



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing Theodore Roosevelt School to Execute Broadband Telecommunications Installation and Service Agreement with COMMNET; Approving the Limited Waiver of Immunity Therein; Waiving TERO Fees for a Portion of the Project)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(s) that the Tribal Council (“Council”) shall exercise the power, “...To regulate subordinate organizations...”; and
- WHEREAS,** Theodore Roosevelt School (or “TRS” or the “School”) is funded by the federal government as a tribally-controlled school of the White Mountain Apache Tribe that serves qualifying school-aged children of the Tribe and of other Indian tribes; and
- WHEREAS,** TRS has been awarded a grant of federal funds and matching State of Arizona funds under the E-rate program to install and provide highspeed broadband capability to the School through a contract with Commnet of Arizona, LLC (the “Telecommunications Agreement”); and
- WHEREAS,** The proposed undertaking would call for the installation of broadband fiber from the Pinetop-McNary area to the School campus, subject to approval from the Tribal Council and in compliance with Tribal and federal environmental regulations, permitting procedures, and realty approvals; and
- WHEREAS,** A portion of the installation would be made within the current State Highway 73 right-of-way, with the remaining portions to be attached to existing NEC utility poles; and
- WHEREAS,** Commnet of Arizona, LLC would be responsible for preparing and submitting all applications for regulatory permits and Council approval, and will do so at a later date, with the understanding that the installation work and other obligations of the parties would commence only after such approvals are obtained; and
- WHEREAS,** The Telecommunications Agreement contains a limited waiver of immunity, and stipulates that Tribal law, and applicable federal law would govern the enforcement of the contract terms, with the use of state of Arizona law in the absence of controlling Tribal or federal law, with all disputes heard in the Tribal Court, on the condition that a sitting or retired state court judge would preside as the visiting judge; and

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WHEREAS, The proposal serves the broader Tribal initiative by securing a broadband line which will have additional capacity to serve other Tribal programs and users within the Whiteriver vicinity; and

WHEREAS, The TRS School Board has given its approval for the Telecommunications Agreement, subject to Council approval; and

WHEREAS, The Council finds that authorizing the Telecommunications Agreement will utilize federal and state funds to enhance internet services to the Theodore Roosevelt School and the Whiteriver community, and is in the best interests of the Tribe and its members.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Telecommunications Agreement between Theodore Roosevelt School and Commnet of Arizona, LLC, and for that purpose, authorizes the limited waiver of immunity, as provided in Section 18 of the Agreement and attached hereto.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that due to limiting conditions of the grant funding and because the proposal is implemented in part to serve the Tribal initiative for enhanced broadband service for Tribal departments, programs and the greater Whiteriver community, it finds and declares that the assessment of a TERO fee shall not be applicable to the portion of the installation work funded under the School's E-rate grant.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it reaffirms that the approval granted herein is limited to the conditions and enforcement of the Telecommunications Agreement, and that nothing shall be deemed to approve the actual installation work until the appropriate Tribal, ADOT, and federal permitting has been completed, and thereafter, final approval for the installation is issued by the Tribal Council.

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 Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

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The foregoing resolution was on MARCH 24, 2021 duly adopted by a vote of 9 for, 0 against, and 1 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 September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Gwendene Lee-Gatewood 3.24.21 Doreen T. Numkena
Gwendene Lee-Gatewood, Chairwoman Date Doreen T. Numkena, Tribal Secretary Date