAND TOTAL
						\$2,201.68

22. UNITED STATES OF AMERICA BY (Signature) *Noreen C. Francisco*

23. NAME (Typed)  
Noreen C. Francisco, #1420-1290-07  
TITLE: CONTRACTING/ORDERING OFFICER



**ORDER FOR SUPPLIES OR SERVICES  
SCHEDULE - CONTINUATION**

PAGE NO.

2 of 2

**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

DATE OF ORDER

July 10, 1998

CONTRACT NO.

Buy Indian

ORDER NO.

H54250I009

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
5.	<u>FACILITY MANAGEMENT - continued</u> Long Distance H54260 98 99 31061 233D	1	MO		174.30	
6.	<u>FACILITY MANAGEMENT - CELLULAR TELEPHONES</u> Local Calls H54260 98 99 31060 233C	1	MO		213.95	
7.	Long Distance H54260 98 99 31060 233D	1	MO		25.91	
8.	<u>TRIBAL OPERATIONS</u> Local Calls H54350 98 99 39220 233C	1	MO		29.92	
9.	<u>REAL PROPERTY MANAGEMENT</u> Local Calls H54410 98 99 39770 233C	1	MO		57.70	
10.	<u>NATURAL RESOURCES</u> Local Calls H54430 98 99 39610 233C	1	MO		251.20	
11.	Long Distance H54430 98 99 39610 233D	1	MO		57.69	
12.	Telefax H54430 98 99 39610 233E	1	MO		35.17	
13.	<u>ROADS</u> Local Calls H54460 98 39550 233C	1	MO		395.53	
14.	Long Distance H54460 98 39550 233D	1	MO		27.45	

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))

\$1,268.82

**ORDER FOR SUPPLIES OR SERVICES**

PAGE OF PAGES

**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

1. DATE OF ORDER January 15, 1998		2. CONTRACT NO. (If any) Buy Indian		6. SHIP TO:	
3. ORDER NO. H542608026		4. REQUISITION/REFERENCE NO. H54260-98-043		a. NAME OF CONSIGNEE USDI, Bureau of Indian Affairs, Papago Agency	
5. ISSUING OFFICE (Address correspondence to) BIA, Papago Agency, P.O. Box 578				b. STREET ADDRESS Circle Drive, BIA Building No. 49	
Sells AZ 85634		7. TO:		c. CITY Sells	d. STATE AZ
a. NAME OF CONTRACTOR				e. ZIP CODE 85634	
				f. SHIP VIA	

b. COMPANY NAME Tohono O'odham Utility Authority				8. TYPE OF ORDER	
c. STREET ADDRESS P.O. Box 816				<input checked="" type="checkbox"/> a. PURCHASE	<input type="checkbox"/> b. DELIVERY - Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.
d. CITY Sells		e. STATE AZ	f. ZIP CODE 85634	REFERENCE YOUR: _____ Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.	

9. ACCOUNTING AND APPROPRIATION DATA See Below			10. REQUISITIONING OFFICE Facility Management		
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11. BUSINESS CLASSIFICATION (Check appropriate box(es))					
<input checked="" type="checkbox"/> a. SMALL	<input type="checkbox"/> b. OTHER THAN SMALL	<input type="checkbox"/> c. DISADVANTAGED	<input type="checkbox"/> d. WOMEN-OWNED		
12. F.O.B. POINT Destination		14. GOVERNMENT B/L NO.	15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) ASAP	18. DISCOUNT TERMS Net	
13. PLACE OF	a. INSPECTION	b. ACCEPTANCE			

17. SCHEDULE (See reverse for Reflections)						
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
1.	Install new telephone numbers in 638-Coordinator's office and Property & Supply.  H54260 98 99 31560 233F	1	Job		ESTIMATE 200.00	

18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOT. (Cont. pages)
21. MAIL INVOICE TO:						
a. NAME BIA, Papago Agency, Attn: Property & Supply.						17(i) GRAND TOTAL
b. STREET ADDRESS (or P.O. Box) P.O. Box 578						
c. CITY Sells		d. STATE AZ	e. ZIP CODE 85634			

22. UNITED STATES OF AMERICA BY (Signature)  23. NAME (Typed)  
Noreen C. Francisco, #1420-1290-0

TITLE: CONTRACTING/ORDERING OFFICER



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COUNSEL

OCT 4 2 44 PM '99

September 29, 1999

Mr. Brad Litchfield  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

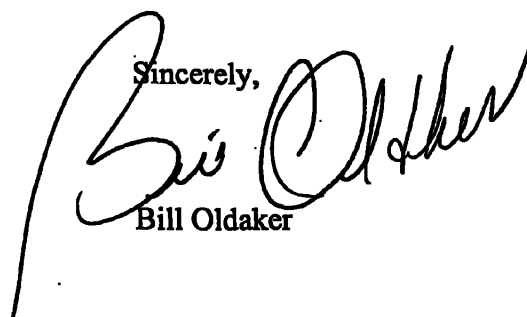
Dear Brad:

Mark Curry, an attorney with the Tohono O'odham Nation's attorney general office has informed us that the Tohono O'odham Utility Authority's (the "TOUA") Plan of Operation takes the place of a charter.

According to Mr. Curry, the federal agencies receiving utility services from the TOUA are the Bureau of Indian Affairs (the "BIA") and the Indian Health Service (the "IHS"). In addition to contract administration and implementation of various Department of Interior programs, the BIA maintains three schools for the Nation's children. The IHS runs a hospital and affiliated programs such as housing for the hospital's physicians. The BIA and IHS facilities are on the Nation's land and administer programs only to the Nation's residents. These services do not extend beyond the Reservation.

Mr. Curry is now gathering relevant billing information, and we will forward that to you as soon as we receive it. Again, thank you for your help with this matter.

Sincerely,



Bill Oldaker

**OLDAKER & HARRIS, LLP**

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

TELEPHONE: (202) 728-1010

FAX (202) 728-4044

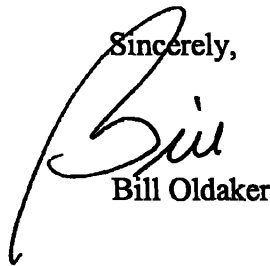
September 20, 1999

Mr. Brad Litchfield  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Brad:

Pursuant to our recent phone conversation regarding the Tohono O'odham's Advisory Opinion Request draft, we are submitting a copy of the utility authority's Plan of Operation. We have asked our client to send us a copy of the utility authority's charter, a list of the federal agencies in question, a list of the services the agencies provide to the Nation, the degree to which these services extend beyond the Nation, an approximation of the ratio of federal agency billing to total monthly billing and an explanation of the billing arrangements between the utility authority and the federal agencies. We will forward this information to you once we've received it from our client. Thanks again for your assistance.

Sincerely,



Bill Oldaker

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OFFICE OF GENERAL  
COUNSEL

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**TOHONO O'ODHAM UTILITY AUTHORITY**

**RESTATED PLAN OF OPERATION**

**Section 1: Name, location and place of business**

- A. Name. The name of the Authority shall be Tohono O'odham Utility Authority, formerly known as Papago Tribal Utility Authority.
- B. Location. The principal place of business and the office of the Authority shall be at Sells, Arizona, and the post office address of the principal office is P.O. Box 816, Sells, Arizona, 85634.
- C. Place of business. The Authority may also have offices at such other places as the Management Board may from time to time authorize.

**Section 2: Seal**

The seal of the Authority is described as follows:

Seal shall be in the form of a circle and shall bear the full name, "TOHONO O'ODHAM UTILITY AUTHORITY" and the word "ARIZONA" and the figure "1970."

**Section 3: Duration**

The duration of the Authority is perpetual.

**Section 4: Purposes**

- A. General. The purposes for which the Authority is organized are as follows:
1. To plan for, provide and furnish utility services to all areas within the Tohono O'odham Nation, where such services are determined to be feasible and economic.
  2. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Tohono O'odham Nation.

3. To acquire, construct, operate, maintain, promote and expand utility systems furnishing electric, gas, water, sewer and telephone services within the Tohono O'odham Nation.
  4. To initiate, acquire, operate, maintain, promote and provide, alone or in conjunction with others, cellular radio services and facilities both within and beyond the boundaries of the Tohono O'odham Nation.
  5. To provide utility service to the Tohono O'odham at the lowest possible cost consistent with prudent fiscal responsibility.
  6. To use the revenues of the Authority for the following purposes which are listed below in the order of the priority of use:
    - a. To pay the costs of operations and maintenance.
    - b. To amortize the loans of the Authority.
    - c. To fund an adequate Renewal and Replacement fund.
    - d. To educate the Tohono O'odham in the proper, efficient and economical use of all utilities.
    - e. To accelerate the retirement of long term debt.
    - f. To provide a fair return to the Nation on its investment.
- B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Plan of Operation for the Authority or the Constitution of the Tohono O'odham Nation.

**Section 5: Easement Franchise and Grant of Use**

- A. Easement Franchise. The Authority shall have, and is hereby granted, subject to any prior valid existing right or adverse claim, the franchise, right, permit, easement and privilege of placing, erecting, constructing, repairing, removing, replacing, maintaining, using and operating public utility systems, lines and facilities for the furnishing of electric, gas, water, sewer, telephone and cellular radio services, and necessary or useful adjuncts thereto, whether laid thereon or therein, together with the right of ingress and egress when necessary for such purposes, on, over, under and across lands of the Tohono O'odham Nation which are useful or convenient for the construction, maintenance, operation and repair of such utility systems, lines or facilities, provided, that in placing, erecting or constructing any new lines or facilities the Authority shall comply with the provisions of any applicable land use plan adopted by a District Council and approved by the Tohono O'odham Council and, provided further, that before

placing, erecting or constructing any new transmission or distribution lines or facilities (excluding service lines as defined in 25 C.F.R. §169.22) on, over, under or across lands of the Nation the Authority shall first obtain the written consent as to the routing or location of such lines or facilities from the District Council of the district in which such lands are located, which consent shall not be unreasonably withheld. The Authority shall furnish to the Superintendent of the Sells Indian Agency copies of plats or maps delineating the utility systems, lines and facilities located on, over, under and across such lands in sufficient detail and number to permit recording in the Southwest Title Plant of the Bureau of Indian Affairs, Albuquerque, New Mexico.

- B. **Grant of Easement Use.** The Authority shall have, and is hereby granted the right, alone or in conjunction with others, and as the agent or permittee of the Tohono O'odham Nation, to use any franchise, right, permit, privilege, right-of-way or easement standing in the name of or granted to the nation in connection with the construction, maintenance, operation or repair of public utility systems, lines or facilities furnishing electric, gas, water, sewer, telephone or cellular radio services.

Section 6: Control of Operations

It is intended that control and operation of the Authority shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a Management Board comparable to a Board of Directors of such a corporation.

Section 7: Management Board; purpose; duties and powers

- A. **Direction of purposes and exercise of powers by Management Board.** Subject to applicable laws and regulations of the Tohono O'odham Nation or the United States, the Management Board shall direct the purposes and exercise the following powers and duties:
1. The Management Board of the Authority is delegated authority and responsibility for the management and operation of the Authority.
  2. The Management Board is authorized to direct the operations to accomplish the purposes set forth in Section 4 above and to exercise the powers set forth in subsection B below without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.
  3. The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of all utilities and facilities; the planning, construction and operating of all new facilities; and for the

taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.

4. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered public service corporation, and shall be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; the selection of management personnel; and for continuous supervision of performance.
5. The Management Board shall exercise its authorized powers in the best interests of the Tohono O'odham Nation, within the limits of responsible business judgment and with the stipulation that it shall not incur contract obligations in excess of the ability of the Authority to make payment on due date.
6. It shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.
7. Copies of the minutes of each meeting of the Board shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior.
8. Members shall be reimbursed for expenses incurred in attending meetings and performing directorship duties and the Board may, at its discretion, set a reasonable fee to be paid to its members on a per-meeting-attended or other basis. Any such fee may be changed from time to time as conditions dictate.
9. The Chairman of the Board shall make a formal report to the Chairman of the Tohono O'odham Nation and to the Tohono O'odham Council not less often than annually and in such report shall include a summary of the budget which the Management Board has approved for the coming fiscal year.
10. The Management Board shall establish purchasing policies and procedures, giving usual and essential latitude to the General Manager and his delegated employees, but establishing limitations on amounts which may be expended without specific approval of the Board.
11. No contract or other transaction between the Authority and any one of the members of the Management Board, or between the Authority and any corporation, partnership, firm or other legal entity in which one or more of the Management Board has an interest, directly

or indirectly, shall be valid for any purpose, unless the entire interest of the Director or Directors in such corporation, firm or other legal entity is fully disclosed to the Board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who are not so interested.

12. The Management Board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Tohono O'odham Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.

13. The Management Board shall submit any contract or act wherein a public officer or employee of the Tohono O'odham Nation may have an interest, directly or indirectly, in the matter or transaction to any regularly called or noticed meeting of the Tohono O'odham Council for approval. Any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.

B. Enumerated powers. Subject to approval by the Tohono O'odham Council where required and to all applicable laws and regulations of the Tohono O'odham Nation and the United States, and solely in furtherance of the limited purposes set forth in Section 4 above, the Management Board shall have the following powers:

1. **Facilities.** The Management Board shall exercise full authority and shall be responsible for the custody, management and operation of all utility property and facilities, including easements and rights-of-way granted therefor, owned and operated by the Tohono O'odham Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility facilities, including the negotiation and execution of engineering and construction contracts; and for taking of any and all usual, necessary and convenient actions incident thereto.
2. **Capacity to act.** To have the capacity to act and direct the officers of the Authority to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in Section 4 above, and such as are not repugnant to laws and regulations applicable to the Authority.
3. **To appoint officers and agents.** To elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board may be needed from time to time, and to define their duties and fix their compensation. The Management Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or

safeguarding of funds, property or other assets of the Authority.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Authority.
5. To deal in real property. To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in Section 4 above except as prohibited by law. Title to all such real property shall be taken in the name of the Tohono O'odham Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.
6. To deal in personal property, generally. To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set forth in Section 4 above.
7. To deal in inventions, copyrights, and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), to hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, and that title of all such acquisitions shall be taken in the name of the Tohono O'odham Nation.
8. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made in pursuance of the purposes set forth in Section 4 above, provided, that no such guaranty shall be made without the prior written approval of the Tohono O'odham Council if the current aggregate indebtedness of the Authority, including such guaranty, shall exceed the sum of Twenty-Five Million (\$25,000,000) Dollars.
9. Depository. To designate and approve all depositories used for the deposit of funds of the Authority.
10. To make contracts. To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in Section 4 above, including the negotiation of contracts subject to

R.S. §2103, 25 U.S.C. §81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.

11. To approve budgets. To give initial approval to annual Authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the Authority for operating and capital addition purposes.
- C. Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.
- D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes but the Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in Section 4 above.

**Section 8: Indemnification of officers, employees and members of the Management Board**

The Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Authority, or any person who may have served at its request as an officer, employee or member of the Management Board, against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which such employee was acting beyond the scope of his employment. The Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tohono O'odham Nation that such settlement be made and that such officer, employee or member of the Management Board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or member of the Management Board may be entitled to receive.

**Section 9: Membership on Board; qualification; term of office**

- A. Number. The Management Board shall consist of seven persons, all of whom shall be appointed by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.

- B. Qualification.** The members of the Management Board shall be called Directors, and shall have the following qualifications:
1. Three of the Directors shall be members of the Tohono O'odham Nation who have sufficient education and experience to qualify them for learning utility business, practices and procedures, to participate in Management Board meetings and functions, and to make sound judgments.
  2. Four Directors shall be persons having not less than ten years experience in business management of substantial character, and at least three of such persons shall have had such experience in the management and operation of a utility business.
  3. No employee of the Bureau of Indian Affairs or member of the Tohono O'odham Council shall be a member of the Board.
- C. Term of office.** Directors shall be appointed for the following terms of office and shall hold office until the qualification and selection of their successors:
1. The initial Management Board shall be appointed for a period of one year or until their successors have been appointed and qualified.
  2. Beginning the second year, the Directors shall be appointed in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years, starting on the first day of July of the year of their respective appointments. Directors shall be eligible for reappointment. They shall hold their offices until their successors have been appointed and qualified or until their death, resignation or removal in the manner provided herein.

**Section 10: Removal**

Any member of the Management Board may be removed by the Chairman of the Tohono O'odham Nation after a majority of the Management Board recommends such removal where, in the Board's best judgment, the best interests of the Authority shall be served by such removal.

**Section 11: Resignation and Vacancies**

Any member of the Management Board may resign at any time by giving written notice to the Chairman and Secretary of the Board and to the Chairman of the Tohono O'odham Nation. Resignations shall become effective at the time specified in said notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend three consecutive properly called and



noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any calendar year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his directorship. The Chairman of the Nation shall be so notified and the director shall be reappointed or replaced as set forth in this Section. Any vacancy on the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.

#### Section 12: Meetings of Board

- A. Annual meeting. The annual meeting of the Management Board shall be held each year in the month of July at such time and place as the Board shall fix.
- B. Regular meetings. The Management Board shall meet at least quarterly upon notice fixing the time and place.
- C. Special meetings. Special meetings of the Board may be held upon notice given by the Chairman, or Secretary, or by any three members of the Board, at such time and place as the Board shall direct or as shall be fixed by the notice.
- D. Notice.
  - 1. Notice of all meetings of the Board, stating the time and place, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available Authority records, not later than five days nor more than thirty days immediately preceding the meeting, excluding the day of the meeting.
  - 2. Notice may be waived in writing signed by the member or members entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a meeting shall constitute a waiver of notice.
- E. Quorum. Five members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board.

#### Section 13: Executive Committee

- A. Designation of committee. The Management Board, by resolution duly adopted, may designate four members of the Board, two of whom shall be members of the Tohono O'odham Nation, to constitute an Executive Committee. The designation of such Executive Committee and the delegation of the authority herein granted, shall not operate to relieve

the Management Board or members thereof of any responsibility imposed upon it or them by law or this Plan of Operation. No member of the Executive Committee shall continue to be a member thereof after he ceases to be a member of the Management Board. The Management Board shall have the power at any time to increase the number of members of the Executive Committee, to fill vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

- B. **Powers of the Executive Committee.** During the intervals between meetings of the Management Board, and subject to such limitations as may be required by resolution of the Management Board, the Executive Committee shall have and may exercise such authority as may be delegated by the Board.

All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Management Board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the Authority upon authorization of the Executive Committee prior to the time at which the same was submitted as above provided.

- C. **Procedure, meetings.** A Chairman of the Executive Committee shall be elected by the Management Board from among the members of the Executive Committee and shall preside at meetings of the Executive Committee and perform all duties incident to the office of the Chairman of the Executive Committee, and such other duties as, from time to time, may be assigned to him by the Management Board or the Executive Committee. The Secretary of the Authority shall keep a record of the acts of the Executive Committee and its proceedings. In the absence of the Secretary, the Chairman of the Management Board shall designate a person to act in said capacity.
- D. **No individual authority.** The members of the Executive Committee shall act only as a committee, and the individual members shall have no power as individuals.
- E. **Notice.** Notices of all meetings of the Executive Committee shall be given by the Chairman, the Secretary, or any member thereof, in the manner provided in Section 12D, and may be waived as therein provided.
- F. **Quorum.** The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

**Section 14: Officers: Powers and Duties**

The principal officers of the Authority shall consist of the following:

- A. **Chairman.** The Chairman of the Management Board and Chairman of the

Executive Committee, which positions may be, but need not be, held by the same person, shall be members of the Management Board. The Chairman shall:

1. preside at all meetings of the Board at which he is present;
2. sign, with the Secretary, any instruments which have been authorized by the Board to be executed on behalf of the Authority, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Plan of Operation to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed; and
3. in general perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board from time to time.

B. **Secretary.** The Secretary may, but need not be, a member of the Management Board or of the Executive Committee. The Secretary shall be responsible for:

1. keeping the minutes of the meetings of the Management Board and the Executive Committee in books provided for that purpose;
2. seeing that all notices are duly given in accordance with the provisions of this Plan of Operation;
3. the safekeeping of the books and records and the seal of the Authority, and affixing the seal of the Authority to all documents, the execution of which on behalf of the Authority under its seal is duly authorized in accordance with the provisions of this Plan of Operation;
4. keeping on file at all times a complete copy of this Plan of Operation of the Authority containing all amendments thereto; and
5. in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

C. **Treasurer.** The Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. The Treasurer shall be responsible for:

1. custody of all funds and securities of the Authority;
2. the receipt of and issuance of receipts for all monies due and payable to the Authority, and for the deposit of all such monies in the name of the Authority in such bank or banks as shall be selected in accordance with the provisions of this Plan of Operation; and

3. in general performing all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.
- D. Other officers. In the discretion of the Management Board, there may be a Vice Chairman of the Board, Assistant Secretary, and Assistant Treasurer. Any two of these positions may be held by the same person. A Vice Chairman shall be a member of the Management Board and may, but need not, be a member of the Executive Committee. An Assistant Secretary or Assistant Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. If a Vice Chairman is elected he shall, in the absence of the Chairman or in the event of his inability or refusal to act, perform the duties of the Chairman, and when so acting shall have all the powers and be subject to all the restrictions upon the Chairman. Such officers shall perform such duties as from time to time may be assigned to them by the Board.
- E. General Manager. The General Manager shall not be a member of the Management Board. He shall be the principal operating executive of the Authority and shall have direction of all parts of actual operations. He shall be responsible to the Board as a principal operating executive of a public service corporation normally would be. He shall render reports to the Board and perform all other functions and duties specified for the General Manager in Section 19 below.

Section 15: Election; term of officer; qualification

The officers, with the exception of the General Manager, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until his successor is chosen and qualified, or until his death, or until he shall have resigned, or shall have been removed in the manner provided herein.

Section 16: Removal

Any officer or agent elected or appointed by the Management Board may be removed by the Board whenever, in its judgment, the best interest of the Authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed, provided, however, the General Manager may be removed only pursuant to any approved contract provisions.

Section 17: Resignations; vacancies

Any officer may resign at any time by giving written notice to the Management Board, or to the Chairman or Secretary. Such resignation shall take effect

at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

**Section 18: Other officers and agents**

The Management Board may appoint such other officers and agents as it deems necessary or expedient, and may determine the duties of them, as well as the terms of their holding office.

**Section 19: General Manager; functions; duties**

- A. The General Manager shall be employed under a written employment contract and shall be responsible to the Management Board.
- B. The function of a General Manager shall be analogous to that of the president of a public service corporation. He shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Authority into departments each with its own specific duties and responsibilities.
- C. He shall exercise his best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.
- D. He shall be the active, operating executive of the Authority and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.
- E. He shall have the full authority and control over all employees of the Authority and shall be responsible for all department heads or other executives carrying out their assignments.
- F. He shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets and to policies and procedures approved by the Management Board relating to standards, programs inspection, cost control, employee relations and in-service training.
- G. He shall render regular reports to the Board and perform all other functions and duties specified in the Plan of Operation for the General Manager.
- H. He shall be furnished with ample transportation and shall be reimbursed for any personal expenses he may incur in carrying out his responsibilities.
- I. The General Manager shall employ competent department heads for the

usual functional responsibilities for each department.

**Section 20: Financial transactions; miscellaneous**

- A. **Contracts.** Except as otherwise provided in this Plan of Operation, the Management Board may authorize any officer or officers, or any agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authority may be general or confined to specific instances.
- B. **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, or employee or employees of the Authority and in such manner as shall from time to time be determined by resolution of the Management Board.
- C. **Deposits.** All funds, except petty cash, of the Authority shall be deposited from time to time to the credit of the Authority in such bank or banks as the Management Board may select.
- D. **Accounting.** A modern accounting system shall be established and installed by a reputable consulting firm in conformity with accounting principles generally accepted in the utility operation field. The accounting system shall insure the availability of information as may be necessary to comply with all applicable regulatory requirements.
- E. **Records; inspection; audits.** The books, records and property of the Authority, including current financial and operating statements, shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited by an independent Certified Public Accountant at the close of each fiscal year. The results of such audit shall be included in the reports by the Chairman of the Management Board to the Chairman of the Tohono O'odham Nation and the Tohono O'odham Council required by subsection 7A (9) above.
- F. **Fiscal year.** The fiscal year of the Authority shall be the same as the fiscal year of the Tohono O'odham Nation.
- G. **Insurance.** Insurance, including liability insurance, adequate and sufficient to protect the interests of the Authority and the Tohono O'odham Nation from losses by fire or other disaster shall be carried on all property of the Authority.
- H. **Policies, rules and regulations.** The Management Board shall have the

power to make and adopt such policies, rules and regulations, not inconsistent with law and this Plan of Operation, as it may deem advisable for the management of the business and affairs of the Authority.

Section 21: Rates and charges

- A. The Management Board shall adopt all rates and charges for utility services which, when adopted, shall become effective at such time as the Board shall determine. Upon a petition being filed by five percent (5%) of the affected customers, the Authority shall, after giving such notice as the Board may determine to be adequate, hold a formal public hearing to review such rates and charges.
- B. Procedures shall be established by the Tohono O'odham Council to provide for appeals of rate decisions following a public hearing by the Authority to an impartial review board composed of specialists on utility rates.
- C. The Management Board may, in its sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the services of the Authority.

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September 3, 1999

Mr. Brad Litchfield  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Dear Mr. Litchfield:

This advisory opinion request is submitted on behalf of the Tohono O'odham Nation ("the Nation"), a federally recognized Indian tribe in southern Arizona. The Tohono O'odham Nation is a non-corporate entity and is organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476.

The Tohono O'odham Nation has formed a Utility Authority (the "TOUA"), a tribally chartered unincorporated entity which operates as a subordinate economic enterprise of the Tribe. All members of the TOUA's management board are appointed by the Chairman of the Tohono O'odham Nation and approved by the Tohono O'odham Legislative Council. Funds from this enterprise are kept separately from other tribal funds.

Among the TOUA's purposes, detailed in its Plan of Operation, are the provision of utility services to all areas and persons within the Nation, provision of utility services to the Nation's members at the lowest possible cost, and the improvement of the health and welfare of Nation residents. Currently, the TOUA is the only provider of utility services on the Reservation. As is standard practice, the TOUA provides utility services for which all customers are billed on a monthly basis, using a formula of kilowatt hours multiplied by a certain dollar amount. Among the TOUA's many customers are several federal agencies with offices and facilities on the Reservation. As part of its mandate, the TOUA provides services to these agencies in the same manner as the rest of its customers. TOUA has no written contract for the provision of utility services to the federal agencies conducting business on the Reservation, just as TOUA has no written contract to provide utility services to any of its residential or commercial customers. Like all residential and business customers, these federal agencies are billed monthly by TOUA based on actual utility usage. The Tohono O'odham Nation requests an Advisory Opinion that the regular and customary provision of utility services to these federal agencies does not preclude the Nation from making federal campaign contributions, pursuant to 2 U.S.C. § 441c and 11 CFR 115.2(a).

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The Nation is seeking clarification of Advisory Opinion 1993-12 [CCH Federal Election Campaign Financing Guide ¶ 6096], which deals with the permissibility of federal campaign contributions by an Indian Tribe which had entered into various agreements with the federal government. In this opinion, the Federal Election Commission ("the Commission") determined that an agreement to sell posters and prints to the federal government was a contract, thus prohibiting the Tribe from making federal campaign contributions under 2 U.S.C. § 441c. This contract was between the Bureau of Indian Affairs and First American Printing & Direct Mail, an unincorporated commercial venture which operated as a subordinate economic enterprise of the Tribe.

The TOUA is distinguishable from First American Printing & Direct Mail as it is not a commercial venture providing goods to the federal government. The provision of services by TOUA is incidental to its mandate, to provide utility services to the Nation's residents. Since the principal function of the TOUA is to improve the health and welfare of the Nation's residents, it serves the same purpose as the Self-Determination agreements exempted in AO 1993-12, such as the Tribal Children Services Program or the Agriculture program.

In providing utility services to federal agencies, the TOUA is simply fulfilling its mandate to supply service to all areas on the Reservation. Furthermore, the TOUA and the federal agencies have no written contract for the provision of utility services. Consequently, we believe the Nation is not a federal contractor as defined at 11 CFR § 115.1(a).

The Nation requests an opinion that the TOUA's provision of utility services to federal agencies with buildings on the Reservation is not a contract which would preclude the Tohono O'odham Nation from making federal campaign contributions. Thank you for your assistance and attention to this matter.

Sincerely,

  
William C. Oldaker