



Resolution No. 06-2010-189

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

(Authorizing Agreement with REDW Including a Limited Waiver of Sovereign Immunity)

- WHEREAS,** pursuant to Sections 1(a) and 1(b) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe, and to negotiate, make and perform contracts and agreements; and
- WHEREAS,** regular, annual audits of the financial records of the Tribe are required by granting agencies and the Tribe's own policies and procedures; and
- WHEREAS,** the Tribe has utilized the services of REDW d/b/a the Rogoff Firm for its audits pursuant to Resolution Nos. 07-2006-251, 11-2008-264 and prior resolutions; and
- WHEREAS,** the Controller recommends that the Tribe continue its relationship with REDW for the audit of the Fiscal Year 2009; and
- WHEREAS,** REDW requests arbitration to resolve disputes between the parties; and
- WHEREAS,** a provision for arbitration expressed in a written contract has been found by the U.S. Supreme Court to be a waiver of a Tribe's sovereign immunity from suit, *C.L. Enterprise v Citizen Band Potawatomi Indian Tribe*, 532 U.S.411(2001); and
- WHEREAS,** the Tribe may provide a limited waiver of sovereign immunity from suit for the purposes of binding arbitration if and only if the following conditions exist:
- A dispute between the REDW and the White Mountain Apache Tribe arises directly from the Agreement between them for the purposes expressed therein.
 - The claim alleges a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.
 - The claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs the REDW incurs in collection of such amounts, or (3) the foreclosure of collateral secured under the Agreement, if any.
 - The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of the REDW only, or an Assignee of a valid assignment of the REDW's interest in the Agreement, if any.
 - The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the

Resolution No. 06-2010-189

imposition of incidental, consequential, exemplary or punitive damages or lost profits.

- Any claim against which arbitration may be demanded must be made in writing to the Tribe by the REDW and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted; and

WHEREAS, the Tribal Council, after careful consideration, finds that agreements with the REDW remain in the best interests of the White Mountain Apache Tribe for the funds and services provided thereunder, and that a limited waiver of sovereign immunity for the purposes of enforcement of arbitration provisions therein are acceptable according to the terms described above.


BE IT RESOLVED by the White Mountain Apache Tribal Council that:

1. Any and all agreements with the REDW for the purposes of professional services to produce annual audits are hereby approved.
2. As part of the approval of said Agreements, the Council hereby grants a limited waiver of sovereign immunity for the purpose of effecting dispute resolution thereunder in the form of binding arbitration if, and only if, the following conditions exist within the Agreement:
 - A dispute between the REDW and the White Mountain Apache Tribe arises directly from the Agreement between them for the purposes expressed therein.
 - The claim alleges a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.
 - The claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs the REDW incurs in collection of such amounts, or (3) the foreclosure of collateral secured under the Agreement, if any.
 - The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of the REDW only, or an Assignee of a valid assignment of the REDW's interest in the Agreement, if any.
 - The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.
 - Any claim against which arbitration may be demanded must be made in writing to the Tribe by the REDW and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted.
3. In the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.


Resolution No. 06-2010-189

4. The Chairman, or in his absence the Vice-Chairman, is hereby authorized to negotiate and execute agreements with REDW of every description, not inconsistent with Federal law or the Constitution of the White Mountain Apache Tribe, subject to review by the Tribe's Legal Department.

The foregoing resolution was on **JUNE 23, 2010** adopted by a vote of **TEN** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Sections 1 (a), (b), (f), (g), (i), (j), (k), (s), (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).



Ronnie Lupe, Chairman of the Tribal Council



Mariddie J. Craig, Secretary of the Tribal Council