



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing First Amendments to the Governmental and Enterprise 401(k) Plans)

- WHEREAS,** the White Mountain Apache Tribe (the “Tribe”), as a federally recognized Indian tribal government, with inherent rights of self governance, and pursuant to its Tribal Constitution, exercises rights of self determination through its elected Council, and enjoys a government-to-government relationship with the federal government of the United States; and
- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe has retained the authority, powers, and duties to establish and maintain programs to promote the health, welfare, and retirement security of its members and employees; and
- WHEREAS,** the White Mountain Apache Tribe sponsors the White Mountain Apache Tribe Governmental 401(k) Plan (the “Government Plan”) and the White Mountain Apache Tribe Enterprise 401(k) Plan (the “Enterprise Plan”) (referred together as the “401(k) Plans”) for the benefit of its employees; and
- WHEREAS,** Wells Fargo Institutional Retirement and Trust (“Wells Fargo”) serves as the third party administrator and record keeper for the 401(k) Plans; and
- WHEREAS,** Wells Fargo Institutional Retirement and Trust (“Wells Fargo”) serves as the third party administrator and recordkeeper for the 401(k) Plans; and
- WHEREAS,** certain errors have occurred in Wells Fargo’s administration of the hardship withdrawal provisions in the 401(k) Plans; and
- WHEREAS,** legal counsel to the Tribe has determined that corrective action must be taken with regard to the hardship withdrawal errors that have occurred, including the adoption of amendments to the Plan which will prevent the error from reoccurring; and
- WHEREAS,** certain federal legislative and regulatory changes have been made to the federal tax laws governing hardship withdrawals from tax-qualified retirement plans and those changes are favorable to plan participants; and
- WHEREAS,** the Tribe desires to amend the 401(k) Plans to incorporate the favorable hardship withdrawal changes now available to plan sponsors; and
- WHEREAS,** the Enterprise Plan is operated in reasonable and good faith compliance with the requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”) and the related regulations published by U.S. Department of Labor (“DOL”), pending the publication of final guidance regarding the application of ERISA to Tribal governments; and

WHEREAS, the DOL issued final regulations regarding disability claims procedures and the Tribe desires to address the regulations on a reasonable and good faith basis by clarifying that the 401(k) Plans provide no additional or unique benefits upon a finding of "Disability;" and

WHEREAS, legal counsel to the Tribe has prepared proposed First Amendments to the 401(k) Plans setting forth the terms of the recommended and requested amendments.

BE IT RESOLVED, that the Tribal Council of the White Mountain Apache Tribe that the First Amendment to the White Mountain Apache Tribe Governmental 401(k) Plan and the First Amendment to the White Mountain Apache Tribe Enterprise 401(k) Plan, in the form presented to the Council this date and together with any necessary technical or legal revisions, are hereby approved and adopted.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that legal counsel to the Tribe hereby is authorized and directed to assist in the correction of the hardship withdrawal errors that have occurred in Wells Fargo's administration of the 401(k) Plans, including the preparation and filing of a Voluntary Compliance Program application with the IRS, on behalf of the Tribe.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that the Tribal Treasurer hereby is authorized and directed to execute any and all IRS forms and authorizations necessary to file and complete the Voluntary Compliance Program application with the IRS, on behalf of the Tribe.

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 APRIL 10, 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

5/8/19
Date


Doreen T. Numkena, Tribal Secretary

5/8/2019
Date