

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

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**(Approving Settlement Agreement in U.S. Court
of Federal Claims; No. 99-148L)**

**FORT APACHE INDIAN AGENCY
WHITENEVER, ARIZONA**

- WHEREAS,** on March 18, 1999, the White Mountain Apache Tribe sued the United States in the U.S. Court of Federal Claims in the case entitled *White Mountain Apache Tribe vs. United States of America*, No. 99-148L, alleging damages for breach of fiduciary duty on the part of the United States to maintain the Fort Apache property while under the Secretary of Interior's control, use and occupation for school or administrative purposes; and
- WHEREAS,** ultimately the Supreme Court of the United States held in the same case that, under the 1960 Congressional Act which transferred the Fort Apache property in trust to the White Mountain Apache Tribe, the United States, as a trustee in occupation and control of the Fort Apache property, had the fiduciary duty and responsibility to preserve it, and, thus, was liable in damages for breach of its fiduciary duties, *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003); and
- WHEREAS,** after remand by the United States Supreme Court to the U.S. Court of Federal Claims for trial on the amount of damages owed by the United States to the White Mountain Apache Tribe, the Tribe and the United States have engaged in negotiations in an attempt to seek a full and final resolution of all claims raised in the Tribe's Complaint; and
- WHEREAS,** the United States made an offer to the Tribe on October 6, 2004, in the amount of \$12 million dollars (\$12,000,000) to resolve all of the Tribe's claims raised by its Complaint in the U.S. Court of Federal Claims pursuant to the terms of a draft Settlement Agreement dated September 20, 2004 between the White Mountain Apache Tribe and the United States, a copy of which was distributed to the Tribal Council for its review and which was explained to the Tribal Council by the Tribe's attorney of record, Robert C. Brauchli, resulting in approval of said Settlement Agreement by the Tribal Council in Resolution No. 10-2004-246; and
- WHEREAS,** the Tribe acknowledged in Resolution No. 10-2004-246 that the offer made by the Department of Justice on behalf of the Defendant United States to settle Tribe's damage claims for the amount of twelve million dollars (\$12,000,000), was not binding on the United States until the Associate Attorney General approved the sum and settlement terms in the October 6, 2004 Draft Settlement Agreement, but that the Tribe's approval of the sum and settlement terms contained in that Draft Settlement Agreement was required before presenting the proposed settlement to the Associate Attorney General; and
- WHEREAS,** the twelve million dollar settlement offer from the United States presumed that four hundred and forty-four thousand seven hundred and fifty-nine dollars (\$444,759), in

the form of a 638 self determination grant for the Boys Dorm, building no. 116/226, had been designated by the Bureau of Indian Affairs for the White Mountain Apache Tribe for said building; and

WHEREAS, it has been determined that the four hundred forty-four thousand seven hundred and fifty-nine dollars (\$444,759) has been designated and set aside by the Bureau of Indian Affairs pursuant to a 638 contract for the Boys Dorm, building no. 116/226, and said 638 contract funds may be used by the Tribe for the Boys Dorm; and

WHEREAS, the Tribal Council has reviewed a revised Settlement Agreement dated December 9, 2004 which clarifies certain provisions in the draft Settlement Agreement dated September 20, 2004, and which re-affirms the United States' offer to settle the Tribe's breach of trust damage claims against the United States for the amount of \$12,000,000 and in accordance with other conditions and terms set forth in the Settlement Agreement; and

WHEREAS, the Tribal Council concludes that it is in the best interests of the Tribe to finally and fully resolve any damage claims it may have against the United States arising out of the complaint it filed in the U.S. Court of Federal Claims, No. 99-148L, pursuant to the terms and conditions set forth in the December 9, 2004 draft Settlement Agreement reviewed by the Tribal Council this date and explained to the Tribal Council by its attorney of record, Robert C. Brauchli.

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves and accepts the settlement offer of the United States in the amount of twelve million dollars, (\$12,000,000), pursuant to the terms and conditions set forth in the December 9, 2004, draft Settlement Agreement, entitled *White Mountain Apache Tribe v. United States of America*, No. 99-148L., with the understanding that the draft Settlement Agreement and the offer made by the Department of Justice on behalf of the Defendant United States to settle the Tribe's damage claims as expressed therein is not binding on the United States until the Associate Attorney General approves the amount and the settlement terms in said draft settlement agreement.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache that it hereby acknowledges and understands that the Tribe's approval and acceptance of the December 9, 2004 draft Settlement Agreement and the terms and conditions therein are necessary so that the draft Settlement Agreement may be presented to the Associate Attorney General for approval.

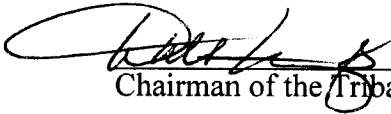
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that this Resolution hereby supercedes Resolution No. 10-2004-246.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes Robert C. Brauchli, attorney of record in the above entitled and numbered case, to present a copy of this signed resolution to the Departments of Justice and Interior.

The foregoing resolution was on December 14, 2004, duly adopted by a vote of EIGHT for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority

Resolution No. 12-2004-291

vested in it by Article IV, Section 1(a), (b), (f), (g), (h), (i), (j), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of 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