

**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 03-C49 to provide water and sewer services for seventy-five (75) new 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 waiver 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 SEPTEMBER 9, 2003 duly adopted by a vote of NINE for, ZERO against and ONE abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (h), (i), (j), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

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 03-C49
PUBLIC LAW 86-121

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

JULY 2003

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

WHEREAS, the Tribe desires to obtain water and sewer services for 75 new houses on the Fort Apache Indian Reservation, Navajo, Gila and Apache Counties, Arizona, and

WHEREAS, the Tribe has requested IHS assistance in the provision of water and sewer facilities for the new houses in on July 22, 2003, and

WHEREAS, the IHS desires to assist in the provision of sanitation facilities under Public Law 86-121 for the White Mountain Apache Tribe, and

WHEREAS, the Tribe has reviewed the attached Project Summary and concurs with its provisions.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Summary titled "...Apache Dawn Water & Sewer Main Extensions, Fort Apache Indian Reservation..." dated July 2003, 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 Summary and provided for in this Agreement and further agrees to waive all claims for damage directly related to activities necessary for the construction of sewer facilities as set forth within the Project Summary, except those that may be recognized under the Federal Tort Claims Act.
2. The Tribe will provide a temporary easement to IHS on all Tribal land in and around the construction sites of the pipelines and related facilities described in the Project Summary. There will be no charge to IHS for this temporary easement that shall revert back to the Tribe upon termination of this agreement, as outlined in Paragraphs 49 and 50 hereof.

3. The IHS shall consult with the Tribe, through the Tribal Historic Preservation Officer, regarding excavations that may result in the discovery of artifacts and cultural items, including the 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

4. The Tribe shall provide a written prioritized list of Indian homes to be served under this project. Additions to and/or deletions from the home list 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.
5. The Tribe shall provide for, at no cost to the IHS, water and sewer lines to be extended to a point five feet outside homes approved for service and proper winterization of homes, including skirting for mobile homes, to protect facilities from freezing.
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. Additional participants may be served (funds permitting) with a letter amendment to this Agreement, as required by IHS and the Tribe, prior to any additional construction. This amendment will describe the numbers and types of additional services to be provided, and the maximum additional contribution, if any, to be made by IHS.
8. The IHS reserves the right to delete from the project any home for which eligibility requirements have not been met by December 31, 2005, and to withdraw from the project any or all funds intended to serve those homes.

IHS CONTRIBUTIONS

9. The IHS will provide without charge to the Tribe:
 - a. Technical assistance for contract administration,

construction inspection, supply and materials purchase, construction staking, and preparation of plans and specifications;

- b. All materials, supplies, equipment, and labor for the design and installation of the facilities outlined in the attached Project Summary and identified as being provided for by IHS; and
 - c. Instruction as to the proper utilization, maintenance, operation, and protection of the facilities provided for herein.
10. The IHS shall contribute to the Tribe an amount not to exceed \$109,564 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 three percent of the contract amount;
 - c. Actual cost of **construction of facilities** listed in the Project Summary, including labor, equipment, material, supplies, and services; and
 - d. **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.
11. 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.
12. The IHS will release contributions to the Tribe as provided for in Paragraph 10 and 11 of this Agreement, upon:
- a. Execution of this Agreement by all parties;
 - b. Receipt of a 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.
13. The IHS shall utilize project funds in the amount of \$10,852 for project technical support expenses. Project technical support expenses shall include IHS expenditures such as technician and clerical salaries, GSA vehicles and miscellaneous project related expenses.
14. The IHS shall retain 50% of the identified contingency amount for the "Risk Pool." The "Risk Pool" will be used to make funds available to any Area project that may exceed the budgeted project contingency amount. Fifty percent of the estimated project contingency amount (the portion not retained for the "Risk Pool") will be directly available to the Tribe for construction of the facilities proposed in this project. If all facilities proposed in the Project Summary are completed and there are funds remaining in the project, the remaining funds may be used for additional facilities, provided the additional facilities are within the general scope of work. Additional facilities must be sanitation facilities eligible under the PL 86-121 program that funded the project. The District Engineer will review and approve the additional scope and estimated cost of additional facilities. A copy of the cost accounting of completed facilities, a tribal request for additional facilities and District Engineer approval must be forwarded to the Director, DSFC prior to the construction of any additional facilities.

REPRESENTATIVES

15. The Tribe will provide one or more representatives to coordinate the conduct of tribal participation under this Agreement. The Tribal representative shall, at a minimum, obtain consent of each participating Indian family on forms furnished by the IHS; obtain cooperation of Tribal members in the fulfillment of labor responsibilities assumed by the Tribe under this Agreement; and attend the final inspection.
16. The IHS Project Engineer shall manage the project and coordinate IHS participation in the Project.

TRANSFER OF TRIBALLY PROVIDED 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 is necessary. In lieu of a transfer agreement, the IHS will notify the Tribe by registered mail when IHS participation in the project is complete.
19. The Tribe shall transfer on-site water and waste facilities to individual homeowners. Upon completion of construction, the homeowners will become responsible for operation and maintenance of their facilities. Facilities constructed under this Agreement at all times belong to the Tribe until transferred to individual homeowners or other parties.

OPERATION AND MAINTENANCE FEES AND ORDINANCES

20. 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.
21. The Tribe agrees to enact and enforce appropriate ordinances or regulations governing:
 - a. Connection to the community water supply and sewage systems by the residents of the community;
 - b. The methods and materials to be used in making connections to the community water supply and sewage systems in a safe and sanitary manner; and
 - c. The continued operation, maintenance, and repair of individual water supply and waste disposal facilities in a safe and sanitary condition by the persons served thereby.

PROJECT SCHEDULE

22. In the interest of coordination, understanding, and economy, before construction of the project begins, the IHS Project Engineer in consultation with the Tribe shall prepare a work plan and priority for the scheduling and conduct of the project. The work plan will specify the facilities to be installed and a time schedule for completing the work. The work plan may be modified or amended by the Project Engineer when necessary to carry out the project.
23. Installation of the water supply and waste disposal facilities provided for herein shall be completed as soon as is practicable in accordance with the schedule developed by the IHS project engineer in consultation with the Tribe.
24. In the event that actual construction of this project cannot be

initiated for any reason by June 30, 2005, the IHS reserves the right to cancel the project and use the designated project funds for other projects. 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.

TRIBAL FINANCIAL MANAGEMENT STANDARDS AND PROCEDURES

25. 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.
26. The Tribe shall maintain a separate financial account for the project.
27. The Tribe shall submit a projected cash flow schedule. The Tribe and IHS shall minimize the time elapsed between fund transfer and disbursement.
28. Interest in excess of \$100 per year earned on cash advances (Federal funds) must be returned to the IHS in the appropriate project account.
29. 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.
30. 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.

PROVISIONS FOR TRIBAL PROCUREMENT

31. The facilities described in the Project Summary shall be designed and constructed in accordance with normal IHS standards for such facilities.
32. The Tribe, through its procurement system, shall provide for construction of all water and sewage facilities described in the Project Summary as being provided by the Tribe and shall procure the facilities in accordance with this Agreement and in compliance with applicable Federal requirements.
33. 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.
34. The Tribe shall develop and submit to IHS for approval a proposed construction contract showing proposed unit costs, based on bids received, for construction of sanitation facilities to be installed. The Tribe shall negotiate these unit costs if necessary to receive approval from IHS. These unit costs shall govern for the duration of the Tribal contract under which they are proposed. No work shall be performed prior to written approval by IHS of the corresponding unit costs.
35. If additional or special units of work are needed for specific sites during execution of the project, the Tribe shall submit a list of proposed costs for negotiation on those items. Costs for the additional or special items shall then govern either for the duration of the Tribal contract, or for just those sites specified in the proposal, as agreed at the time. Major modifications to the construction contract (such as adding facilities not included in the Project Summary or requiring additional project funds) shall not be executed without written approval by the IHS Associate Director, Office of Environment Health and Engineering, Phoenix Area.
36. The IHS shall review and approve proposed unit costs for all items of work under the project. Once approved by IHS, these unit costs shall govern all work for the duration of the Tribal contract under which they are proposed. All unit costs are subject to approval by the Director, Sanitation Facilities Construction prior to the award of any contract or the start of any construction involving those items of work.
37. The Tribe shall procure construction of facilities outlined in the Project Summary using a system of contract administration that ensures performance by its contractors in accordance with the terms and conditions of the contract and compliance with the latest edition of the IHS MOA Guideline Chapter 6, Section 2. Some, but not all, of the requirements are:
 - a. Procurement Standards;

- b. Competitive Procurement Practice;
 - c. Indian Preference;
 - d. Davis-Bacon Wage Rate Application;
 - e. Bonding Requirements; and
 - f. Subcontract Limits.
38. 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.
39. The IHS will, at the request of the Tribe, provide oversight and technical assistance on the contractor submittals, progress payments, change order requests, and other project related information submitted by the tribal contractor and make recommendations to the Tribe.
40. The IHS shall provide construction inspection services to the Tribe. The IHS inspector shall not have the authority to modify the contract or direct the contractor. The IHS and Tribe will 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.
41. At no time during the project will the Tribe represent the IHS nor will the IHS represent the Tribe in contract administration matters.
42. The Tribe shall conduct with the contractor, IHS representatives, and other interested parties, a final inspection of the facilities provided under the contract. Final acceptance and payment for the work by the Tribe shall not occur until the contractor has corrected all deficiencies identified at the final inspection and until the work is in full compliance with the plans, specifications and other contract requirements.
43. Work will be inspected by IHS to insure that the work performed complies with all the terms and conditions of the Tribal contract. Final IHS contributions for the work performed will not be released to the Tribe until such time as the IHS participates in a final inspection and determines that the work complies with all contract requirements.

PROJECT CLOSEOUT

44. 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 project funds contributed by IHS within 90 days after the completion of the project construction phase and shall submit a closeout financial report after completion of the project.

45. 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.
46. 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

47. 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 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

48. All disputes regarding the provisions of this agreement will be resolved among the parties through the IHS Area's established administrative procedures first. If a dispute cannot be resolved locally, the parties 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

49. 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.

50. This agreement shall remain in effect until the earliest of the following dates:
- a. The date when all obligations under the terms of the MOA have been fulfilled, or
 - b. December 31, 2007.

IN WITNESS WHEREOF, the parties have subscribed their names:

FOR THE TRIBE:

Date

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

FOR THE INDIAN HEALTH SERVICE:

Date

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

Resolution No.

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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

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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 _____, duly adopted by a vote of _____ for and _____ 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).

Chairman of the Tribal Council

Secretary of the Tribal Council