

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

**(Authorizing a Memorandum of Agreement with the Indian Health Service for the  
installation of water and sewer lines)**

**WHEREAS,** the Indian Health Service desires to enter into a Memorandum of Agreement, as attached and incorporated by this reference, with the White Mountain Apache Tribe in furtherance of a project, PH 05-C88, for the installation and improvement of sanitation facilities, in particular, water and sewer lines will be installed to tribal member homes; and

**WHEREAS,** the Memorandum of Agreement includes a waiver of damages for rights-of-way needed to construct the sanitation facilities; and

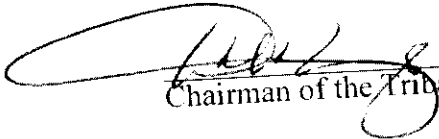
**WHEREAS,** upon completion of such service by the Indian Health Service, the sanitation facilities will be transferred to the Tribe or individual home owner as appropriate; and


**WHEREAS,** such facilities are needed for 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:

1. Approves the Memorandum of Agreement with the Indian Health Service, as attached and incorporated by this reference, whereby the Indian Health Service will be installing sanitation facilities, including water and sewer lines to tribal member homes and the Tribe waives damages for rights-of-way needed to construct sanitation facilities.
2. Authorizes the Tribal Chairman, and in his absence, the Vice-Chairman, to negotiate and execute any and all documents necessary to implement the intent of this Resolution.

The foregoing resolution was on APRIL 6, 2005 duly adopted by a vote of TEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (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

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE INDIAN HEALTH SERVICE  
AND  
THE WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE INDIAN RESERVATION

PROJECT PH 05-C88  
PUBLIC LAW 86-121

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

MARCH 2005

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE INDIAN HEALTH SERVICE  
AND  
THE WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE INDIAN RESERVATION

PROJECT PH 05-C88  
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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, Fort Apache Indian Reservation, Navajo, Gila, and Apache Counties, Arizona, hereinafter called the Tribe, acting through the Chairman, White Mountain Apache Tribal Council.

WHEREAS, the Tribe desires to obtain water and sewer services for scattered houses and Tribal members on the Reservation located in Navajo, Gila, and Apache Counties, Arizona, and

WHEREAS, the Tribe has requested IHS assistance in the provision of sanitation facilities outlined in the Project Summary by letter dated February 2005, 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 Water & Sewer Services for Scattered Homes, and dated February 2005, 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 design and construction of facilities as set forth within the Project Summary, except those that may be recognized under the Federal Tort Claims Act.
2. The Tribe shall obtain all rights-of-way and easements on or over tribal lands which, 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 a temporary easement to IHS on all Tribal land in and around the construction sites of the 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.
4. The IHS shall consult with the Tribe, through the Tribal Historic Preservation Officer, 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, the Tribe shall assume full responsibility for compliance with 43 CFR Part 10.

#### **HOMES SERVED**

5. The Tribe shall provide a written prioritized list of Indian participants' 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.
6. The Tribe, or individual participant, shall provide A) water and sewer lines, at no cost to the IHS, from the home approved for service to a point five feet outside the dwelling; and B) proper winterization of homes, including skirting for mobile homes, to protect facilities from freezing.
7. 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.
8. 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.
9. The IHS reserves the right to delete from the project any home for which eligibility requirements have not been met by December 31, 2007, and to withdraw from the project

any or all funds intended to serve those homes.

## IHS CONTRIBUTIONS

10. The IHS will provide without charge to the Tribe:
  - a. All materials, supplies, equipment, and labor for the design of the facilities outlined in the attached Project Summary;
  - b. Technical assistance for contract administration, construction inspection, supply and materials purchase, construction staking, and preparation of plans and specifications;
  - c. All materials, supplies, equipment, and labor for the installation of the facilities outlined in the attached Project Summary identified as being provided for by IHS, and;
  - d. Instruction as to the proper utilization, maintenance, operation, and protection of the facilities provided for herein.
  
11. The IHS shall contribute to the Tribe in amounts not exceeding the total approved costs for construction of facilities as outlined below in Paragraphs 12 & 13. Contributions shall include funds for administration and construction of the proposed facilities. The exact amount to be contributed shall be the sum of the following items:
  - a. Actual cost of approved 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 (3) percent of the contract amount including the TERO and business license fee.
  - 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.
  
12. The IHS contributions to the Tribe shall be made on a quarterly basis in amounts recommended 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.
  
13. The IHS will release contributions to the Tribe as provided for in Paragraph 11 and 12 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 District 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 Director, Division of Sanitation Facilities Construction.

14. The IHS shall utilize project funds in the amount of \$26,231.63 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.
15. 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 scope 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 proposal for additional facilities from the Tribe, a copy of the cost accounting of completed facilities, and District Engineer approval must be forwarded to the Director, DSFC prior to the construction of any additional facilities.

## REPRESENTATIVES

16. 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.
17. The IHS Project Engineer shall manage the project and coordinate IHS participation in the Project.

## TRANSFER OF TRIBALLY PROVIDED FACILITIES

18. All parties understand that the facilities constructed (including equipment, land, and supplies purchased) through Tribal Procurement 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.
19. 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.

20. 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**

21. The Tribe has established connection fees and user rates and will 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.
22. The Tribe has enacted and will continue to 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**

23. 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.
24. 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.
25. In the event that actual construction of this project cannot be initiated for any reason by June 30, 2007, 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**

26. The Tribe shall provide the following features in its financial management system:
  - a. The Tribe shall maintain original accounting records that 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.
27. The Tribe shall maintain a separate financial account for the project.
28. The Tribe shall submit a projected cash flow schedule. The Tribe and IHS shall minimize the time elapsed between fund transfer and disbursement.
29. Interest in excess of \$100 per year earned on cash advances (Federal funds) must be returned to the IHS in the appropriate project account.
30. 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.
31. Any proposed changes by the Tribe in the project Summary and/or budgeted costs must be reviewed and approved by IHS as provided for in the Agreement.

#### **TRIBAL PROCUREMENT PROVISIONS**

32. The facilities described in the Project Summary shall be designed and constructed in accordance with normal IHS standards for such facilities.
33. 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.
34. 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.
35. 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.
36. If additional or special units of work are needed 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 Director, Division of Sanitation Facilities Construction, Phoenix Area.
  37. 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, Division of Sanitation Facilities Construction prior to the award of any contract or the start of any construction involving those items of work.
  38. 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; and
    - g. Specific Contract Provisions.
  39. 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. In addition, the contract documents shall require the contractor to comply with OSHA safety requirements for all construction activity.
  40. The IHS will, at the request of the Tribe, provide oversight and technical assistance on the contractor submittals, progress payments, change order requests, bid evaluation, contractor qualification review, dispute and claim resolution, and other project related information submitted by the tribal contractor and make recommendations to the Tribe.

41. 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.
42. At no time during the project will the Tribe represent the IHS nor will the IHS represent the Tribe in contract administration matters. The Tribe shall be responsible, applying good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to source evaluation, protests, disputes, and claims.
43. IHS inspection of work is to ensure that the work performed complies with all the terms and conditions of the Tribal contract. Acceptance and final IHS contribution for the work performed will not be made to the Tribe until such time as the IHS participates in a final inspection and determines that all work complies with all contract requirements.
44. The Tribe shall conduct a final inspection of the facilities provided under each contract with the contractor, IHS representatives, and other interested parties. Final 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.

#### **FINAL INSPECTION and PROJECT CLOSEOUT**

45. The IHS and Tribal representatives, and other interested parties, shall conduct a final inspection of the facilities provided under the project. A review of the project scope shall be made to confirm completion of the project, including As-Built drawings, and O&M manuals, as applicable. IHS will close out the project when it determines that all applicable administrative actions and all required project work have 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.
46. 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, purchase orders, and contracts. 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.
47. 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**

48. The Tribe, to the extent economically feasible, will obtain a one-year warranty for the Tribe and heads of household from the Tribal contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. The IHS shall assist the Tribe or heads 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**

49. 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 the disputed matter(s), provided nothing within this agreement shall waive the sovereign immunity of the White Mountain Apache Tribe.

## **AGREEMENT TERMINATION**

50. 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.

IN WITNESS WHEREOF, the parties have subscribed their names:

FOR THE TRIBE:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman, 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 White Mountain Apache Tribal Council.

FOR THE INDIAN HEALTH SERVICE:

\_\_\_\_\_  
Date

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