

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

WHEREAS, the Tribal Council is advised by the Acting Treasurer and Acting Tribal Business Administrative Manager that there is a financial necessity to pay vendors and subcontractors on HUD Projects 16-30 and 16-31 in the approximate amount of \$750,000.00; and

WHEREAS, the Tribal Council is further advised that over the course of the last several weeks, despite an initial advance of \$800,000.00 to Development Enterprise, the Project remains undercapitalized and the tribe lacks adequate cash flow to presently pay the vendors and subcontractors, thereby threatening the continuation of the HUD and BIA Contracts with the consequence that continued failure to pay the subcontractors and vendors could result in default on the HUD Contracts, the necessity of the bonding company to make the payments and to perform the contract work, and substantial immediate financial liability on the part of the tribe pursuant to its previously enacted Resolution agreeing to indemnify the bonding company for any and all losses associated with the three Aetna bonded projects, e.g., 16-30, 16-31 and the Bonito Creek Road; and

WHEREAS, the Aetna bonding company, as a pre-condition to provide financial assistance to Development Enterprise at this time rather than waiting for a default to occur, is agreeing and requiring that:

1. that the Tribal Council request financial assistance from the bonding company to pay the vendors and subcontractors on the three Aetna bonded contracts;
2. that the bonding company will pay the vendors and subcontractor bills up to June 30th, in the amount of approximately \$750,000, which amount when paid by HUD or the Housing Authority, shall be deposited into a special account to be used by D.E. for the future payment of vendors, subcontractors and payroll on the three Aetna bonded projects;

3. an assignment of all the monies due on the three Aetna bonded projects be granted to the bonding company, and that said monies be deposited in a special account for the sole purpose of paying vendors, subcontractors and payroll for the three Aetna bonded jobs;
4. that the tribe grant a security interest in all Development Enterprise account receivables to Aetna after subcontractors, suppliers, vendors and payroll are paid for in those projects and deposit any profit or surplus in an escrow account until the completion of the three Aetna bonded projects, in which case any shortfall on those three bonded projects will be covered by those receivable monies to the extent necessary to cover said shortfall;
5. that the Tribe agrees to pledge to Aetna the equipment and rolling stock of D.E. as collateral security, and waive its sovereign immunity in the event that enforcement of Aetna's security interest is necessary by Aetna to pay any shortfall in the three bonded projects;
6. that the tribe execute an unsecured Promissory Note with a waiver of sovereign immunity to cover any shortfall if the assignment of contract monies due from HUD in Projects 16-30 and 16-31 and the BIA in the Bonito Creek Project, the assignment of account receivables for other jobs D.E. has contracted for and the assignment of D.E.'s assets are insufficient to cover any shortfall in the three Projects; and

WHEREAS, the Tribal Council agrees in principle with the foregoing proposal submitted by Aetna in response to the tribe's request for financial assistance.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in consideration of the Aetna bonding company providing immediate financial assistance to Development Enterprise for the purpose of continuing the three bonded projects, the Tribal Council hereby agrees as follows:

1. to establish a separate accounting system for the three bonded projects with the cooperation of the bonding company and the tribal business office;

2. that Aetna will receive an assignment of the contract monies due from HUD on Projects 16-30 and 16-31 and from the BIA for the Bonito Creek Project; that these monies shall not be commingled with general tribal monies, but shall be placed in a separate account for use on the three Aetna bonded projects for payment of vendors, subcontractors and payroll; the tribe hereby waives its sovereign immunity in Tribal Court only if enforcement action is necessary by Aetna to collect said assigned monies;
3. that the bonding company shall receive a security interest in all contract account receivables presently due Development Enterprise after the payment of vendors, subcontractors and payrolls, that any profits or surplus shall be maintained in a separate escrow account to cover any shortfall on the three Aetna projects, that collection of this money shall not occur unless there exists a shortfall in the three bonded projects from contract monies. If enforcement becomes necessary, the tribe hereby waives sovereign immunity in Tribal Court only for said receivable monies;
4. that a security agreement shall be entered into whereby the equipment and rolling stock of Development Enterprise shall be independently appraised and listed and shall be assigned to Aetna to secure repayment of advanced monies from Aetna and in the event the assignment of contract monies and the account receivables is insufficient to repay Aetna; further, that the tribe hereby waives its sovereign immunity if enforcement of the chattel mortgage or security agreement on the equipment is necessary. Said waiver of sovereign immunity shall only be effective in Tribal Court;
5. that the tribe shall execute an unsecured Promissory Note to Aetna in an amount to be agreed upon necessary to cover any shortfall of repayment if the assignment of the two HUD contracts, the Bonito Creek BIA Contract monies, the security interest in account receivables and the assignment of D.E.'s assets is insufficient to repay Aetna for

advances it has made on the three bonded projects. If enforcement action is necessary on the note, the tribe waives its sovereign immunity in Tribal Court only to collect the same.

BE IT FURTHER RESOLVED by the Tribal Council that the specific language of the security agreements and promissory notes and assignments necessary to carry out this resolution shall govern over any general statement of purpose set forth in this Resolution or interpretation of the same and shall become effective when said agreements have been duly executed by the appropriate tribal officials.

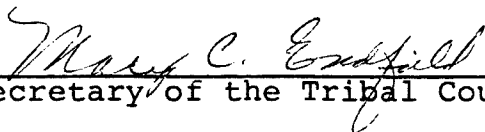
BE IT FURTHER RESOLVED by the Tribal Council that the waiver of sovereign immunity as to D.E.'s assets is to be construed strictly and shall relate only to the listed equipment and rolling stock for Development Enterprise and no other tribal enterprise whatsoever, including tribal governmental equipment, assets, land or monies; further that any other waiver of sovereign immunity herein is conditioned upon any litigation arising from the enforcement of any these documents to lie exclusively in Tribal Court and that if any attempt is made to enforce the notes and agreements in federal or state court, the agreements and waiver of sovereign immunity shall be null and void.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes the Tribal Chairman, and in his absence the Vice Chairman, and the General Manager of Development Enterprise, to execute any and all documents necessary to carry out this Resolution; provided that the agreements and documents necessary to carry out this resolution shall have no effect unless signed by the Chairman, or in his absence the Vice Chairman.

BE IT FURTHER RESOLVED by the Tribal Council that the Tribal Council has requested payment assistance on the bond only and not performance, and that advancement of any monies by Aetna shall not constitute a default by Development Enterprise or the tribe or control by Aetna over the performance of the three Aetna bonded projects.

The foregoing resolution was on August 14, 1985, duly adopted by a vote of 8 for, 1 against and 1 abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (b) & (i) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

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FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ.