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Resolution No. 06-2004-127

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

**WHEREAS,** the Tribal Council previously authorized a Special Counsel Contract between Robert C. Brauchli, Attorney at Law, and the White Mountain Apache Tribe by and through Tribal Chairman Dallas Massey, Sr., acting for and on behalf of the Tribe; and

**WHEREAS,** said Contract commenced June 6, 2001 and terminates on June 6, 2004; and

**WHEREAS,** pursuant to said Special Counsel Contract, Mr. Brauchli has provided legal services to the Tribe in the areas of water rights and related natural resource issues, forestry, gaming, and represented the Tribe in its breach of trust claim against the United States in the U.S. Court of Federal Claims for damage committed by the United States within the Fort Apache Historic District, and successfully prosecuted the Tribe's claims before the U.S. Supreme Court; and

**WHEREAS,** the U.S. Supreme Court has remanded the Tribe's damage claim back to the Court of Federal Claims for a trial of the Tribe's damage claim; and

**WHEREAS,** negotiations to settle of the Tribe's damage claims against the United States for waste committed at Fort Apache are being conducted by Mr. Brauchli; and

**WHEREAS,** upon request and direction from the Tribal Chairman and the Tribal Attorney, Mr. Brauchli has represented the Tribe in other issues which affect vital Tribal interests and the protection of the Tribe's sovereignty; and

**WHEREAS,** Mr. Brauchli reopened the Tribe's mismanagement of natural resources claim in 22-H and worked closely with the Tribe's former water rights counsel, the late William H. Veeder, for eighteen years on 22-H and on the Tribe's water rights claim; and

**WHEREAS,** Mr. Brauchli is familiar with the Tribe's claim to 16,000 acres of land erroneously placed outside the Tribe's 1871 Reservation boundaries due to a Federal Government survey error after establishment of the 1871 Fort Apache Indian Reservation boundaries by Executive Order; and

**WHEREAS,** as lead water rights counsel, Mr. Brauchli initiated, with Tribal Council approval, meetings with the Tribe's Trustee, the United States, to amend the Tribe's claims to the use of water in the Salt River and Little Colorado River systems to include a claim to the transbasin Coconino and other aquifers that underlie the Tribe's aboriginal trust lands and which are the source of the base flow in both the Little Colorado River and Salt River systems on the Reservation, and has coordinated the Tribe's request for appropriations from Congress for a Master Drinking Water

Plan for the Reservation and funding to complete the North Fork Drinking Water Diversion Project; and

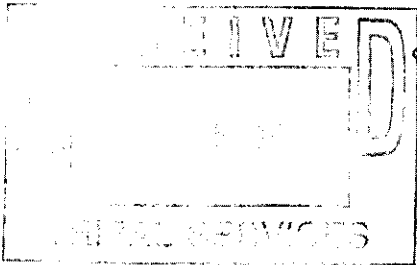
**WHEREAS,** a Federal Negotiating Team has been requested by the Tribal Council to assert, protect and quantify the Tribe's aboriginal and otherwise reserved water rights; and

**WHEREAS,** the ongoing Gila River and Little Colorado River Basin General Stream Adjudications, the Tribe's pending damage claim for waste and ongoing settlement negotiations involving Fort Apache in the U.S. Court of Federal Claims, the Tribe's Federal Negotiating Team request involving the water rights of the Tribe, the Tribe's 16,000 acre land claim, other natural resource issues, and ongoing sovereignty and jurisdictional issues, require continuation of Mr. Brauchli's legal services to the Tribe; and

**WHEREAS,** the Tribal Council concludes that a Special Counsel Contract should be reauthorized for an additional three year term so that Mr. Brauchli may continue to advise and otherwise provide legal representation to the Tribe on the legal matters identified in this Resolution.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes a Special Counsel Contract between Robert C. Brauchli and the White Mountain Apache Tribe, for the term June 6, 2004 through June 6, 2007, and hereby authorizes the Tribal Chairman, and in his absence, the Vice-Chairman, to execute the Special Counsel Contract between the Tribe and Mr. Brauchli.

The foregoing resolution was on JUNE 3, 2004 duly adopted by a vote of THREE for and TWO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (i), (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).



*[Handwritten Signature]*  
\_\_\_\_\_  
Chairman of the Tribal Council

*[Handwritten Signature: Cindy B. Harney]*  
\_\_\_\_\_  
Secretary of the Tribal Council

SPECIAL COUNSEL  
ATTORNEY CONTRACT

Symbol No. \_\_\_\_\_

Contract No. \_\_\_\_\_

THIS SPECIAL COUNSEL ATTORNEY CONTRACT, is made and entered into as of the 6th day of June, 2004, at Whiteriver, Arizona, by and between the White Mountain Apache Tribe ("Tribe") of the Fort Apache Indian Reservation, Whiteriver, Arizona, by and through its Tribal Chairman, Dallas Massey Sr. and ROBERT C. BRAUCHLI, Attorney at Law, ("Special Counsel"), Tucson, Arizona.

WITNESSETH:

WHEREAS, THE WHITE MOUNTAIN APACHE TRIBE, under the authority vested therein, and acting through its Tribal Council, adopted Resolution No. \_\_\_\_\_ on the \_\_\_\_\_ day of May, 2004, attached and incorporated by reference herein, and said Resolution authorizes a contract to employ ROBERT C. BRAUCHLI as Special Legal Counsel for the Tribe, ("Special Counsel"), in the matters hereinafter described; and

WHEREAS, ROBERT C. BRAUCHLI wishes to serve as Special Counsel for the TRIBE in the matters described herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, it is agreed as follows:

1. It shall be the duty of ROBERT C. BRAUCHLI, as SPECIAL COUNSEL, to act and serve as legal representative for and on behalf of the TRIBE in (1) legal matters before any courts or tribunals, national, state or local departments, agencies, committees and legislative

bodies, dealing with or relating to water rights and related natural resource issues, (2) the Tribe's breach of trust and damage claim against the United States regarding the Fort Apache property now pending in the U.S. Court of Federal Claims, (3) gaming matters, (4) to advise the Tribal Attorney, other contract attorneys, and the Tribal Legal Department as needed or requested, and (5) upon request, to act and serve as legal counsel in national, state and local matters, including legislative, departmental, agency or committee affairs, which affect any interests of the TRIBE. Special Counsel duties shall not be deemed to include General Counsel or Tribal Attorney duties otherwise provided for by the TRIBE.

2. SPECIAL COUNSEL, in the performance of the duties required under this Attorney Contract, shall be subject to the supervision and direction of the Tribal Council of the TRIBE, by and through its Tribal Chairman.

3. SPECIAL COUNSEL, subject to the prior written approval of the Tribal Council by and through the Tribal Chairman, may employ for work hereunder such attorney or attorneys as he may select; provided that neither the TRIBE nor the federal government is to owe any additional compensation by reason of such employment, without the prior written approval of the Tribal Council.

4. (a) In consideration of the services to be rendered, SPECIAL COUNSEL shall receive as legal fees, compensation in the amount of \$175.00 per hour, billable monthly or bi-monthly, for time spent on, including but not limited to, legal research, factual investigations, trial preparation or negotiations of any kind, appearances before judicial or other tribunals, the Tribal Council, Tribal committees, and commissions and others as necessary for the performance of SPECIAL COUNSEL'S duties under this Contract; PROVIDED

FURTHER, that SPECIAL COUNSEL shall receive as legal fees, compensation for actual travel time required under this Contract, in the amount of \$87.50 per hour, not to exceed \$522.00 in any one day; PROVIDED FURTHER, that all sums billable hereunder for legal fees shall not exceed in payment, the amount of Twenty Five Thousand Dollars (\$25,000.00) in any one calendar month, without the prior written approval of the Tribal Council, by and through the Tribal Chairman.

(b) SPECIAL COUNSEL shall additionally be paid for all necessary and reasonable expenses, including traveling, and room and board expenses, postage, long distance telephone calls, faxes, telegrams, copying and computer copying costs, court costs, depositions, exhibits, blueprinting, and any reproduction, printing, title searches and like expenses; but not including expenses such as office rent, utilities and secretarial services. It is mutually agreed that in the event that SPECIAL COUNSEL should use his privately owned vehicle in the performance of his duties under this Agreement, he shall be compensated for the use of said vehicle at such rate as is established by the Tribal Council for the TRIBE, but not less than \$0.25 per mile. Any expenses incurred by the SPECIAL COUNSEL shall not be payable hereunder by the TRIBE in excess of Twenty Four Thousand Dollars (\$24,000.00) per annum, unless additional amounts are authorized by the Tribal Council, by and through the Tribal Chairman. Except in emergency situations, advance approval shall be obtained for such additional amounts. Payment of compensation and reimbursement of expenses incurred pursuant to this Contract shall be made only upon submission of itemized billings to the TRIBE; provided that necessary and reasonable filing fees, bond, or related costs payable to a court or other tribunal in advance of initiating or defending the position of the TRIBE before such entity, may be paid through

SPECIAL COUNSEL'S trust or general account, as the case may be, without such prior approval.

(c) It is further understood and agreed that SPECIAL COUNSEL shall be reimbursed at the rate of One Hundred Fifty Dollars (\$150.00) per day, or fraction thereof, that such attorney is away from his office in Tucson, Arizona, and within the Reservation if staying overnight, and if not overnight, then per fraction thereof; and Two Hundred Twenty Five Dollars (\$225.00) per day, or fraction thereof, that said attorney is away from his Tucson office and outside of the Reservation in the State of Arizona and other states, if overnight, and Two Hundred Seventy Five Dollars (\$275.00) per day while overnight in Washington, D.C.; said sums to be paid from the expenses allowance hereinabove provided. For any travel, as set forth in this paragraph, which does not include any overnight stay, SPECIAL COUNSEL shall be paid the pro-rata portion of the established rate based upon the number of hours SPECIAL COUNSEL is in such other location, provided the pro-rata amount does not exceed \$90.00. Such pro-rata payment shall not include any hours for which SPECIAL COUNSEL is paid compensation for travel, as set forth in this Contract. Any expense vouchers submitted hereunder shall be itemized and verified by SPECIAL COUNSEL, and approved by the TRIBE.

5. It is understood and agreed that the compensation for services specified in Paragraph (4) of this Contract constitutes compensation for Special Counsel's services involved in the prosecution, litigation, negotiation, research, briefing, and verbal or written representation of the Tribe or appearance in Congressional, Tribal, State or Federal hearings, tribunals and courts, and travel within or without Arizona, or other places outside Tucson, Arizona, on behalf of the Tribe unless otherwise directed by the TRIBE.

6. No assignment of the obligation of this Contract, in whole or in part, shall be made without the prior written approval of the Tribal Council by and through the Tribal Chairman. No assignment or encumbrance of any interest in the compensation to be paid under this Contract shall be made, without such consent; provided, that if such assignment or encumbrance of any interest in the compensation to be paid is made in violation of the provisions of this paragraph, the Contract may be terminated at the option of the TRIBE, and no attorney having any interest in the Contract or other fee provided herein shall be entitled to any compensation whatsoever for any services rendered or expenses incurred subsequent to the date of such termination.

7. This Contract may be terminated by either party by giving thirty (30) days written notice to the other party. If the contract shall be so terminated, SPECIAL COUNSEL shall receive such compensation as the Tribal Chairman may determine equitably to be due to and including the date of termination.

8. It is mutually understood and agreed that payment of compensation and expenses under the terms of this Contract shall be contingent upon the availability of funds in the Tribal Treasury or, if applicable, upon an appropriation by Congress from tribal funds held by the United States to the credit of the TRIBE.

9. SPECIAL COUNSEL shall render to the TRIBE a written report of the services rendered to the TRIBE not less frequently than annually and at such times as may be requested by the TRIBE.

10. This Contract shall be in effect for a period of three (3) years commencing June 6, 2004 and shall continue until June 6, 2007, unless terminated earlier as provided herein.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WHITE MOUNTAIN APACHE TRIBE  
Whiteriver, Arizona

By \_\_\_\_\_  
Dallas Massey, Sr., Chairman of the Tribal Council  
P.O. Box 1150  
Whiteriver, AZ 85941  
(520)338-1560  
FAX (520) 338-1514

Attest: \_\_\_\_\_  
Cindy Harvey Burnette,  
Secretary of the Tribal Council

SPECIAL COUNSEL

By \_\_\_\_\_  
Robert C. Brauchli, Attorney  
6650 N. Oracle Rd., Suite 110  
Tucson, Arizona 85704  
520-742-2191  
520-742-2179 [fax]



## CERTIFICATION

Attorney stipulates that he is a fully licensed member in good standing of the bar of the State of Arizona, and to the best of his knowledge no disciplinary proceedings have been instituted against him by any bar association of any jurisdiction of the United States or its territories which are pending and/or unresolved and he has not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert C. Brauchli  
Special Counsel  
Tucson, Arizona