



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

**(Approving a Construction Contract with Pace Pacific for the construction of the Detention Center and authorizing a limited waiver of sovereign immunity)**

- WHEREAS,** Article IV, Section 1(b) of the Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation vests the Tribal Council with the authority to negotiate and contract with agencies of the federal, state, local and tribal governments, private entities, and individuals on behalf of the Tribe; and
- WHEREAS,** the Tribe desires to construct a new Detention Center and the Contractor requires that the Tribe enter into a construction contract that requires a limited waiver of defense of sovereign immunity for binding arbitration as more fully set forth in Exhibit A, entitled "Contract Clarification," attached hereto and incorporated by reference herein; and
- WHEREAS,** the Tribal Council finds that after review of the Contract and the required limited waiver of defense of sovereign immunity, the Contract remains in the best interest of the White Mountain Apache Tribe for the construction of the Detention Center; and
- WHEREAS,** given the urgency of the construction, the Tribal Council further finds that a decision needs to be considered and made outside of its regularly scheduled meeting; and
- WHEREAS,** the Tribal Council further finds that: (1) this Resolution may be voted upon by signature of a member of the Tribal Council where a signature indicates a vote for this Resolution, (2) the Tribal Council Secretary should attempt to obtain signatures for members of the Tribal Council personally, (3) no signature would mean that the respective Tribal Council member is against this Resolution, (4) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.


**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby:

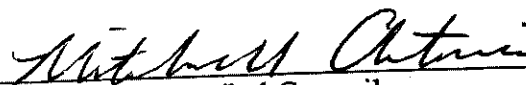
1. Approves the Tribe's entry into, and agreement with, the Contract and Exhibit A, "Contract Clarifications," as attached and incorporated by this reference.
2. Authorizes a limited waiver of sovereign immunity for the purpose of binding arbitration as provided in Exhibit A, entitled, "Contract Clarifications," as attached and incorporated by this reference.
3. Authorizes the Tribal Chairman, or in his absence the Tribal Vice-Chairwoman, to execute the construction contract with Pace Pacific and the Exhibit A, "Contract Clarifications," and all documents related thereto.

**Resolution No. 12-2007-517**

**BE IT FURTHER RESOLVED** by the Tribal Council of the Tribal Council of the White Mountain Apache Tribe that given the urgency of the construction, this Resolution may be voted upon as follows: (a) by signature of a member of the Tribal Council, including the Chairman of the Tribal Council and the Vice-Chairwoman of the Tribal Council, where a signature indicates a vote for this Resolution, (b) the Tribal Council Secretary shall attempt to obtain signatures for members of the Tribal Council personally, (c) no signature shall mean that the respective Tribal Council member is against this Resolution, (d) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature, and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.

The foregoing resolution was on December 3, 2007, duly adopted by a vote of 7 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1(a), (b), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

**ACTING**   
Secretary of the Tribal Council

Corrected Version

## Exhibit A Contract Clarifications

10/26/2007			
WMAT - Adult and Juvenile Detention Center			
VALUE ENGINEERING ITEMS			
Item	Description	PACE Pacific	Remarks
<b>Value Engineering Items</b>			
1	Material Testing & Inspections by owner	(22,000)	
2	Delete West wall & connect intake building	(13,112.00)	Per revised drawings 10-19-07. Any additional cost increase pending revised structural details.
3	Delete Footing under west wall of intake building	(2,000.00)	Per revised drawings 10-19-07. Any additional cost increase pending revised structural details.
4	Change TPO Roof system to a modified Bitumen roof system.	(25,866.00)	
5	Eliminate the 5/8" gypsum board on roof & reduce the warranty from 15 to 10 yrs	(13,041.00)	
6	Use acrylic Paint in lieu of specified epoxy paint	(4,000.00)	
7	Delete painted ceiling	(9,600.00)	
8	Delete all Exterior block paint and okon plugger replace with masonry sealer such as prosoco WB siloxans	(7,240.00)	
9	Delete Ceramic Tile	(28,810.00)	
10	Add for paint for deleted tile areas	5,000.00	
11	Change R.R. Brink 5020 Series Maximum Security Detention Locks to R. R. Brink 3020 Series Medium Security Detention Locks.	(4,900.00)	Material prices susceptible to price increases
12	If Item 1 is accepted, hollow metal frames would change from 8" column frames to 2" jamb width.	(2,600.00)	Material prices susceptible to price increases
13	Change Sargent mortise locks from 9200 Series to 7800 Series.	(7,400.00)	Material prices susceptible to price increases
14	Change fence gate locks noted as R.R. Brink 8050 Series to R.R. Brink 8030 Series	(2,100.00)	Material prices susceptible to price increases
15	Delete Flag Pole & Footing	(1,800.00)	
16	Alternate plumbing Fixtures	(53,311.00)	There will be a material price increase on Dec 15th from all material suppliers. Est. increase 12-20%
17	Deduct for use of Wirsbo pex pipe w/ APR fitting system for all domestic water pipe 1" and smaller	(13,530.00)	There will be a material price increase on Dec 15th from all material suppliers. Est. increase 12-20%
18	Deduct to use ABS or PVC for sanitary waste and vent system in lieu of specified pipe. (Above and Below Ground)	(61,868.00)	There will be a material price increase on Dec 15th from all material suppliers. Est. increase 12-20%
19	Use threaded joint system for gas piping in lieu of welded fittings for all gas pipe 2 1/2" & larger	(8,320.00)	There will be a material price increase on Dec 15th from all material suppliers. Est. increase 12-20%
20	CCTV: CCTV the system will be either Vicon or Bosch. The system will not be an IP addressed system. It will be a digital camera system connected to a video switcher. All video will be stored on DVR's. The	(20,000.00)	Material prices susceptible to price increases

	manufacturer will be determined on final system de		
21	Touch Screen/PLC: - Door control, there will be two Touch screens, one located in Intake and the other in Detention. The Touch screen size will be a 19" Flat Screen. - The PLC will be either GE Fanuc or Omron, both leading manufacturers used in the correc	(20,000.00)	Material prices susceptible to price increases
22	Intercom/Paging: The Audio the Pre Amp will be a 15 watt Dukane amplifier for the Intercom and paging. There will be one located in Intake & Detention. All intercom & paging speakers will be manufactured by Quam.	(4,000.00)	Material prices susceptible to price increases
23	Card Access: The Card Access all equipment will be provided by Andover, readers will be HID. The Head end computer is to be provided by the Owner. We will provide owner with the specification requirements for computer.	(4,000.00)	Material prices susceptible to price increases
24	Change generator from 1400KVA 277/480 to a 500KVA 277/480	(180,000.00)	
25	Eliminate Taxes	(254,302.00)	
26	Delete 800 sq ft of over all building construction	(32,000.00)	
	Total Savings	(790,800.00)	
	Original Bid Price	7,480,000.00	
	Contract Value	6,682,000.00	

**Section 3 Paragraph A** – Provide all taxes in excess of the \$254,302 included in line 25 shall be reimbursed by the owner.”

**Section 3 Paragraph I** - Delete word “accepted” and replace with “signed off”.

**Section 4** – Add at the end of the Paragraph “If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner or by changes order in the Work, then the Contract Time shall be extended by a Change Order for such reasonable time and cost”.

**Section 13 Paragraph B** – This section remains as originally written.

**Section 20 Paragraph H** - Delete wording “If the Contractor does not promptly replace or correct rejected work” and replace with “After the Contractor has received written notice from the contracting officer the Contractor has 14 working days to replace or correct the rejected work,”

**Section 22 Paragraph E** – Delete wording “a reasonable” and replace with “30 days”

**Section 23** - Delete “210” and replace with “365”.

**Section 26 Paragraph B** - Delete “approximately”.

**Section 26 Paragraph F** - Delete Paragraph F in its entirety and replace with “The Owner shall retain ten (10%) percent of the amount of progress payments until 50 percent of the Contract

amount is billed. At that time, the retainage shall be five (5%) percent for the remaining balance of the contract."

**Section 26 Paragraph I** - Part 2 of this paragraph cannot be deleted since the Tribe must be released future liabilities for all work it has paid the contractor for.

**Section 26** - Add Paragraph L - If the Owner fails to make payment within 30 calendar days after receipt of contractors pay application, the Contractor after written notice to Owner, if not paid within 15 days shall stop all work".

**Section 28 Paragraph B** - Delete "or oral order" in the first sentence.

**Section 28 Paragraph D second sentence** - delete "5 days for oral order".

**Section 28 Paragraph F part 3** - insert after the first sentence "If the Contractor disagrees with the amount of overhead and profit allowed on a Change Order, the Contractor has the right not to proceed with said work until said overhead and profit amount has been approved by the Contractor."

**Section 30** - Delete entirely and replace with - The Tribe hereby expressly waives the jurisdiction of any of the courts of the Tribe now existing or established during the term hereof and expressly waives its sovereign immunity and consents to bind arbitration as set forth herein. The Tribe shall execute and deliver such documentation, as a reasonable request for the purpose of verifying the effectiveness of the limited waiver of sovereign immunity. The Tribe hereby expressly waives sovereign immunity from a judgment or order issued through arbitration as authorized here which is final.

**BINDING ARBITRATION.** The parties agree that any and all claims, controversies, disputes, damages or whatever kind or nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or contingent, actual or potential, that either party may have against the other shall be submitted for binding arbitration with the American Arbitration Association (AAA) or another arbitration association as agreed by parties in order to exercise the remedies provided in the Contract according to the following terms and conditions:

I. **SCOPE OF ARBITRATION**

A. Contractor and the Tribe agree to the following binding and unappeasable arbitration process for the enforcement of the terms of the Contract pursuant to the following conditions:

1. The claim alleges a breach by the Contractor of one or more specific obligations or duties expressly assumed by it under the terms of the Contract.
2. The claims seek either (a) specific action or discontinuance of some action by the Contractor into full compliance with the duties and obligations expressly assumed by it in the Contract; (b) payment of all amounts due under the Contract and reasonable costs incurred by the Tribe in the collection of such amounts, or (c) the foreclosure of collateral secured under the Contract.

3. The scope of arbitration is limited to breach of contract, tort, equity or actions brought pursuant to the Contract for the benefit of the Tribe and its successors and assigns only, as set forth therein.
4. The claim is made in writing to the Contractor and the Contractor shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted.

## II. ARBITRATION PROCEDURES

Contractor and the Tribe agree that the matter shall be brought before an impartial tribunal for mandatory and binding arbitration, as set forth below:

- A. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of this Contract shall be settled by binding arbitration by a panel of three (3) arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and governed by the laws of the State of Arizona (without regard to the choice-of-law rules or principles of that jurisdiction) and enforceable pursuant to the Federal Arbitration Act, 9 U. S.C. Section 1 et. Seq. ("FAA"). Judgment upon the award may be entered in any court of competent jurisdiction located in the State of Arizona, County of Maricopa and all the parties hereto hereby consent to submit to the jurisdiction of such courts and expressly waive any objections or defense based upon lack of personal jurisdiction or venue.
- B. Each of the plaintiff and defendant party to the arbitration shall select one (1) arbitrator (or where multiple plaintiffs and/or defendants exist, one (1) arbitrator shall be chosen collectively by such parties comprising the plaintiffs and one (1) arbitrator shall be chosen collectively by those parties comprising the defendants) and then the two (2) arbitrators shall mutually agree upon the third arbitrator. Where no agreement can be reached on the selection of either a third arbitrator or an arbitrator to be named by either a group of plaintiffs or a group of defendants, any implicated party may apply to a judge of the courts of the State of Arizona, County of Maricopa, to name an arbitrator. The location of any arbitration shall be Phoenix, in the State of Arizona. Process in any such action or proceeding may be served on any party anywhere in the world.
- C. The award rendered by the majority of the arbitrators pursuant to this Contract shall be final and binding on all parties. Notice of the award shall be mailed to each of the parties by certified mail not later than ten (10) days after the conclusion of the hearing.
- D. Each party shall bear its own arbitration costs and expenses. The prevailing party shall be entitled to recover reasonable attorney fees, costs and the costs of the arbitration proceeding from the losing party. The arbitrators shall apply as substantive law, the Uniform Commercial Code as adopted by the State of Arizona.

III. **TIME PERIOD**

With respect to any claim authorized herein, arbitration proceeding shall be instituted within six (6) months after the claim accrues or shall be forever barred. The Waiver granted herein shall commence on the effective date of the Contract and shall continue until all obligations, covenants and agreements contained therein are fully satisfied.

IV. **SERVICE OF PROCESS**

In any such arbitration, service on the Contractor shall be effective if made by certified or registered mail, return receipt requested, to the President of the Contractor at the address set forth above.

V. **NON-TERMINATION OF CONDITIONS**

The Tribe agrees that the terms and conditions contained herein shall not be repealed, rescinded or modified until the obligations, covenants, and agreements contained in the Contract are fully satisfied. These arbitration provisions shall survive the termination or expiration of the Contract.

**Section 47** - Delete "Section 47" in its entirety.

**Add Section 50 "FUNDS"**. "The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor."

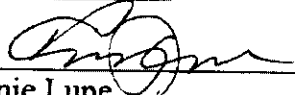
**Add Section 51 Value Engineered Items"**. Cost to add back any Value Engineered items will be subject to current market pricing at the time of any such additions.

X \_\_\_\_\_  
Initial

Resolution No. 12-2007-517

Signatures of the members of the Tribal Council represent their approval of Tribal Council Resolution No. 12-2007-517 initiated the 3rd day of December 2007.

Presented Personally by Tribal Council Secretary (TCS)-Indicated by Initials  
MA TCS Initials

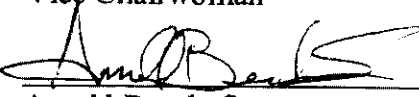
  
Ronnie Lupe  
Tribal Chairman

12/4/07  
Date Signed

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TCS Initials

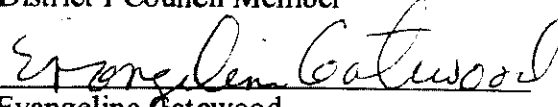
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Margaret Baha-Walker  
Vice Chairwoman

\_\_\_\_\_  
Date Signed

  
Arnold Beach, Sr.  
District I Council Member

12/03/07  
Date Signed

MA TCS Initials

  
Evangeline Gatewood  
District I Council Member

12/03/07  
Date Signed

MA TCS Initials

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Lafe Altaha  
District II Council Member

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Date Signed

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Victoria Brewer  
District II Council Member

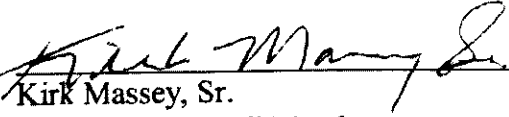
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Alvin DeClay, Sr.  
District III Council Member

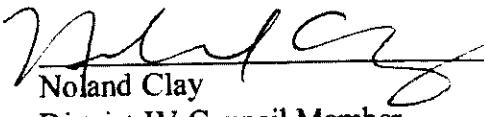
12/03/07  
Date Signed

MA TCS Initials

  
Kirk Massey, Sr.  
District III Council Member

12/03/07  
Date Signed

MA TCS Initials

  
Noland Clay  
District IV Council Member

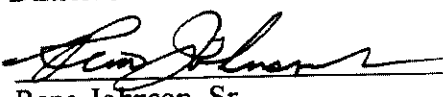
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MA TCS Initials

  
Wayne Colelay, Jr.  
District IV Council Member

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Date Signed

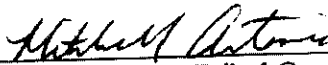
MA TCS Initials

  
Reno Johnson, Sr.  
District IV Council Member

12-3-07  
Date Signed

MA TCS Initials

ATTEST:

  
Cyndy R. Harvey, Tribal Council Secretary

12-4-07  
Date Signed

**ACTING**