



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Limited Waiver of the Sovereign Immunity of the Fort Apache Heritage Foundation, Inc., As Set Forth in the Construction Agreement with Pointe Companies, Inc., for Home of Harmony Project)

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 in Section 1(s), “to regulate subordinate organizations for economic or other purposes”; and

WHEREAS, The Fort Apache Heritage Foundation, Inc., (“Foundation”) is overseeing all aspects of the planning, financing, and design of the Home of Harmony Project (“Project”) which entails the renovation and rehabilitation of the former boys’ dorm, located in the Fort Apache Site, as authorized by the Council pursuant to Resolution Nos. 11-98-258 and 09-2000-272; and

WHEREAS, The Council, pursuant to Resolution No. 02-2022-18, approved a grant application by the Foundation to the U.S. Economic Development Administration (“EDA”) for purposes of financing the cost of the Project; and

WHEREAS, The Foundation’s Chief Executive Officer (“CEO”) this day advises the Council that the EDA has awarded the Foundation Four Million Six Hundred Seventy-Eight Thousand Eight Hundred Thirty-One Dollars (\$4,678,831.00) for the Project; and

WHEREAS, The Council, pursuant to Resolution No. 05-2024-103, approved term sheets with U.S. Bancorp Community Development Corporation (“USBCDC”) for the Foundation to begin negotiating with USBCDC on its proposed equity investment of Five Million Nine Hundred Thirty-Seven Thousand Five Hundred Thirty-Three Dollars (\$5,937,533.00) in federal New Markets Tax and Historic Rehabilitation Tax Credits to finance the remaining cost of the Project; and

WHEREAS, The Foundation’s CEO this day advises the Council that Pointe Companies, Inc., has been selected as the General Contractor for the Project; and

WHEREAS, The Foundation’s CEO further advises that the Foundation has negotiated and approved a Construction Agreement (“Construction Agreement”), as attached and incorporated by this reference, with Pointe Companies, Inc., for a total contract price of Ten Million

Resolution No. 06-2024-140

Seven Hundred Forty Thousand Five Hundred Ninety-Six Dollars and Five Cents (\$10,740,596.05); and

WHEREAS, Exhibit A, as attached and incorporated by this reference, to the Construction Agreement with Pointe Companies, Inc., provides a limited waiver of the Foundation's sovereign immunity solely for the limited purpose of participating in mediation and arbitration proceedings involving claims arising out of the Construction Agreement between Pointe Companies, Inc., and the Foundation; and

WHEREAS, Article XII, Section 12.2(B)(1) of the Foundation's Amended Bylaws require approval by the Council for a limited waiver of the Foundation's sovereign immunity for contracts entered by the Foundation that exceed Five Hundred Thousand Dollars (\$500,000.00); and

WHEREAS, Accordingly, the Foundation's CEO this day requests approval of Exhibit A by the Council for the Foundation to provide a limited waiver of the Foundation's sovereign immunity solely for the limited purpose of permitting Pointe Companies, Inc., to commence mediation or arbitration proceedings or to enforce any mediation or arbitration awards in accordance with the attached Construction Agreement; and

WHEREAS, The Construction Agreement and Exhibit A does not include any waiver of the Tribe's sovereign immunity; and

WHEREAS, The Council finds that approving a limited waiver of the Foundation's sovereign immunity solely for the limited purpose of permitting Pointe Companies, Inc., to commence mediation or arbitration proceedings or to enforce any mediation or arbitration awards in accordance with the attached Construction Agreement, will allow the Home of Harmony Project to proceed with the rehabilitation of the boys' dorm and, therefore, would be in the best interests of the Foundation and the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves a limited waiver of the Fort Apache Heritage Foundation, Inc., sovereign immunity solely for the limited purpose of permitting Pointe Companies, Inc., to commence mediation or arbitration proceedings or to enforce any mediation or arbitration awards in accordance with Articles 1.2, 1.3, 1.4, and 1.5 of Exhibit A to the attached Construction Agreement.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby agrees to approve this limited waiver of sovereign immunity for the Fort Apache Heritage Foundation, Inc., with the understanding that this waiver (1) only extends to Pointe Companies, Inc., and does not extend to any other third party, and (2) is solely for the limited purpose of permitting Pointe Companies, Inc. to commence mediation or arbitration proceedings or to enforce any mediation settlement or arbitration awards in accordance with the attached Construction Agreement.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that nothing in the Construction Agreement, its Amendments, Exhibits or Attachments shall constitute an expressed or implied waiver of the White Mountain Apache Tribe's sovereign immunity.

Resolution No. 06-2024-140

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Tribal Council authorizes the Tribe's Attorney General or the Foundation's Legal Counsel, with the authorization from the Tribe's Attorney General, to make minor corrective and clarifying changes to the attached Construction Agreement so long as the changes do not materially alter any substantive provisions of the Construction Agreement.

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 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 the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute and deliver any and all other documents and to take or cause to be taken such further actions as such individual deems necessary or appropriate to effectuate the intent of this Resolution.

The foregoing resolution was on **JUNE 11, 2024** duly adopted by a vote of **EIGHT** 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Kasey Velasquez 6.17.24
Kasey Velasquez, Chairman

Date

Vaneyssa Johnson 06/12/2024
Vaneyssa Johnson, Tribal Secretary

Date