



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## **(Authorizing Settlement Agreement Between the Tribe and EKO/Encourage Capital and Expenditures from the Permanent Carbon Credit Trust Fund for the Same)**

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**WHEREAS,** The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation provides, at Article IV, Section 1(b) that the Tribal Council (“Council”) shall exercise the power “To negotiate, make and perform contracts and agreements of every description, not inconsistent with Federal law or [the] Constitution...”; and

**WHEREAS,** The Tribe’s Government Code provides, at Section 11.8 that Permanent Carbon Credit Trust Fund Compliance Account or Primary Account Principal may be expended “...on all costs of litigation or other legal disputes related to the [Carbon Credit] Project, as approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council; and

**WHEREAS,** A dispute has arisen between the Tribe and EKO/Encourage Capital (“EKO”) regarding payments due under a carbon credit sale agreement; and

**WHEREAS,** EKO has submitted a Notice of Filing for Arbitration, and is seeking nearly \$4 million dollars in contract and punitive damages from the Tribe; and

**WHEREAS,** The Tribe’s Office of the Attorney General and EKO are negotiating a settlement agreement whereby the dispute would be settled for \$100,000.00, payable by the Tribe to EKO, without any admission of wrongdoing by either party; and

**WHEREAS,** The Tribal Treasurer has reviewed and approved expenditure of the Permanent Carbon Credit Trust Fund to settle this dispute; and

**WHEREAS,** The Tribe’s Attorney General recommends, at this time, that the Council authorize this settlement agreement and subsequent payment; and

**WHEREAS,** The Council has reviewed the circumstances and finds that entering into a settlement agreement with EKO will allow the Tribe to move past this dispute and is in the best interests of the Tribe and its members.

**NOW THEREFORE, BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Tribe’s Office of the Attorney General is hereby instructed to settle the dispute between the Tribe and EKO/Encourage Capital regarding payments due under the Carbon Credit Project, under the same or substantially similar terms as those stated above.

***Resolution No. 09-2019-182***


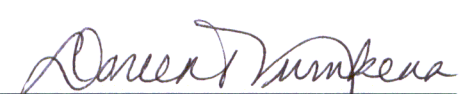
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that payments to satisfy the terms of the aforementioned settlement agreement shall be made from the appropriate portions of the Permanent Carbon Credit Trust Fund, as permitted under the Tribe's Government Code, Section 11.8, and as directed by the Tribal Treasurer.

**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 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.

The foregoing resolution was on SEPTEMBER 3, 2019 duly adopted by a vote of ELEVEN 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 September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

   
Gwendena Lee-Gatewood, Chairwoman      Date      Doreen T. Numkena, Tribal Secretary      Date  
11/4/19      11-5-19