



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Bridge Loan Finance Term Sheet with Sovereign Bank for Home of Harmony Project and a Limited Waiver of the Sovereign Immunity of the Fort Apache Heritage Foundation, Inc., for Purposes of the Bridge Loan)

- 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 total estimated cost for the Project is Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00); and
- WHEREAS,** The proposed financing structure for the Project is approximately Five Million Five Hundred Thousand Dollars (\$5,500,000.00) in grant proceeds from the U.S. Department of Commerce Economic Development Administration ("EDA") and the Arizona State Parks (the "Grant Proceeds"), approximately Five Million Nine Hundred Thirty-Seven Thousand Five Hundred Thirty-Three Dollars (\$5,937,533.00) in proceeds from federal New Markets Tax Credits and Historic Tax Credits through U.S. Bancorp Community Development Corporation, and up to Three Million Five Hundred Thousand (\$3,500,000.00) from the White Mountain Apache Tribe Settlement Fund pursuant to the Settlement Agreement between *White Mountain Apache Tribe v. United States of America*, Case No. 99-148L; and
- WHEREAS,** The Grant Proceeds will be provided on a reimbursement basis for eligible Project costs as they are incurred and the total proceeds from the Historic Tax Credits, estimated to be approximately Two Million One Hundred Thousand Dollars (\$2,100,000.00), will not be available until after completion of construction and certification of costs of the Project; and
- WHEREAS,** The federal New Markets Tax Credits Program requires all Project financing to be in place at the time of closing, which the Foundation estimates to be on or about September 30, 2024; and
- WHEREAS,** Accordingly, the finance structure for the Project requires the Foundation to obtain a bridge loan for Five Million Nine Hundred Thousand Dollars (\$5,900,000.00) to fund the costs of the Project and to close the New Markets and Historic Tax Credits finance transaction on or about September 30, 2024, in accordance with the requirements of the federal New Markets Tax and Historic Tax Credits Program; and

WHEREAS, The Foundation's Chief Executive Officer ("CEO") this day advises the Council that Sovereign Bank has proposed to make a bridge loan to the Foundation on the terms and conditions set forth in the Bridge Loan Term Sheet, which is attached and incorporated by this reference as Exhibit A, for Five Million Nine Hundred Thousand Dollars (\$5,900,000.00); and

WHEREAS, The CEO further advises that in order to satisfy certain federal and state bank regulatory requirements, the term sheet requires that the Tribe, as a co-recipient/co-awardee of the EDA grant, 1) make an irrevocable assignment of the Tribe's interest in the EDA grant to the Foundation solely for purposes of funding the renovation and rehabilitation of the Home of Harmony Project and 2) provide the Tribe's assurance that it will not interfere in any way with the use of the EDA grant for the renovation and rehabilitation of the Home of Harmony Project, pursuant to the Agreement and Limited Waiver of Sovereign Immunity, as attached and incorporated by this reference as Exhibit B; and

WHEREAS, The CEO further advises that the Bridge Loan term sheet requires a limited waiver of the Foundation's sovereign immunity pursuant to the Agreement and Limited Waiver of Sovereign Immunity, as attached and incorporated by this reference as Exhibit B, as a condition to the Bridge Loan and that such waiver is solely for the limited purpose of participating in mediation and arbitration proceedings involving claims arising out of the Bridge Loan Agreement between the Foundation and Sovereign Bank; 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 CEO requests approval of the terms and conditions of the Bridge Loan Term Sheet with Sovereign Bank and in connection therewith that the Council also approve the Tribe, as a co-recipient/co-awardee of the EDA grant, 1) making an irrevocable assignment of the Tribe's interest in the EDA grant to the Foundation solely for purposes of funding the renovation and rehabilitation of the Home of Harmony Project and 2) providing the Tribe's assurance that it will not interfere in any way with the use of the EDA grant proceeds for the renovation and rehabilitation of the Home of Harmony Project; and

WHEREAS, The CEO further requests approval by the Council of a limited waiver of the Foundation's sovereign immunity as a condition to the Bridge Loan and that such waiver is solely for the limited purpose of participating in mediation and arbitration proceedings, including enforcement of an arbitration award in the United States District Court, involving claims arising out of the Bridge Loan documents between the Foundation and Sovereign Bank; and

WHEREAS, The Council finds that approving the CEO's request, as described above, would allow the Home of Harmony Project to proceed 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 the terms and conditions of the Bridge Loan Term Sheet with Sovereign Bank, as attached and incorporated by this reference as Exhibit A, for Five Million Nine Hundred Thousand Dollars (\$5,900,000.00).

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Tribe, as a co-recipient/co-awardee of the EDA grant, making an irrevocable assignment of the Tribe's interest in the EDA grant to the Foundation solely for purposes of funding the renovation and rehabilitation of the Home of Harmony Project.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby confirms, as a condition of Sovereign Bank providing the Bridge Loan, that the Tribe will not interfere in any way with the use of the EDA grant proceeds for the renovation and rehabilitation of the Home of Harmony Project.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves a limited waiver of sovereign immunity by the Fort Apache Heritage Foundation, Inc., as a condition to the Bridge Loan and that such waiver is solely for the limited purpose of participating in mediation and arbitration proceedings involving claims arising out of the Bridge Loan documents between the Foundation and Sovereign Bank, in accordance with Exhibit B, as attached and incorporated by this reference.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that nothing herein, in the Bridge Loan Agreement or related documents shall constitute an expressed or implied waiver of the White Mountain Apache Tribe's sovereign immunity.

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 Exhibit B, Agreement and Limited Waiver of Sovereign Immunity, so long as the changes do not materially alter any substantive provisions of the Exhibit B.

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 Bridge Loan Term Sheet, so long as the changes do not materially alter any substantive provisions of the Bridge Loan Term Sheet.

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 SEPTEMBER 11, 2024 duly adopted by a vote of NINE 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 9/11/24
Kasey Velasquez, Chairman

Date

Vaneysa Johnson 9/11/2024
Vaneysa Johnson, Tribal Secretary

Date