

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

WHEREAS, The Indian Health Service (IHS) desires to enter into a memorandum of Agreement with the White Mountain Apache Tribe in furtherance of IHS Project PH 97- R30 to provide plumbing for 16 houses on the Fort Apache Indian Reservation; and

WHEREAS, upon completion of such service by the Indian Health Service, the sanitation facilities will be transferred to the Tribe or individual home owner as appropriate; and

WHEREAS, such facilities are needed for the Fort Apache Indian Reservation and benefits derived from such facilities will far offset any damages that may occur from the land utilized.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby declares its desire to enter into a Memorandum of Agreement for sanitation facilities including the wavier of damages for rights-of-way.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Chairman to enter into such Memorandum of Agreement as herein approved by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman and Vice Chairman of the Tribe are hereby authorized to sign all future documents pertaining to this resolution.

The foregoing resolution was on May 23, 1997, duly adopted by a vote of nine for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by the White Mountain Apache Tribal Constitution, including Article IV, Sections 1 (a), (b), (h), (i), (j), (t), and (u), of the Constitution of the Tribe, ratified by the Tribe on 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).

RECEIVED

JUN 17 1997
FORT APACHE INDIAN AGEN
WHITERIVER, ARIZONA


Arthur
Chairman of the Tribal Council

Virginia M. Dalton
Secretary of the Tribal Council

IN WITNESS WHEREOF, the parties have subscribed their names:

FOR THE TRIBE:

Date



Chairman, White Mountain Apache Tribal
Council, having been duly authorized to
enter into this Agreement on behalf of
the White Mountain Apache Tribe, as
evidenced by the attached copy of the
resolution made by the Tribal Council.

FOR THE INDIAN HEALTH SERVICE:

Date

Area Director
Phoenix Area Indian Health Service
Department of Health and Human Services

MEMORANDUM OF AGREEMENT
BETWEEN
THE INDIAN HEALTH SERVICE
AND
THE WHITE MOUNTAIN APACHE TRIBE
FORT APACHE INDIAN RESERVATION
NAVAJO, GILA AND APACHE COUNTIES, ARIZONA

PROJECT NO. PH 97-R30
PUBLIC LAW 86-121

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE
PHOENIX AREA OFFICE

APRIL 1997

MEMORANDUM OF AGREEMENT
BETWEEN
THE INDIAN HEALTH SERVICE
AND
THE WHITE MOUNTAIN APACHE TRIBE
FORT APACHE INDIAN RESERVATION
NAVAJO, GILA AND APACHE COUNTIES, ARIZONA

PROJECT NO. PH 97-R30
PUBLIC LAW 86-121

DATE OF AGREEMENT:
April 1997

THIS AGREEMENT is made between the Indian Health Service, acting through the Director, Phoenix Area Indian Health Service, hereinafter referred to as IHS, Department of Health and Human Services (HHS), under and pursuant to the provisions of Public Law 86-121 (73 Stat. 267), and the White Mountain Apache Tribe, Fort Apache Indian Reservation, Navajo, Apache and Gila Counties, Arizona, hereinafter called the Tribe, acting through the Tribal Chairman.

WHEREAS, the Tribe desires to construct indoor plumbing facilities for 16 privately constructed houses without indoor plumbing on the Fort Apache Indian Reservation, and

WHEREAS, the Tribe, acting through the Tribal Chairman, submitted a project proposal to the IHS, dated February 7, 1997, requesting assistance under Public Law 86-121 in the construction of sanitation facilities for 16 privately constructed houses on the Fort Apache Indian Reservation, Navajo, Apache and Gila Counties, Arizona, and

WHEREAS, the IHS desires to assist in the construction of said sanitation facilities on the Fort Apache Indian Reservation, Navajo, Apache and Gila Counties, Arizona, as a means of improving the health of the residents, and

WHEREAS, the Tribe has reviewed and concurs with the provisions of the attached Project Scope.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Scope entitled "...Indoor Plumbing Project For 16 Houses, Fort Apache Indian Reservation..," and dated April 1997, the parties mutually agree that:

TRIBAL LANDS

1. The Tribe hereby grants permission for the IHS and its representatives to enter upon or across tribal lands for the purpose of carrying out the project outlined in the attached Project Scope and provided for in this Agreement and further agrees to waive all claims which may arise by reason of such entry upon tribal lands, except those that may be recognized under the Federal Tort Claims Act.
2. The Tribe will obtain all rights-of-way and easements on or over tribal lands as in the judgment of the IHS may be necessary for the provision and operation of any facilities provided for in this Agreement and further agrees to waive any claims which may arise by reason of such entry upon tribal lands.
3. The Tribe will provide, without charge to the IHS, all tribal land necessary for the construction of the facilities as provided for in the Project Scope.
4. The IHS shall consult with the Tribe regarding excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act and related Regulations, 43 CFR Part 10. This Agreement shall serve as official notice to the Tribe that the proposed sanitation facilities construction may result in inadvertent discoveries, and that any such discoveries shall be subject to the above Regulations, including consultation between the IHS and the Tribally designated cultural resources representative and disposition of human remains or related cultural items. If the Tribe is administering construction of the sanitation facilities, through a Tribal contract or force account, it shall assume full responsibility for compliance with 43 CFR Part 10.

HOMES SERVED

5. The Tribe shall provide a prioritized list of Indian homes to be served under this project. Changes or deletions of homes may be made by the Tribe at any time prior to actual construction providing that such changes are made in writing by the appropriate tribal official. All homes must be found to meet eligibility and feasibility criteria established by

the IHS. The actual homes to be served under this project will be determined by the IHS from the applications submitted by the Tribe.

6. The IHS shall make final determinations and notify the Tribe on whether individual participants and sites qualify for sanitation facilities, taking into account the recommendations by the Tribe.
7. The IHS reserves the right to delete from the project any home for which eligibility requirements have not been met by July 1, 1998, and to withdraw from the project any or all funds intended to serve those homes.

IHS CONTRIBUTIONS

8. The IHS will provide without charge to the Tribe:
 - a. Technical assistance with contract administration, construction inspection, supply and materials purchase, construction staking (if applicable), and the preparation of plans and specifications;
 - b. All materials, supplies, equipment, and labor for the installation of the facilities as provided for in the attached Project Scope, and not otherwise provided for in this Agreement; and
 - c. The instructions as to the proper utilization, maintenance, operation, and protection of the facilities provided for herein.
9. The IHS shall contribute to the Tribe an amount not to exceed \$160,000 for administration and construction of the proposed facilities. The IHS Area Director may increase this amount subject to the availability of funds, and will notify the other parties in writing of any changes. The exact amount to be contributed shall be the sum of the following items:
 - a. Actual cost of construction contracts;
 - b. Contract administrative support fee to be paid to the Tribe in lieu of indirect costs. This fee is to cover

a portion of the cost of administering construction contracts under the project. The contract administrative support fee shall be as follows:

<u>Contract Amount</u>	<u>Administrative Fee</u>
\$0 to \$25,000	Four percent of the Del. Order or contract amount.
\$25,000 to \$200,000	\$1,000 plus three percent of the Del. Order or contract amount in excess of \$25,000.
Above \$200,000	\$6,250 plus two percent of the Del. Order or contract amount in excess of \$200,000.

- c. Direct costs such as printing, copying, advertising, and accounting fees may be paid if approved in advance by the IHS District Engineer, Division of Sanitation Facilities Construction, Phoenix Area.
10. The IHS contributions to the Tribe shall be made on a quarterly basis in amounts approved by the IHS District Engineer based on cost estimates for construction projected during the upcoming quarter. Supplemental requests for contributions may be made should costs exceed the quarterly estimate. Any funds contributed and not expended within a given quarter shall be applied toward the next quarterly estimate and the contribution adjusted accordingly.
 11. The IHS will release contributions to the Tribe as provided for in Paragraph 9 of this Agreement, upon:
 - a. Execution of this Agreement by all parties;
 - b. Receipt of written request from the Tribe for the required funds;
 - c. Certification from the IHS Project Engineer that the amount of funds requested is required to make timely payments in accordance with the project budget for the

supplies, materials, equipment, and services being obtained under the provisions of this Agreement; and

- d. Approval by the IHS Area office.
12. The IHS shall identify in the Project Scope a separate amount for engineering support (normally 10%) and contingency (normally 5%). The engineering funds will be used for IHS costs related to temporary salaries, GSA vehicles and miscellaneous expenses. The contingency amount may be reduced for large projects, over \$500,000, if the level of complexity and uncertainty mitigate the likelihood of exceeding the project budget. The minimum contingency amount for projects funded above the \$500,000 level will be \$25,000.
13. The IHS will retain 50% of the identified contingency amount in the IHS "Risk Pool." The "Risk Pool" will be used to make funds available for addressing contingencies that may exceed the budgeted project contingency amount. The balance of the project contingency amount will be directly available to the Tribe for construction of the facilities proposed in the Project Scope. If the project construction is completed "under budget," the construction funds and 50% of contingencies will be made fully available to the tribe for enhancements. Project enhancements will be limited to sanitation facilities eligible under the PL 86-121 program that funded the project (regular or housing). The District Engineer will review and approve the scope and estimated cost of project enhancements. A copy of the cost accounting of completed facilities, tribal request for enhancements, and District Engineer approval shall be forwarded to the Director, DSFC.
14. The Tribe can use contingency funds for minor changes with funds already available to the Tribe after submitting the proposed changes and estimated costs to the Field Engineer and approval from the District Engineer. If the contingency would potentially exceed the amount of funds available to the Tribe, including the local share of the contingency, then the Tribe may be able to access the "Risk Pool." Major changes that would potentially increase the total project budget, project schedule or would include items outside the scope of the project, must be reviewed by the District

Engineer and approved by the Director, DSFC. A contingency request by the Tribe must be made before any construction expenditures for these contingencies take place.

REPRESENTATIVES

15. The Tribe will provide one or more representatives to coordinate the conduct of tribal participation under this Agreement, including active promotion of attendance of Indian beneficiaries at meetings; obtaining consent of each participating Indian family on forms furnished by the IHS; obtaining cooperation of tribal members in the fulfillment of labor responsibilities assumed by the Tribe under this Agreement; and attendance at the final inspection.
16. The IHS Project Engineer shall coordinate IHS participation in the Project.

TRANSFER OF TRIBALLY OWNED FACILITIES

17. All parties understand that the facilities constructed (including equipment, land, and supplies purchased) under this Agreement with IHS contributed funds are at no time the property of the IHS, but rather belong to the Tribe, which shall operate and maintain such facilities properly, until or unless transferred to other parties.
18. Because the IHS will not at any time own the facilities constructed, no formal transfer agreement may be necessary. IHS may develop a transfer agreement or, in lieu of a transfer agreement, the IHS will notify the Tribe by registered mail when IHS participation in the project is complete.

OPERATION AND MAINTENANCE FEES AND ORDINANCES

19. The Tribe will establish connection fees and user rates and collect such charges from individuals served by the system to obtain the revenue necessary to sustain the operation, maintenance, and repair of the community water supply and sewerage systems. As an alternative, the Tribe may provide this revenue from another source.
20. The Tribe agrees to enact and enforce appropriate ordinances

or regulations governing:

- a. Connection to the community water supply and sewer systems by the residents of the Fort Apache Indian Reservation;
- b. The methods and materials to be used in making connections to the community water supply and sewer systems in a safe and sanitary manner; and
- c. The continued operation, maintenance, and repair of individual water supply and sewer facilities in a safe and sanitary condition by the persons served thereby.

PROJECT SCHEDULE

21. It is important that the installation of the water supply facilities provided for herein be completed as soon as is practicable in accordance with the schedule of the IHS project engineer.
22. In the event that actual construction of this project cannot be initiated for any reason by July 1, 1998, the IHS reserves the right to cancel the project and use the designated project funds for other projects which lack impediments to prompt construction. If the condition which impeded construction is resolved following such cancellation, the IHS will give high priority to funding the project from appropriated sanitation facilities funds available at the time or from future appropriations for sanitation facilities.

PROVISIONS FOR TRIBAL PROCUREMENT

23. The Tribe shall provide for construction through its procurement system of all water and waste disposal facilities described in the Project Scope and shall procure the facilities in accordance with this Agreement and in compliance with applicable Federal requirements.
24. The Tribe shall submit to the IHS, for review and approval before advertising, all proposed solicitations and shall make such adjustments in the solicitations as determined necessary by IHS.

25. The Tribe shall develop and submit to IHS for approval a proposed construction contract, based on bids received, for construction of sanitation facilities to be installed. The IHS District Engineer, Division of Sanitation Facilities Construction, Phoenix Area, must approve in writing any construction contract in excess of \$25,000 before it can be awarded.
26. Major modifications to the construction contract (such as adding facilities not included in the Project Scope or requiring additional project funds) shall not be executed without written approval by the IHS Associate Director, Office of Environmental Health and Engineering, Phoenix Area.
27. The Tribe shall procure construction of the facilities in conformance with Chapter 6, section 6.2 of the IHS "Guidelines for Utilization of the Memorandum of Agreement, May 1990" and Phoenix Area OEH Guideline 2-53. Some, but not all, of the requirements included in these provisions are listed below:
 - a. The Tribe shall use a system of contract administration that ensures performance by its contractors in accordance with the terms and conditions of the contract and compliance with OMB Circular A-102 as adopted by DHHS in 45CFR92;
 - b. Tribal procurement documents shall provide for the right of the IHS to inspect sanitation facilities installed to insure they meet minimum IHS standards. The procurement documents shall also note that the IHS inspector does not have authority to modify the contract or issue direction to the contractor.
 - c. No employee, officer, or agent of the Tribe shall participate in the selection, or in the award, or in the administration of a federally assisted contract if a conflict of interest, real or apparent, would be involved;
 - d. Tribal officers, employees, and agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential

contractors;

- e. All supply and construction contracts in excess of \$2,000 must be made by competitive solicitation;
 - f. All construction contracts in excess of \$2,000 must include labor provisions which comply with the regulations of the U.S. Department of Labor for federally assisted construction contracts, including the requirement for Davis-Bacon wage rates;
 - g. All construction contracts in excess of \$25,000 must include contractor bonding requirements, unless specifically waived by the IHS Director, Division of Sanitation Facilities Construction; and
 - h. All construction contracts in excess of \$10,000 must include clauses requiring compliance with the "Equal Employment Opportunity" Executive Order 11246.
28. The IHS will, at the request of the Tribe, provide oversight and technical assistance on contractor submittals, progress payments, change order requests, and other project related information submitted by the tribal contractor and make recommendations to the Tribe.
29. The IHS shall provide construction inspection services to the Tribe. The IHS inspector shall not have the authority to modify the contract or provide direction to the contractor.
30. The IHS and Tribe shall inspect all sanitation facilities constructed through Tribal procurement to insure construction meets minimum IHS standards. Following construction inspection, the IHS will advise the Tribe on whether the construction meets the IHS interpretation of the contract requirements.
31. At no time during the project will the Tribe represent the IHS nor will the IHS represent the Tribe in contract administration matters.

GENERAL PROVISIONS FOR TRIBAL FORCE ACCOUNT

32. The Tribe agrees to construct the proposed sanitation facilities, with its own construction employees, in accordance with plans and specifications prepared by IHS.
33. The Tribe and IHS agree to work cooperatively to complete preconstruction planning activities which shall include equipment, material and manpower needs, wage rates, qualifications necessary for the project superintendent, construction management, and the project schedule. The Tribe shall then complete a detailed construction cost estimate to demonstrate how the work will be performed within the project budget.
34. The Tribe and IHS acknowledge that project funding is limited to the amount shown in the Project Scope. If the Tribe's cost exceeds the estimate in the Project Scope, the scope of the project may need to be reduced. Cost overruns discovered near the end of the project, or after completion of the construction, may not get reimbursed due to a lack of funds. Any proposed change in the project scope or budget must be approved by IHS prior to implementation.
35. The construction shall be performed by the Tribe in accordance with plans and specifications prepared or approved by IHS. IHS is responsible for construction inspection, approval of materials, quality control testing and final acceptance of all work.
36. The Tribe agrees that (a) all of its employees working on construction of the project shall be covered by applicable workmen's compensation insurance; and (b) a general public liability and property damage insurance policy shall be in force throughout the construction period.
37. The Tribe agrees to demonstrate to the satisfaction of IHS that (a) adequate financial controls are in place to identify the source and disbursement of all funds; (b) a cost accounting system will be utilized that will compare actual costs with budgeted amounts; (c) accounting records will be supported by source documents; and (d) its procurement system complies with IHS requirements.

38. The Tribe may not receive a profit, in excess of allowable costs, as approved by IHS in accordance with the allowable cost provisions of OMB Circular A-87.
39. The Tribe is responsible for jobsite safety and for compliance with all applicable State and Federal health and safety requirements. The IHS Project Engineer may stop work if a safety problem is unresolved by the Tribe.
40. The Tribe is responsible for resolving all tort claims, contractual disputes, protests and claims resulting from its activities on this project.

COST CONTROL PROVISIONS FOR TRIBAL FORCE ACCOUNT

41. The Tribe and IHS shall agree on unit prices for the work to be performed. After appropriate deductions for cash advances, IHS shall contribute funds to the Tribe for the quantity of work performed at the agreed upon unit prices, plus the contract administrative support fees, **if applicable.**
42. The Tribe will develop a projected cash flow and a construction budget to estimate costs for the work.
43. The Tribe and IHS shall agree upon a cost control system to track project costs and accomplishments prior to construction. The Tribe shall provide to IHS, on a monthly basis, a financial and progress report showing (a) a current accounting of all income, obligations and disbursements for labor, equipment, materials, administrative support costs, and budgeted amounts; and (b) construction progress and a revised progress schedule if necessary.
44. If the Tribe experiences cost increases, above the amount estimated prior to construction, IHS will recommend corrective actions to reduce costs. Major cost overruns may require a revised scope of work, suspension of construction or other cost reduction initiatives.

TRIBAL FINANCIAL MANAGEMENT STANDARDS AND PROCEDURES

45. The Tribe shall provide the following features in its financial management system:

- a. The Tribe shall maintain original accounting records which accurately identify the source and application of all project funds it receives. The source documentation shall include canceled checks, paid bills, payrolls, time and attendance records, purchasing documents, and financial records. Accurate, current, and complete project records shall be reported in accordance with other provisions of this Agreement;
 - b. The Tribe shall maintain effective controls and accountability for all cash, real and personal property, and other assets acquired;
 - c. The Tribe shall compare actual tribal expenditures with budgeted amounts for the project; and
 - d. Applicable OMB cost principles (OMB Circular A-87) and the terms of this Agreement shall govern in determining the reasonableness, allowability, and allocability of all costs under the project.
46. The Tribe shall maintain a separate financial account for the project.
47. Interest in excess of \$100 per year earned on cash advances (Federal funds) must be returned to the IHS in the appropriate project account.
48. Funds for construction projects under an Agreement shall not be borrowed or intentionally invested. Funds from one IHS funded construction project shall not be used for cash flow or other unauthorized purposes or for another IHS funded construction project.
49. Any proposed changes by the Tribe in the project scope and/or budgeted costs must be reviewed and approved by IHS as provided for in the Agreement.

PROJECT CLOSEOUT

50. The IHS will close out the project when it determines that all applicable administrative actions and all required project work has been completed. The Tribe shall return unexpended funds within 90 days after the completion of the

project construction phase and shall submit a closeout financial report after completion of the project.

51. Except as otherwise provided, project records shall be retained for three (3) years from the project completion date. These records include all financial records, supporting documents, procurement documents, titles, and equipment records; including, but not limited to, time sheets, canceled checks, invoices, and purchase orders. These records shall be made available to the IHS, Inspectors General, or other designated representatives upon request. The Tribe shall be subject to audit in accordance with the requirements of the Single Audit Act.
52. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the three year period, whichever is later.

WARRANTIES

53. The Tribe, to the extent economically feasible, will obtain a one year warranty for the Tribe and head of household from the tribal contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. The IHS shall assist the Tribe or head of household in obtaining the benefits and protection of all warranties on equipment or work provided under this Agreement. In the event of a problem occurring within the first year of installation with the design or construction of tribal force account installed facilities, equipment, or work not protected by the warranties of the suppliers or manufacturers, the IHS will correct the problem, subject to the availability of funds and staff resources, as determined by the IHS.

AGREEMENT DISPUTES

54. The parties to this Agreement agree to resolve all disputes regarding the provisions of this Agreement among the parties through administrative procedures first. If a dispute cannot be resolved locally, the parties to this Agreement agree that the next administrative procedure is an appeals

board established at the IHS headquarters level, which will make a recommendation to the IHS Director, who will exercise final authority for the IHS in the administrative review of all disputes.

AGREEMENT TERMINATION

55. Any party to this Agreement may terminate its relationship with the other Agreement parties prior to project completion upon 30 days notice in writing to all other parties.