



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

**(Approval of an Intergovernmental Agreement between WMAT and ADOT
for the Construction of an Enhanced Lighting Project at Hospital and Potter Roads)**

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, The WMAT Transportation Committee duly appointed by the Tribal Council is authorized to advise and recommend to the Tribal Council in all policy and program matters related to the Indian Reservation Roads Program, bridges, roads and highways within the Fort Apache Indian Reservation, byways and trails; and other inter-modal initiatives for the benefit of the members of the White Mountain Apache Tribe; and

WHEREAS, the WMAT Transportation Committee is further authorized to interact, meet, and represent the Tribe in such matters with outside agencies such as the Bureau of Indian Affairs, Federal Highway Administration, Arizona Department of Transportation; also local, state, federal governments and other transportation groups, associations, and committees concerning transportation policies, procedures and funding related to but not limited to 25 CFR 170 et. Seq. regarding primary rules, regulations and federal funding initiatives; and

WHEREAS, the Tribal Transportation Committee requests that the Tribal Council of the White Mountain Apache Tribe approve the use of WMAT Tribal Shares to be used as the 50% match for the design, construction and maintenance of enhancing the lighting at the intersection of SR-73 and W. Hospital Entrance and N. Potter Street for the safety and benefit of WMAT Tribal Members and the Traveling Public; and

WHEREAS, the WMAT has entered into an Intergovernmental Agreement with ADOT on July 22, 2005 to pay the 50% match as shown in Attachment "A"; and

WHEREAS, the Indian Health Service agrees to pay Navopache Electric Coop monthly for the enhancing lighting at the intersection of SR 73 and W. Hospital Entrance and Potter Road as shown in Attachment "B"; and

WHEREAS, that ADOT is requesting that the funds be released at this time to began the construction of the SR-73 and W. Hospital Road and N. Potter Street; and

WHEREAS, the Transportation Committee requests that the Tribal Council of the White Mountain Apache Tribe approve and amend the current Tribal TIP to include the above mentioned projects.

Resolution No. 07-2009-239

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that upon approval this document be transmitted to the BIA, WRO, for approval.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairwoman, is hereby authorized to execute any and all document necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **JULY 9, 2009** duly adopted by a vote of **NINE** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (h), (s), (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).

for Margaret Babin-Wall **ACTING**
Chairman of the Tribal Council

Gregory R. Harney
Secretary of the Tribal Council

Resolution No. 07-2009-239

Attachment "A"

ARIZONA DEPARTMENT OF TRANSPORTATION
CONTRACT ACCOUNTING - 204B
206 SOUTH 17TH AVENUE
PHOENIX, ARIZONA 85007
(602) 712-6638
April 01, 2009

INVOICE# 29103

THE WHITE MOUNTAIN APACHE TRIBE
ATTN: RICHARD PALMER
TRANSPORTATION COORDINATOR
PO BOX 700
WHITERIVER, AZ 85941

DESCRIPTION	AMOUNT
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RE:

ECS FILE NO.: JPA 04-060
PROJECT NO.: S 073 - A - 503
TRACS: HX15501C
SECTION: SR 73 @ WHITERIVER IHS

II. SCOPE OF WORK

1. The State will:

c. Upon execution of this Agreement, invoice the Nation its proportionate share of total Project costs currently estimated at \$50,000.00, fifty - percent (50%) of the total estimated costs of the Project, as set forth in this Agreement.

SEE ATTACHED JPA 04- 060

AMOUNT DUE: \$ 50,000.00

PLEASE REMIT PAYMENT WITHIN 30 DAYS OF RECEIPT

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
AND
THE WHITE MOUNTAIN APACHE TRIBE

THIS AGREEMENT is entered into July 22, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the WHITE MOUNTAIN APACHE TRIBE, acting by and through its BOARD (the "Nation").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Nation is empowered by Council Resolution to enter into this Agreement, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Nation.
3. The State and the Nation desire to participate in the design, construction and maintenance of enhancing the lighting at the intersection of SR-73 and W. Hospital Entrance and N. Potter Street at an estimated cost of \$100,000.00, hereinafter referred to as the "Project", for the safety and benefit of the traveling public. The State and the Nation agree to each pay fifty-percent (50%) of the total estimated costs of the Project, currently estimated in the amount of \$100,000.00, except as stated in 11.1.e. and 11.2.c of this Agreement. The State's funding will be provided from the Traffic Signal funds, Item No. 71203. The parties hereto agree that the State shall be the lead agency for the Project.
4. The parties agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27635
Filed with the Secretary of State
Date Filed: 7/22/05
Jenice K. Brewer
Secretary of State

By: [Signature]

II. SCOPE OF WORK

1. The State will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate or resolve the Nation's review comments.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer same, and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by delays attributable to the State

c. Upon execution of this Agreement, invoice the Nation its proportionate share of total Project costs currently estimated at \$50,000.00, fifty-percent (50%) of the total estimated costs of the Project, as set forth in this Agreement.

d. Upon completion of the Project, approve and accept the intersection lighting as being complete, upon behalf of the parties hereto, and will provide maintenance of the intersection lighting *within* the State's right of way at the State's expense.

e. Upon completion of the construction of the Project, provide the Nation with an itemized list of the Project's final costs along with an invoice for reimbursement to the State by the Nation for its proportionate share of the monetary difference between the estimated cost paid by the Nation and the actual costs for the Project.

2. The Nation will:

a. Review the design documents and provide comments.

b. Upon execution of this Agreement remit to the State \$50,000.00, fifty-percent (50%) of the total estimated costs, associated with the engineering, construction, and administration of the Project. Be responsible for contractor claims for additional compensation caused by delays attributable to the Nation.

c. Upon receipt of an itemized list of the Project's final costs and within thirty (30) days of an invoice, remit to the State its proportionate share of the monetary difference between the estimated cost paid by the Nation and the actual costs for the Project.

d. Upon completion and acceptance of the Project by the parties hereto, be responsible to provide electrical energy to connect and operate the Project's intersection lighting including the monthly utility cost associated with the operation of the Project's intersection lighting, all at Nation's expense.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon filing with the Secretary of State

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until the completion and reimbursements are provided for herein. This Agreement may be cancelled at any time prior to the award of a Project construction contract upon thirty (30) days written notice to either party. It is understood and agreed that, in the event the Nation terminates this Agreement, the State shall in no way be obligated to maintain said Project.

3. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the Nation for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. Applicable laws of the State, Federal and Tribal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State, Federal and Tribal government, and acceptable to the State and the Tribe. Such process shall include a provision for arbitration, provided nothing contained in the Agreement should be deemed a waiver of the Tribe's sovereign immunity of a suit.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712-7424

White Mountain Apache Tribe
Tribal Chairman
P.O. Box 1150
Whiteriver, AZ 85941
FAX: (928) 338-1514

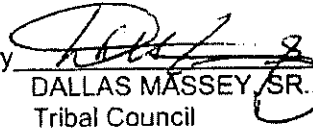
10. In accordance with Arizona Revised Statutes Section 11-952(D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

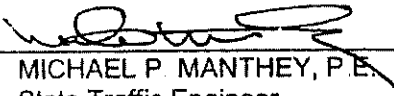
[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

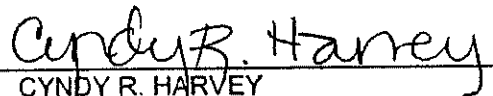
WHITE MOUNTAIN APACHE TRIBE

STATE OF ARIZONA
Department of Transportation

By  _____
DALLAS MASSEY, SR., CHAIRMAN
Tribal Council

By  _____
MICHAEL P. MANTHEY, P.E.
State Traffic Engineer

ATTEST

By  _____
CYNDY R. HARVEY
Secretary of the Tribal Council

ATTORNEY APPROVAL OF THE WHITE MOUNTAIN APACHE NATION

I have reviewed the above-referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the WHITE MOUNTAIN APACHE NATION, an Agreement among the State of Arizona and the Nation that has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the WHITE MOUNTAIN APACHE NATION under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 5 day of June, 2005.



Anthony Lee A. B. Rikher
Nation Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1270-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 18 July 2005

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "James R. Redpath", written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214



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

(Approval of Submittal of FAIR Inventory Update)

WHEREAS, pursuant to Article IV, Section 1(a) and 1(s) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, the WMAT Transportation Committee duly appointed by the Tribal Council is authorized to advise and recommend to the Tribal Council in all policy and program matters related to the Indian Reservation Roads Program, bridges, roads and highways within the Fort Apache Indian Reservation, byways and trails; and other inter-modal initiatives for the benefit of the members of the White Mountain Apache Tribe; and

WHEREAS, the WMAT Transportation Committee is further authorized to interact, meet, and represent the Tribe in such matters with outside agencies such as the Bureau of Indian Affairs, Federal Highway Administration, Arizona Department of Transportation; also local, state, federal governments and other transportation groups, associations, and committees concerning transportation policies, procedures and funding related to but not limited to 25 CFR 170 *et. seq.* regarding primary rules, regulations and federal funding initiatives; and

WHEREAS, the Tribal Transportation Committee requests that the Tribal Council of the White Mountain Apache Tribe approve the IRR, FAIR Inventory Update; and

WHEREAS, the Transportation Committee requests that the Tribal Council of the White Mountain Apache Tribe approve the inclusion of the following projects into the updated proposed Tribal TIP;

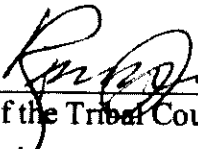
1. HIS/ADOT SR 73 for matching funds of \$50,000 to be taken from Tribal shares;
2. FAIR Rt. 12 CBQ Community to CBQ Airport Road;
3. Whiteriver Detention Center Road;
4. Rick Lupe Fire Management Road;
5. Whiteriver Super Market Road;
6. Canyon Day/Fort Apache Jct. Proposed Housing Project;
7. Reservation Wide Signage, Striping and Guard Rail Projects;
8. 2008 and 2009 Inventory Updates;
9. WMAT Proposed road update;
10. CBQ Bridge as the WMAT 2009 Stimulus Project;
11. Trails identified in the WMAT Long Range Transportation Plan and other inclusions;
12. Reservation wide Materials Testing and Inventory of Aggregate data.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that upon approval this document be transmitted to the BIA, WRO for approval.

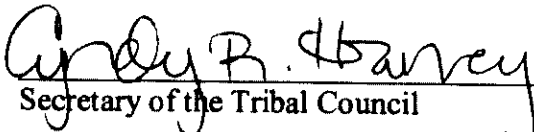
Resolution No. 03-2009-85

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairwoman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **March 27, 2009** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (c), (m), (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

Resolution No. 07-2009-239

Attachment "B"

From: "Harris"
To: "Bashir Hassan" <BHassan@azdot.gov>, "Richard Palmer" <RichardPalmer@wmat.us>
cc: "Tsouhlarakis, Kay (IHS/PHX)" <Kay.Tsouhlarakis@ihs.gov>
Date: Monday, June 22, 2009 11:59AM
Subject: RE: [SPAM?] RE: ADOT LIGHT @ ENTRANCE

Mr. Hassan,

Please have Navopache Electric Coop (NEC) set up the account for the main entrance light to be the same as the NEC bills for the hospital. All NEC bills are sent to:

U S. Public Health Service

c/o Supply Department

PO Box 860

Whiteriver , AZ 85941-0860

If you have any questions feel free to contact me at 928-338-3586. Thank you.

From: Bashir Hassan [mailto:BHassan@azdot.gov]
Sent: Friday, June 19, 2009 2:03 PM
To: 'Richard Palmer'; Harris, Lucinda (IHS/PHX)
Subject: RE: [SPAM?] RE: ADOT LIGHT @ ENTRANCE

Thanks Richard.

Lucinda, what is your address, the latter we send to the utility company would require a name along with the address. Thanks

Bashir Ahmed Hassan, P.E

Transportation Engineer

Phone (602) 712-7868

Fax (602) 712-3020

<http://www.zerofatalities.com/>

From: Richard Palmer [mailto:RichardPalmer@wmat.us]
Sent: Friday, June 19, 2009 11:17 AM
To: Bashir Hassan
Subject: Fw: [SPAM?] RE: ADOT LIGHT @ ENTRANCE

Bashir,

The contact and billing information at the Whietriver Hospital will be Lucinda Harris. Her contact information is on the mail below.

Thanks,

Richard Palmer

-----Forwarded by Richard Palmer/01-White Mountain Apache Tribe/WMAT on 06/19/2009 11:11AM -----

To: " Tsouhlarakis, Kay (IHS/PHX)" <Kay.Tsouhlarakis@ihs.gov>, rpalmer@wmat.us
From: "Harris, Lucinda (IHS/PHX)" <Lucinda.Harris@ihs.gov>
Date: 06/18/2009 08:21AM
Subject: [SPAM?] RE: ADOT LIGHT @ ENTRANCE

I have reviewed the intergovernmental agreement between ADOT and WMAT. There is no cost for the IHS regarding design/construction or installation for the light. I am forwarding the information that the hospital agrees to pay the recurring electric bill for the light on to Mr. Palmer so he can coordinate the progress of the project. Thank you.

Lucinda Harris

From: Tsouhlarakis, Kay (IHS/PHX)

[https://wmat-dom1.wmat.us/mail/rpalmer.nsf/\(\\$Inbox\)/72762C38ABE9E5419073F61DD...](https://wmat-dom1.wmat.us/mail/rpalmer.nsf/($Inbox)/72762C38ABE9E5419073F61DD...) 6/22/2009

Sent: Monday, June 15, 2009 4:18 PM
To: Harris, Lucinda (IHS/PHX)
Subject: RE: ADOT LIGHT @ ENTRANCE

Yes the hospital will pay the recurring monthly electric bill for the light. Who is paying for the light/installation? Is this a joint project with the Tribe and ADOT or is ADOT paying all of the costs? We want to make sure that it is know that we do not have any funds available to participate in the purchase/installation of the light. Thanks...

From: Harris, Lucinda (IHS/PHX)
Sent: Monday, June 15, 2009 3:36 PM
To: Tsouhlarakis, Kay (IHS/PHX)
Subject: FW: ADOT LIGHT @ ENTRANCE
Importance: High

Kay,

ADOT called me this afternoon regarding this matter. Will the hospital pay the recurring electric bill for the light? Please let me know ASAP as the project may lose funding if it cannot be completed by July 3. Thank you.

From: Harris, Lucinda (IHS/PHX)
Sent: Thursday, June 11, 2009 4:25 PM
To: Tsouhlarakis, Kay (IHS/PHX)
Subject: ADOT LIGHT @ ENTRANCE

Kay,

Per our discussion today, I am sending this email regarding the bill for the ADOT light at the entrance to the hospital. The Council stopped the work until it is determined who will pay the bill for the light.

I spoke with Marc yesterday and he said the hospital had agreed to pay the bill for the light. He said there is a

[https://wmat-dom1.wmat.us/mail/rpalmer.nsf/\(\\$Inbox\)/72762C38ABE9E5419073F61DD...](https://wmat-dom1.wmat.us/mail/rpalmer.nsf/($Inbox)/72762C38ABE9E5419073F61DD...) 6/22/2009

manila folder in his files that had about 10 sheets of paper in it, which included a copy of the agreement with the Tribe. Please discuss with Exec Board and let me know if this ok, so the project can proceed. Thank you.

Lucinda Harris

WRSU Facilities Engineer &

Housing Committee Chair

928-338-3586

Lucinda.Harris@ihs.gov

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2009

