

LOAN RESOLUTION SECURITY AGREEMENT

A RESOLUTION OF THE Tribal Council

OF THE White Mountain Apache Tribe

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS IN THE

PRINCIPAL AMOUNT OF \$312,000.00 FOR THE PURPOSE

OF PROVIDING A PORTION OF THE COST OF ACQUIRING AND CONSTRUCTING A

Cedar Creek Wastewater Project, PROVIDING FOR THE COLLECTION, HANDLING, AND DISPOSITION OF REVENUES THEREFROM, AND AUTHORIZING MAKINGS OF PROMISSORY NOTE(S), SECURITY INSTRUMENTS, AND PLEDGES OF REVENUES TO EVIDENCE AND SECURE THE PAYMENT OF SAID INDEBTEDNESS AND FOR RELATED PURPOSES.

WHEREAS, the White Mountain Apache Tribe

(hereinafter referred to as the "Organization"), was organized under the Indian Organization Act of 1934 for the purpose of providing a

Tribal Government for its members and to authorize construction of improvements to the Reservation (hereinafter referred to as the "Facility") to serve the Members of the said Organization; and

WHEREAS, a meeting of the members of the said organization was held on the 7th day of March pursuant to proper notice thereof to consider plans for the acquisition and construction methods of financing the Facility; and,

as shown by the minutes of said meeting, of the 11 members of record of the organization there were present and voting 8, and by a recorded majority vote, the Facility and its financing authorized; and,

WHEREAS, the proposed Facility is to be constructed and equipped in accordance with plans and specifications prepared Indian Health Service

and in order to finance the Facility, the Tribal Council (hereinafter referred to as the "Board") is authorized and empowered, in their discretion, for and in the name of the organization, to make application to the United States of America, acting through the United States Department of Agriculture, (hereinafter referred to as the "Government"), for financial assistance; to cause the execution and delivery of a promissory note or notes or other evidence of indebtedness (hereinafter referred to as the "note"), and appropriate security instruments to secure any loan or loans made or insured by the Government; to comply with any requirements, terms or conditions prescribed by the Government or by Government regulations; and to execute contracts or enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental or appropriate to finance, acquire, construct, complete, and/or equip the Facility for and on behalf of the Organization.

NOW THEREFORE, it is hereby resolved by the Board as follows:

Section 1. (Determination of Board). That it is necessary to defray a portion of the costs of financing the Facility by obtaining a loan made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and Rural Development Act, it being determined that the Organization is unable to obtain sufficient credit elsewhere to finance the Facility, taking into consideration prevailing private and cooperative rates and terms currently available;

*Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0015), Washington, DC 20503.*

Section 2. (Terms of Loan). That the Organization borrow \$312,000.00 and issue as evidence thereof an installment promissory note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the President, attested by the Secretary, and have the corporate seal of the Organization affixed thereto, and shall bear interest from its date, which shall be the date of delivery, at a rate not to exceed 4.500 percent per annum; the principal and interest shall be paid over a period of 40 years in accordance with the payment schedule set forth in the promissory note, until the principal and interest are fully paid, except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable 40 years from the date of the note. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the Organization.

Section 3. (Assignment and Pledge of Revenue). The indebtedness hereby authorized to be incurred, together with the interest thereon, shall be payable from the gross income and revenue to be derived from the operation of the Facility, a sufficient portion of which, to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose and this assignment and pledge shall extend to and include any assessments that may be levied pursuant to Section 5 (d) hereof.

Section 4. (Protection and Disposition of Funds). The Tribal Chairman and Tribal Treasurer of the Organization shall be the custodian of all funds of the Organization. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

The Tribal Chairman & Treasurer is hereby directed to establish the following accounts into which the current funds of the Organization, note proceeds, the revenues from the Facility and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

(a) Construction Account

The proceeds of the borrowing hereby authorized not disbursed contemporaneously with loan closing for incurred Facility costs, and at least the amount of \$ 14,000.00 to be contributed by the Organization from the collection of initial connection fees, membership fees, or contributions shall be deposited in the Construction Account, which shall be established as required by the Government. Withdrawals from the construction account shall be made only on checks signed by the

Tribal Chairman & Treasurer of the Organization as authorized by the Board from time to time, and with prior concurrence of the Government. At the option of the Government, the construction account may be established as a "supervised bank account". Amounts in the supervised bank account exceeding \$100,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. Withdrawals from a supervised bank account

shall be made only on checks signed by the Tribal Chairman & Treasurer of the Organization and countersigned by an authorized official of the Department of Agriculture. The Organization's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Facility. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on the loan or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

(b) General Account

As soon as the facility becomes revenue producing, all funds received shall be set aside in an account to be designated as the General Account, and disbursements and transfers from this account shall be in the following priority: Debt Service, Operations and Maintenance, transfers to Reserve Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) Borrowers making monthly USDA Debt Service Payments shall use the General Account for making such payments plus operating and maintenance expenses. Also, funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) Borrowers making other than monthly USDA Debt Service Payments shall use the General Account to pay operating and maintenance expenses. Other transfers from this account will be made in the following order: (i) Transfers to the Debt Service Account will be made in accordance with (c) below, (ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account

For borrowers on other than monthly debt service payments, transfers, in proportion to income availability, shall be made from the General Account and set aside in an account designated as the Debt Service Account, in sufficient amounts which will accumulate for the next installment on the note.

(d) Reserve Account

From the remaining funds in the General Account, after transfers and payments required in (b) (1) or (b) (2) and (c), there shall be set aside into an account(s) designated as the Reserve Account(s) the sum of \$ 141.65 each month for the life of the loan unless prohibited by Federal or state law. If collection of the sum above is prohibited by Federal or state law an amendment to this Resolution will be adopted by the Organization setting forth the reserve amounts to be collected and attached to this Resolution. With the prior written approval of the Government, funds may be withdrawn and used for such things as loan installments, emergency maintenance, extensions to facilities and replacement of short-lived assets.

(e) Whenever there shall accumulate in the General Account amounts in excess of those required in subsections (b)(1) and (2), (c), and (d), such excess will be used by the organization to make prepayments on the loan or retained in the General Account.

(f) The accounts required in subsections (b)(1) and (2), (c), and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the Organization, unless otherwise directed by the Government.

Section 5. (Other Covenants and Agreements of the Organization). The Organization covenants and agrees that so long as the indebtedness hereby authorized remains unpaid;

(a) It will indemnify the Government for any payments made or losses suffered by the Government.

(b) It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.

(c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for payment of the operation and maintenance thereof; the installment payments on the note; and the maintenance of the various funds herein created. All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization; no free service by or use of the Facility will be permitted.

(d) It will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet installment payments on the note when the same become due if, for any reason, gross revenues are insufficient.

(e) It will establish and maintain such books and records relating to the operation of the system and its financial affairs, and will provide for the annual audit thereof, in such manner as may be required by the Government; will provide the Government without its request a copy of each such audit; and will make and forward to the Government such additional information and reports as it may from time to time require.

(f) It will provide the Government, at all reasonable times, access to all books and records relating to the Facility and access to the property of the Facility so that the Government may ascertain that the Organization is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.

(g) It will maintain at least such insurance and fidelity bond coverage as may be required by the Government.

(h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.

(i) It will not cause or permit any voluntary dissolution of its organization, or merge or consolidate with any other organization, without obtaining the prior written consent of the Government. It will not dispose of or transfer title to the facility or any part thereof, including lands and interest in lands, by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the Government. Revenue in excess of the amount required to maintain the accounts described by Section 4 herein will not be distributed or transferred to any other organization or legal entity.

(j) It will not modify or amend the Articles of Incorporation or the Bylaws of the Organization without the written consent of the Government.

(k) It will provide adequate service to all persons within the service area who can feasibly and legally be served and will obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the organization or public body.

(l) All present and future contract rights, accounts receivable, and general intangibles arising in connection with the facility are pledged as security for the loan.

(m) It will comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing adverse environmental impacts of the facility's construction or operation.

Section 6. (Security Instruments). In order to secure the payment of the principal and interest of the note, the President and Secretary of the Organization are hereby authorized and directed to execute and deliver good and sufficient lien instruments, where necessary, encumbering the properties and assets both real and personal constituting said Facility, as completed or as the same may be thereafter extended, including an assignment and pledge of revenues and such other instruments as may be prescribed by the Government

Section 7. (Refinancing). If at any time it shall appear to the Government that the Organization is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Organization will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such actions as may be required in connection with such loan.

Section 8. ("Equal Employment Opportunity under Construction Contracts and Nondiscrimination"). The President and the Secretary be and they are hereby authorized and directed to execute for and on behalf of the Organization, Form RD 400-1, "Equal Opportunity Agreement", and Form RD 400-4, "Assurance Agreement".

Section 9. In the case of a grant in the sum not to exceed \$312,000.00, the Organization hereby accepts the grant under the terms as offered by the Government and that the Tribal Chairman and Vice Chairman of the Organization are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the Organization hereby resolves to operate the facility under the terms as offered in said grant agreement(s).

Section 10. Default under the provisions of this agreement or any instrument incident to the making or issuing of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Organization, and default under any such instrument may be construed by the Government to constitute default hereunder.

Section 11. (Resolution of Contract). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall constitute a contract between the Organization and the Government or assignee so long as the note hereby authorized remains unpaid.

Section 12. This resolution shall take effect and be in force from and after the 7<sup>th</sup> day of March, 2000, being the date of its enactment.

The vote was: Yeas 7 Nays 0 Absent 0

White Mountain Apache Tribe

(SEAL) (if applicable)

By [Signature]  
Title Tribal Chairman

Attest:

[Signature]  
Title Tribal Council Secretary

CERTIFICATION

I, the undersigned, as secretary of the White Mountain Apache Tribe hereby certify that the Tribal Council of such Organization or Corporation is composed of 11 members of whom 8, constituting a quorum, were present at a meeting thereof duly called and held on the 7<sup>th</sup> day of March, 2000; that the foregoing resolution was adopted at such meeting by the vote shown above, and that said resolution has not been rescinded or amended in any way.

Dated, this 9<sup>th</sup> day of March, 2000  
[Signature]

Position 5  
**LOAN RESOLUTION**  
**(Public Bodies)**

A RESOLUTION OF THE Tribal Council  
OF THE White Mountain Apache Tribe  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING  
A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS  
Cedar Creek Wastewater Facility  
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the White Mountain Apache Tribe  
(Public Body)  
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of  
\$312,000.00

pursuant to the provisions of Resolution No.; and

WHEREAS, the Association intends to obtain assistance from the Rural Housing Service, Rural Business - Cooperative Service, Rural Utilities Service, or their successor Agencies with the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by the Government. No free service or use of the facility will be permitted.



### CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Tribal Council Secretary of the White Mountain Apache Tribe hereby certify that the Tribal Council of such Association is composed of 11 members, of whom 8, constituting a quorum, were present at a meeting thereof duly called and held on the 7th day of March, ~~19~~2000, and that the foregoing resolution was adopted at such meeting by the vote shown above. I further certify that as of \_\_\_\_\_, the date of closing of the loan from the Government, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 9th day of March, ~~19~~2000.

Amy Harvey-Burnette  
 Title Tribal Council Secretary