



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing the Chairwoman to Present to the U.S. Bureau of Indian Affairs, a Letter and Report of Non-Compliance by the United States of its Obligations in the Court Approved Settlement Agreement Between the White Mountain Apache Tribe and the United States in *White Mountain Apache Tribe vs. United States*, U.S. Court of Federal Claims, Case No. 99-148L; and to Negotiate a second P.L. 93-638 Self-Determination Act Contract(s) Between the BIA and the FAHF to Address Accrued and Unmet U.S. Maintenance and Repair Obligations Under said Settlement Agreement in regards to the Fort Apache Property, also Known as the Fort Apache and Theodore Roosevelt School National Historic Landmark)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power, “To represent the Tribe and act in all matters that concern the welfare of the Tribe...”; and
- WHEREAS,** The Tribe is a federally recognized American Indian tribe and holds an unbroken chain of aboriginal title with full beneficial and equitable title over that portion of its aboriginal territory that it retained for the exclusive use and benefit of the Tribe’s Members, said trust lands known officially by its Trustee, the United States, as the Fort Apache Indian Reservation (“Reservation”); and
- WHEREAS,** The Council has, since the 1969 creation of the Nohwike’ Bagowa Museum and Cultural Center, sustained national and regional leadership in cultural resource conservation at Fort Apache; and
- WHEREAS,** The Tribe and the US Bureau of Indian Affairs (“BIA”) co-nominated the Fort Apache and Theodore Roosevelt School historic district as a National Historic Landmark, and United States Secretary of the Interior Ken Salazar’s March 6, 2012 formal designation of the Fort Apache and Theodore Roosevelt School National Historic Landmark recognizes the district’s 26 historic buildings and approximately 300 acres and as a high-integrity and nationally significant embodiment and reflection of more than ten decades of United States policy targeting American Indian sovereignty, land, culture, and education; and
- WHEREAS,** The Council chartered the Fort Apache Heritage Foundation (“Foundation”) in 1998 to assist in managing the Fort Apache and Theodore Roosevelt School National Historic Landmark and the Kinishba Ruins National Historic Landmark, and to otherwise provide technical, financial, and other support to the Tribe's heritage perpetuation and economic development efforts; and

Resolution No. 02-2022-17

- WHEREAS,** On April 7, 2005, the Council and the United States entered into a court approved stipulation and agreement to settle *White Mountain Apache Tribe vs. United States*, U.S. Court of Federal Claims, Case No. 99-148L, following remand to that court by the Supreme Court in *U.S. vs. White Mountain Apache Tribe*, 537 U.S. 465 (2003) (“Settlement Agreement”); and
- WHEREAS,** The Settlement Agreement describes ongoing obligations required of the United States to maintain and repair the infrastructure and landscape elements listed in the Settlement Agreement as Exhibit A under “OTHER IMPROVEMENTS,” and in the body of the Settlement Agreement, and includes “Landscaping & trees, fencing,” “Water, & Sewer infrastructure,” “Electrical infrastructure,” and “Roads, street lights, curbs and sidewalks” within the Fort Apache Property; and
- WHEREAS,** The United States has not performed its maintenance and repair responsibilities in the Settlement Agreement and said accrued maintenance and repair obligations now total approximately \$7.33 million; and
- WHEREAS,** The Memorandum of Agreement entered into between the Council and the Fort Apache Heritage Foundation Inc., authorizes the Foundation to enter into P.L. 93-638 Self Determination Contracts for work to be completed on the Fort Apache Property for the benefit of the Tribe; and
- WHEREAS,** The Foundation successfully completed in 2019, as authorized by Tribal Council Resolution 01-216-18, an initial, \$2.56 million P.L. 93-638 Contract with BIA to perform maintenance, water system infrastructure replacement, and environmental damage mitigation at Fort Apache, specifically, water system replacement, sidewalk repair and restoration, erosion and flooding problems at the Girls Dormitory, and soil mitigation caused by BIA buried fuel tanks and lines; and
- WHEREAS,** In addition to the initial P.L. 93-638 contract authorized by the Council to enforce the Settlement Agreement obligations of the United States, the Foundation has faithfully fulfilled its responsibilities pursuant to its charter and the Foundation-Tribe Memorandum of Agreement, and the terms of the congressionally approved Use Plan for the Fort Apache Property, by supervising the investment of over \$8 million for the preservation, rehabilitation, and redevelopment of Fort Apache for the benefit of the White Mountain Apache people; and
- WHEREAS,** The Foundation has, in response to a 2019 request from U.S. Bureau of Indian Affairs Western Regional Office (“WRO”) officials and in consultation with the Tribe’s Attorney General, commissioned and supervised a team of engineers and landscape architects to identify and analyze the deferred and accrued repair and maintenance items, and estimated cost to thereof, all of which are United States’ obligations under the Settlement Agreement, resulting in a December 17, 2021 Summary Report and two technical investigative reports, dated January 2020 and December 2020 (Revised November 2021); and
- WHEREAS,** The Summary Report and two technical reports prepared under Foundation supervision identify and provide provisional cost estimates for \$7,329,382 as of October 2021, in

Resolution No. 02-2022-17

deferred and accrued repair and maintenance obligations that are the responsibility of the United States pursuant to the terms of the Settlement Agreement; and

WHEREAS, The Foundation’s amicable working partnership with the Bureau of Indian Affairs’ Western Regional Office (“BIA-WRO”) established during the first P.L. 638 contract has laid solid foundations for fulfilling the requirements and objectives of the Settlement Agreement; and

WHEREAS, On January 13, 2022, at a special meeting of the Council, Foundation Board Chair Rochelle Lacapa, Foundation CEO Krista Beazley, Foundation Board Secretary John R. Welch, and other Foundation Board members presented, seeking due consideration by the Council, of a proposal to demand U.S. compliance with the Settlement Agreement and to commence negotiation of one or more P.L. 93-638 Self-Determination Act contracts to bring the United States into compliance with its repair and maintenance obligations under the Settlement Agreement; and

WHEREAS, The Foundation has, with donated assistance from Robert C. Brauchli, prepared and recommended for signature the draft of a letter by the Tribe’s Chairwoman to BIA-WRO requesting a second 638 Self-Determination contract with the Fort Apache Heritage Foundation to bring the United States into compliance with the Settlement Agreement; and

WHEREAS, The Tribe has established the WMAT Tribal Historic Preservation Office (THPO) and directed that office to protect WMAT cultural resource sites and to assist and assure attention by the Foundation and all other parties to the Secretary of Interior’s Standards and Guidelines for Rehabilitation of historic properties on WMAT Lands; and

WHEREAS, The Council finds that authorizing the requested letter and its presentation to the Bureau of Indian Affairs will help enforce the settlement agreement and maintain the grounds and cultural resources of Fort Apache and Theodore Roosevelt School National Historic Landmark and the Kinishba Ruins National Historic Landmark.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairwoman, or in her absence the Tribe’s Vice-Chairman, to sign and distribute to BIA-WRO a request by the White Mountain Apache Tribe that the United States enter into a second 638 Self-Determination contract with the Fort Apache Heritage Foundation to bring the United States into compliance with its repair and maintenance obligations under the Settlement Agreement in *White Mountain Apache Tribe vs. United States*, U.S. Court of Federal Claims, Case No. 99-148L, following remand to that court by the Supreme Court in *U.S. vs. White Mountain Apache Tribe*, 537 U.S. 465 (2003).

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs and authorizes Foundation officials to negotiate and execute one or more P.L. 93-638 contracts to assist the United States in meeting its obligations under the Settlement Agreement, keeping the Attorney General and THPO apprised of all significant developments and requesting their assistance, as needed.

Resolution No. 02-2022-17

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs and authorizes Foundation officials to continue consultations and engagements with the director and staff of the Nohwike' Bagowa Museum and Cultural Center, with the Theodore Roosevelt School Board and Superintendent, and with other Fort Apache stakeholders to optimize the benefits and minimize costs and concerns with the implementation of maintenance, repair, rehabilitation, and redevelopment projects at Fort Apache.

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 Federal Laws, 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.

The foregoing resolution was on FEBRUARY 7, 2022 duly adopted by a vote of ELEVEN for, ZERO against, and ZERO 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).

 2/10/22
Gwendena Lee-Gatewood, Chairwoman Date

 2-10-2022
Doreen T. Numkena, Tribal Secretary Date