



Resolution No. 09-2006-304

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

**(Approving a Municipal Lease and Option Agreement with Lehigh Capital Access, Inc.
and Authorizing a Limited Waiver of Sovereign Immunity)**

WHEREAS, the White Mountain Apache Tribe desires to purchase a new 2006 school bus (the "Bus") for the Tribe's Head Start Program for use in the course of performing its essential duties to provide school transportation for students; and

WHEREAS, the Tribal Council finds that the Bus should be acquired by the Tribe; and

WHEREAS, the Tribe's Head Start Program has secured a grant to fund the cost of the Bus and separately located financing sufficient to assist the Tribe with acquiring the Bus through Lehigh Capital Access, Inc. (the "Lessor"), which has provided a Municipal Lease and Option Agreement Number 101-081606-1 (the "Agreement"), as attached and incorporated by this reference in which the Tribe as lessee may lease and/or exercise an option to purchase the Bus; and

WHEREAS, the Bus is described as:

(1) one new Thomas FS65 Conventional School Bus, Model 100 PS, Chassis Year 2006, Body year 2006, VIN # 4UZAAXCSX6CV55211; and

WHEREAS, the total purchase price for the Bus is \$68,630.00 that will be paid out over a term of six (6) years at an annual rate of 7.490%, which adds \$12,878.65 in interest, for a total of \$81,508.65, and there will be a total of 6 annual payments, with \$13,942.60 due upon acceptance and \$13,513.21 for each year thereafter; and

WHEREAS, the agreement requires that the Tribe agree to a limited waiver of defense of sovereign immunity for binding arbitration if, and only if, the following conditions exist:

- A dispute between Lehigh Capital Access, Inc. and the White Mountain Apache Tribe arises directly from the Agreement between them for the acquired Bus described herein.
- The claim alleges a breach by the Tribe of one or more specific obligations of duties with the Tribe expressly assumed under the terms of the Agreement.
- The claim seeks either (1) specific action or discontinuance of some action by the Tribe into full compliance with the duties and obligations expressly assumed by it in the Agreement; (2) payment of all amounts due under the Agreement

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and reasonable costs incurred by Lessor in the collection of such amounts; or (3) the foreclosure of collateral secured under the Agreement.

- The scope of arbitration is limited to breach of contract or actions brought pursuant to the Agreement for the benefit of Lessor only, or an Assignee of a valid assignment of Lessor's interest in the Agreement.
- The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement, nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
- Any claim against which arbitration may be demanded must be made in writing to the Tribe by the Lessor and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted; and

WHEREAS, the Tribal Council finds that after review of the Agreement terms and the required limited waiver of defense of sovereign immunity, the Agreement remains in the best interests of the White Mountain Apache Tribe for the acquisition of the Bus described above.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that:

1. The Council hereby approves the Tribe's entry into, and agreement with, the Agreement as attached and incorporated by this reference for the lease and/or purchase of the Bus, for use by the Tribe's Head Start Program in the performance of its essential duties to provide school transportation for students, as described as:
 - (1) one new Thomas FS65 Conventional School Bus, Model 100 PS, Chassis Year 2006, Body year 2006, VIN # 4UZAAXCSX6CV55211
2. As part of the approval of the Agreement, the Tribal Council hereby grants a limited waiver of sovereign immunity for the purpose of effecting dispute resolution thereunder in the form of binding arbitration if, and only if, the following conditions exist within the Agreement:
 - A. A dispute between Lehigh Capital Access, Inc. and the White Mountain Apache Tribe arises directly from the Agreement between them for the acquired Bus described herein.
 - B. The claim alleges a breach by the Tribe of one or more specific obligations of duties with the Tribe expressly assumes under the terms of the Agreement.

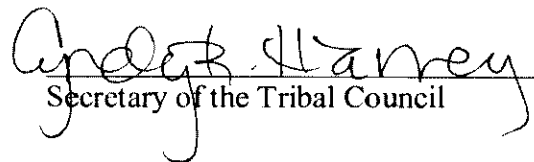
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- C. The claim seeks either (1) specific action or discontinuance of some action by the Tribe into full compliance with the duties and obligations expressly assumed by it in the Agreement; (2) payment of all amounts due under the Agreement and reasonable costs incurred by Lessor in the collection of such amounts; or (3) the foreclosure of collateral secured under the Agreement.
 - D. The scope of arbitration is limited to breach of contract or actions brought pursuant to the Agreement for the benefit of Lessor only, or an Assignee of a valid assignment of Lessor's interest in the Agreement.
 - E. The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement, nor to any arbitration proceeding or other proceeding based on alleged tortuous conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
 - F. Any claim against which arbitration may be demanded must be made in writing to the Tribe by the Lessor and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted; and
- 3. The Chairman, or in his absence the Vice-Chairwoman, is hereby authorized by the Council to negotiate and execute the Agreement and any related documents for the lease and/or purchase of the Bus.
 - 4. The White Mountain Apache Tribe's Head Start Program is hereby authorized to use the Bus described herein for use in the course of performing its essential duties in providing school transportation to students.

The foregoing resolution was on September 13, 2006, 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).

ACTING


Chairman of the Tribal Council


Secretary of the Tribal Council