



# **WHITE MOUNTAIN APACHE TRIBE**

**A Sovereign Tribal Nation**

## **( Authorizing Limited Waiver of Immunity for Arizona State Purchasing Cooperative Agreement )**

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- WHEREAS,** the White Mountain Apache Tribe ("Tribe") intends to enter into a Purchasing Cooperative Agreement ("Agreement") with the State of Arizona; and
- WHEREAS,** the Agreement permits the Tribe to enter into an agreement with the State for the purpose of utilizing State contracts; and
- WHEREAS,** the Division of Transportation will purchase 2 new buses through the State contracts, these contracts will meet Federal Transit Administration ("FTA") procurement standards, the Tribe currently has a FTA grant to establish a tribal transit program; and
- WHEREAS,** the Tribe must agree to a limited waiver of sovereign immunity, which is provided in this authorizing resolution as follows:

*For purposes of authorizing this Agreement, the Tribe, consents and agrees to a limited waiver of its sovereign immunity from suit and consents to be subject to an arbitration award, if relevant. The Tribe represents that this limited waiver of sovereign immunity has been duly approved by the Tribal Council, as explicitly stated in this authorizing Resolution. The Tribe is not waiving its right to assert the defense of sovereign immunity except for the purposes of enforcing the Agreement. This limited waiver is enforceable solely by the State, for enforcement of the Agreement and does not create any additional third party beneficiary rights to suits or private causes of action in favor of third Parties; and*

- WHEREAS,** the Tribal Council finds it in the best interest of the Tribe to enter into an Agreement with the State of Arizona and shall authorize a limited waiver of sovereign immunity for enforcement of any claim or dispute arising under the binding arbitration provisions of the Agreement. The terms of the agreement shall be governed by the laws of the State of Arizona for the duration of the project; and
- WHEREAS,** given the urgency of the approaching deadline to purchase buses, the Tribal Council further finds that the agreement needs to be considered and made outside of its regularly scheduled meeting; and
- WHEREAS,** the Tribal Council further finds that: (1) this Resolution may be voted upon by signature of a member of the Tribal Council where a signature indicates a vote for this Resolution, (2) the Tribal Council Secretary should attempt to obtain signatures for members of the Tribal Council personally, (3) no signature would mean that the respective Tribal Council member is against this Resolution, (4) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.



**Resolution No. 09-2016-203**

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes this Agreement with the State of Arizona, which includes a limited waiver of sovereign immunity and any claim or dispute that arises under the terms of the agreement shall be submitted to binding arbitration and shall be governed by law of the State of Arizona, as authorized by the Limited Waiver of Immunity included hereto.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the limited waiver language in this authorizing Tribal resolution as follows:

*For purposes of authorizing this Agreement, the Tribe, consents and agrees to a limited waiver of its sovereign immunity from suit and consents to be subject to an arbitration award, if relevant. The Tribe represents that this limited waiver of sovereign immunity has been duly approved by the Tribal Council, as explicitly stated in this authorizing Resolution. The Tribe is not waiving its right to assert the defense of sovereign immunity except for the purposes of enforcing the Agreement. This limited waiver is enforceable solely by the State, for enforcement of the Agreement and does not create any additional third party beneficiary rights to suits or private causes of action in favor of third Parties.*

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman or his designee to undertake any other actions necessary to enter into the Agreement and execute and complete the Project.

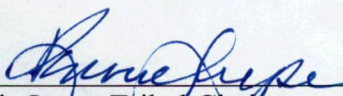
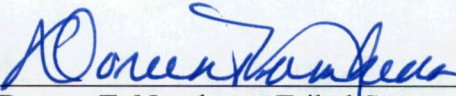
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that given the urgency of the request described herein, this Resolution may be voted upon as follows: (a) by signature of a member of the Tribal Council, including the Chairman of the Tribal Council and the Vice-Chairman of the Tribal Council, where a signature indicates a vote for this Resolution, (b) the Tribal Council Secretary shall attempt to obtain signatures for members of the Tribal Council personally, (c) no signature shall mean that the respective Tribal Council member is against this Resolution, (d) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature, and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

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

~~OCTOBER~~  
The foregoing resolution was on SEPTEMBER 5, 2016 duly adopted by a vote of 8 for, 0 against, and 0 abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

 _____ Ronnie Lupe, Tribal Chairman	<u>10-5-16</u> _____ Date	 _____ Doreen T. Numkena, Tribal Secretary	<u>10-5-16</u> _____ Date
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Resolution No. 09-2016-203

Signatures of the members of the Tribal Council represent their approval of Tribal Council Resolution No: 09-2016-203 initiated the 5th day of ~~September~~ October, 2016.

Presented Personally by Tribal Council Secretary (TCS) Indicated by Initials  
DTN TCS Initials

Ronnie Lupe  
Ronnie Lupe  
Tribal Chairman

10-5-2016  
Date Signed

DTN TCS Initials

Kasey Velasquez  
Kasey Velasquez  
Vice Chairman

9-29-16  
Date Signed

Arnold Beach, Sr.  
Arnold Beach, Sr.  
District I Council Member

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
TCS Initials

Tony Alsenay  
Tony Alsenay  
District I Council Member

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
TCS Initials

Jerold Altaha  
Jerold Altaha  
District II Council Member

9-29-16  
Date Signed

DTN TCS Initials

Colleen Faden  
Colleen Faden  
District II Council Member

9-29-16  
Date Signed

DTN TCS Initials

Ralph Thomas  
Ralph Thomas  
District III Council Member

29/09/16  
Date Signed

DTN TCS Initials

Floyd Walker  
Floyd Walker  
District III Council Member

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
TCS Initials

Jerome Kasey III  
Jerome Kasey III  
District IV Council Member

27 Sept 16  
Date Signed

DTN TCS Initials

Alvena Bush  
Alvena Bush  
District IV Council Member

9/28/16  
Date Signed

DTN TCS Initials

Everette Massey  
Everette Massey  
District IV Council Member

27 SEPT 16  
Date Signed

DTN TCS Initials

ATTEST:

Doreen T. Numkena  
Doreen T. Numkena, Tribal Council Secretary

10-5-2016  
Date Signed