



# **WHITE MOUNTAIN APACHE TRIBE**

**A Sovereign Tribal Nation**

**(Authorizing the Negotiation of one or more P.L. 93-638 Self-Determination Act Contracts Between the U.S. Bureau of Indian Affairs BIA and the Fort Apache Heritage Foundation to Address Unmet and Accruing U.S. Maintenance and Repair Obligations Pursuant to the Court-Approved Settlement Agreement Between the White Mountain Apache Tribe and the United States in *White Mountain Apache Tribe vs. United States*)**

---

**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, “[t]o represent the Tribe and act in all matters that concern the welfare of the Tribe...”; 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 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 conservation and economic development efforts; and

**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, non-discretionary obligations on the part of the United States to maintain and repair the infrastructure and landscape elements listed in the main text of the Settlement Agreement and in Exhibit A under “OTHER IMPROVEMENTS,” and includes “Landscaping & trees, fencing,” “Water, & Sewer infrastructure,” “Electrical infrastructure,” and “Roads, street lights, curbs and sidewalks” within the Fort Apache Property; and

***Resolution No. 04-2023-99***

- WHEREAS,** The United States has not performed its maintenance and repair responsibilities stipulated in the Settlement Agreement, and as of late 2021 said accrued maintenance and repair obligations totaled approximately \$7.33 million; and
- WHEREAS,** The Memorandum of Agreement entered into between the Council and the Fort Apache Heritage Foundation Inc. (“Foundation”), 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,** As directed by Tribal Council Resolution 01-216-18, the Foundation in 2019 successfully completed an initial \$2.56 million Indian Self-Determination Act (“P.L. 93-638”) construction contract with BIA to perform maintenance, water system infrastructure replacement, and environmental damage mitigation at Fort Apache, specifically including water system replacement, sidewalk repair and restoration, erosion and flooding problem remediations at the Girls Dormitory, and soil contamination mitigation caused by BIA buried fuel tanks and lines; and
- WHEREAS,** The Foundation’s amicable working partnership with the BIA established during the first P.L. 93-638 contract has built Foundation capacities and laid relationship foundations for fulfilling the requirements and objectives of the Settlement Agreement; and
- WHEREAS,** In response to a 2019 request from U.S. Bureau of Indian Affairs Western Regional Office (“WRO”) officials, the Foundation 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 identified and provided provisional cost estimates, totaling \$7,329,382 as of late 2021, for 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 Summary Report and two technical reports further identify and enumerate the standards under which the Foundation will operate the proposed P.L. 93-638 construction contract, including the use of licensed and qualified architects and engineers, applicable health and safety standards, adherence to applicable Federal and tribal building codes and engineering standards to address and remediate the 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,** On February 22, 2022, May 25, 2022, and February 28, 2023, the Tribe sent letters to BIA requesting a meeting 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

***Resolution No. 04-2023-99***

**WHEREAS,** As of April 12, 2023, the Tribe has not received a response to its requests to negotiate 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 Summary Report and two technical reports constitute the Tribe's construction contract proposal, submitted pursuant to Section 102 of P.L. 93-638; and

**WHEREAS,** Section 102(2) of P.L. 93-638 directs the Secretary of the Department of the Interior ("Secretary") to either approve and award any proposed P.L. 93-638 contract or provide written notification to the Tribe of the specific deficiencies in the contract proposal.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the negotiation and execution of one or more 638 Self-Determination construction contracts between the BIA and the Foundation to bring the United States into compliance with its repair and maintenance obligations under the Settlement Agreement.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that, in the event the Secretary determines that the Tribe's construction contract proposal is deficient for any reason, the Tribe hereby requests the Secretary's timely technical assistance, pursuant to Section 103 of P.L. 93-638, to remediate these deficiencies.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs and authorizes Foundation officials to keep the Attorney General, the Tribal Historic Preservation Officer, and the Council apprised of all significant developments and requests for their assistance, as needed.

**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.


**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.

**Resolution No. 04-2023-99**

The foregoing resolution was on **APRIL 12, 2023** duly adopted by a vote of **TEN** for, **ZERO** against, and **ONE** 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

  
Kasey Velasquez, Chairman

4.14.23  
Date

  
Vaneysa Johnson, Tribal Secretary

4/14/2023  
Date