

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

WHEREAS, James E. Curry, of Washington, D.C., was engaged to prosecute our claims; and

Whereas, I. S. Weissbrett, of Washington, D. C., and Jay H. Hoag, of Duluth, Minnesota, have become associated with said Curry for the prosecution of our claims and other Apache Bands and Tribes, and the assignment of fees has not yet been approved by the Commissioner; and

WHEREAS, it now appears desirable that a new contract be made,

NOW THEREFORE BE IT RESOLVED:

- (a) That the Curry contract be terminated and Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist, of Duluth, Minnesota, and David Cobb and I. S. Weissbrett, of Washington, D. C. and C. M. Wright attorneys at law, be employed to represent us and the Apache Tribe and all having an interest in our claims in the investigation, preparation for trial and prosecution and recovery of our claims against the United States;
- (b) That said attorneys be reimbursed for expenditures made or incurred in connection with services, whether rendered or incurred under the present contract or under a new agreement which may be made, which expenses shall include, without intending to limit the same, stenographic, supplies, printing, travel, if by automobile at the rate of seven cents (7¢) per mile, not exceeding railroad and pullman fares, lodging, meals or nine dollars (\$9.00) per diem in lieu of subsistence and other incidentals, including technical services;
- (c) Compensation shall be paid for such services as may be fixed by the Court or Commission, if litigated, otherwise by the Commissioner of Indian Affairs, not exceeding ten percent (10%) of any and all sums recovered or procured through the efforts in whole or in part by said attorneys, whether rendered under the preceding contract or under the new agreement to be made pursuant to this resolution;
- (d) In fixing the fees for services compensation which said James E. Curry shall receive for services which have already been rendered under the present contract shall be fixed and determined as above specified. Such sum as it may be determined shall be paid to James E. Curry shall be deducted from the fees to be allowed and paid to Weissbrett, Hoag and associates out of the fees ultimately found and determined;
- (e) Reimbursement for expenses shall be contingent upon recovery. Advancements may be made for such expenditures or any portion thereof as this Council may from time to time appropriate if funds are thus available and this Council by appropriate action so elects. Such advancement shall be subject to the approval of the Commissioner of Indian Affairs.

If tribal funds be so received by said attorneys such sums shall be restored to the Council out of recovery, but such items so expended may be included and recovered as fixed and determined by the Court, Commission or Commissioner of Indian Affairs, as the case may be.

Upon the approval of the contract to be executed pursuant to this resolution the Curry contract shall, with his consent, be deemed in all respects terminated.

BE IT FURTHER RESOLVED that the contract hereby authorized be executed by Nelson Lupe, Sr., Chairman and Mary C. Endfield, Secretary who are directed to execute the same in accordance herewith.

The foregoing resolution was on December 11, 1952 duly adopted by a vote of 8 for and 0 against, by the Tribal Council of the White Mountain Apache Tribe pursuant to authority vested in it by Article VI, Section 1 (b) of the Constitution and By-Laws of the Tribe, ratified by the Tribe on August 15, 1938 and approved by the Secretary of the Interior on August 26, 1939, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

Nelson Lupe Sr.
Chairman of the Tribal Council

Approved DEC 15 1953

John O. Crow
John O. Crow,
Superintendent

Mary C. Endfield
Secretary of the Tribal Council

John O. Crow, Superintendent

Resolution No. 52-14

THIS AGREEMENT, Made and entered into this 11th day of December, 1952, by and between Nelson Lape, Sr., Chairman, Mary C. Endfield, Secretary acting for and on behalf of themselves and the Tribal Council of the White Mountain Apache Tribe of the Fort Apache Indian Reservation, of Arizona, and the Apache Tribe and all having an interest in the Apache claims, parties of the first part, and Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist, attorneys at law, residing at Duluth, Minnesota, and David Cobb and I.S. Weissbrodt, attorneys at law, residing at Washington, D. C. and C. M. Wright of Tucson, Arizona, parties of the second part,

WITNESSETH:

The parties of the first part, on behalf of themselves and all parties named above, under authority vested by Resolution on the 11th day of December, 1952, a copy of which is hereto attached, marked Exhibit "A", and made a part hereof, hereby contract with, retain and employ the parties of the second part as attorneys in the matter hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs and/or the Secretary of the Interior, pursuant to the provisions of Section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. Sec. 476).

It shall be the duty of said attorneys to advise and represent the parties of the first part in connection with properly investigating, formulating, filing and prosecuting the claims of said parties of the first part against the United States however arising.

It shall be the further duty of said attorneys to advise the parties of the first part and to represent them before the Indian Claims Commission and all courts, departments, tribunals, committees of Congress, and officers having any duties to perform in connection with the investigation, consideration, final allowance, settlement and payment of said claims and the matters therein embraced.

Parties of the second part, in performance of the duties required of them under this contract, shall be subject to the supervision and direction of the Commissioner of Indian Affairs, and shall not make any compromise settlement or other adjustment of the matters in controversy unless with the approval of the parties of the first part and of the Commissioner of Indian Affairs: and parties of the second part shall not be authorized to terminate the proceedings at any stage thereof unless directed by both the parties of the first part and by the Commissioner of Indian Affairs.

It is agreed that parties of the second part, may associate with them in the work hereunder such attorneys as they may select; provided that neither the Government nor the parties of the first part is to be at any expense by reason of the aforesaid employment of such associate attorneys, such associate attorneys to be paid by the parties of the second part out of any compensation which they may receive for their services; However, parties of the second part may employ such technical and stenographic assistance in respect of their obligations under this contract as they may deem necessary; which items of expense, together with the expenses of such associate attorneys, exclusive of fees, shall be recoverable and paid as expenses incident to their employment hereunder.

Parties of the second part, but not by way of limitation, agree that the parties of the second part be reimbursed for expense items reasonably necessary which have been paid or incurred and which may in the future be incurred in connection with the services rendered or to be rendered whether under this or the original Curry contract in the investigation, preparation for trial and prosecution of our claims, including, for example, stenographic, supplies, printing, travel by plane, train automobile or other conveyance; if by personal automobile the rate of reimbursement shall be seven cents (7¢) per mile, not exceeding plane or train travel if available, the mode of travel to be determined by the advantage to the first parties; such reimbursable expense shall include meals and lodging, or nine dollars (\$9.00) per diem in lieu of subsistence.

Such reimbursement shall be contingent upon recovery. Advancement by first parties may be made for such expenses or any portion thereof as the Council may from time to time by resolution appropriate, contingent upon funds being available and the Council so elects, subject to the approval by the Commissioner of Indian Affairs.

In the event tribal funds of parties of the first part are received by parties of the second part, and in the event recovery of expenses for which such funds have been used is effected as part of the ultimate recovery, such recovered funds shall be restored to parties of the first part, but the amount thereof shall be included along with all other items of expense in the determination by the Court or Commissioner of Indian Affairs of the ratable share of expense to be borne by parties of the first part.

In consideration of the services rendered and to be rendered under the terms of this contract the parties of the second part shall be entitled to receive and shall be paid such compensation as the Commissioner of Indian Affairs, or if submitted to a Court, Tribunal or Commission, such Court, Tribunal or Commission may determine to be reasonable and equitable compensation for the services rendered herein, but in no event shall the aggregate fee exceed ten percent (10%) of the sum or sums recovered or procured through their efforts in whole or in part for such Indians, whether by such action or act of any department of government or of Congress or otherwise.

In fixing and determining such fees the services heretofore rendered by James E. Curry and his associate attorneys shall be considered and compensation therefor included.

Compensation shall be fixed and allowed for the services of James E. Curry rendered under the original contract to date and the amount so paid or to be paid to said Curry shall be deducted from the compensation to be paid second parties.

Reimbursement for expenses incurred shall be allowed as herein provided. It is intended that the parties of the second part shall be allowed and reimbursed for all reasonable expenses incurred in the investigation, formulation, filing and prosecution of the claims, provided all such expenditures shall be itemized and verified by parties of the second part and accompanied by proper vouchers for

approval. If items of expense are incurred which have not been approved otherwise, such proof and vouchers shall be submitted to the Court or Commissioner of Indian Affairs for approval.

It is agreed that no assignment of the obligations of this contract, in whole or in part, shall be made without the consent previously obtained of the Commissioner of Indian Affairs; and that any assignment so made must comply with Section 2106 of the Revised Statutes of the United States (Sec. 84, Title 25, U. S. Code.)

It is further agreed that no assignment or encumbrance of any interest of said attorneys in the compensation agreed to be paid by this contract shall be made without the approval of the Commissioner of Indian Affairs. Any assignment of the obligations of this contract and /or any assignment or encumbrance of any interest in the compensation agreed to be paid, made in violation of the provisions of this paragraph, shall operate to terminate this contract insofar as the offending attorney or attorneys are concerned, and in such event no attorney making such unapproved assignment or encumbrance and having any interest in the contract or in the fee provided for, shall be entitled to any compensation whatsoever for any services rendered to date of termination of the contract as to him or them.

It is agreed that in the event one or more, but not all, of the parties of the second part shall die, such death or deaths, shall not operate to terminate this contract; but that the surviving member, or members of the parties of the second part shall be entitled to proceed in all matters pending before the Indian Claims Commission, the Bureau of Indian Affairs, or in any court or tribunal, or before the Committees of Congress until their final termination under the terms and conditions of this contract; and to prosecute such proceedings as a full compliance with the terms and provisions of this contract. It is agreed that some of the parties of the second part are members of law firms, and others have associate counsel; and that, in the event of the death of all of the parties of the second part, such deaths shall not terminate this contract; but that surviving members of such firms and surviving associate counsel shall succeed to all of the obligations and rights of the parties of the second part hereunder; provided, no right shall attach to surviving members of such firms nor to surviving associate counsel unless the parties of the second part shall have theretofore submitted their names and addresses to the Commissioner of Indian Affairs. It is further agreed that in the event of the withdrawal or disability, or any reason, of any or some of the parties of the second part, such withdrawals or disabilities shall not terminate this contract; and the survivors shall be entitled to proceed in all matters as a full compliance with the provisions and terms of this contract.

It is further agreed that this contract shall continue for a period of ten years beginning with the date of its approval by the Commissioner of Indian Affairs; provided, that if at the expiration of the period of ten years from the date of approval hereof, said claims of the parties of the first part shall not have been finally allowed, settled, or otherwise disposed of, the employment of the parties of the second part hereunder may be extended by the Commissioner of Indian Affairs for additional periods of one year each.

This contract shall be terminated by the Commissioner of Indian Affairs with the consent of the parties of the first part upon sixty (60) days' notice to the parties in interest; and, if the contract shall be so terminated, the parties of the second part shall be credited with such interest, should any sum or sums be recovered by an award of the Indian Claims Commission or a judgment of a court or tribunal, as the Commission, court or tribunal may determine to be equitable in the fee found to be due upon the final determination of the said claims and the controverted matters therein included; provided, that if a recovery be had without submission to the Indian Claims Commission or a court or tribunal, then the parties of the second part shall receive such compensation as the Commissioner of Indian Affairs may determine equitably to be due.

Any provisions of this contract which specifies or contemplates any action whatsoever of the Commissioner of Indian Affairs shall connote any other person, officer, agent, official or instrumentality of the United States charged with, created, responsible, delegated or designated for, the performance of such duty or responsibility.

Nelson Fupe Sr.

Mary C. Endfield
Parties of the First Part

Parties of the Second Part