



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## (Authorizing Audit of Enterprise 401(K) Plan and Appointing Benefit Plan Oversight Committee)

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**WHEREAS,** The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation (“Constitution”) provides, at Article IV, Section 1(s) that the Tribal Council (“Council”) shall exercise the power “To regulate subordinate organizations for economic and other purposes”; and

**WHEREAS,** The 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”) (collectively, the “401(k) Plans”) for the benefit of its employees; and

**WHEREAS,** The Tribe operates the 401(k) Plans in reasonable and good faith compliance with the requirements of Section 906 of the Federal Pension Protection Act of 2006 (the “PPA”) and IRS Notice 2006-89 and IRS Notice 2007-67 (the “IRS Transition Relief”), pending the publication of final guidance under the PPA; and

**WHEREAS,** On May 28, 2019, the Department of Labor issued a final agency action setting forth its position that the Tribe is required to comply with the annual Form 5500 filing and audit requirements with regard to the Enterprise Plan, prior to the publication of final guidance under the PPA; and

**WHEREAS,** The Council finds that taking the actions recommended by special counsel Yoder and Langford to comply in good faith with the final agency action, subject to the resolutions set forth below, will help the Tribe avoid liability to the U.S. Department of Labor for penalties in the future, and are in the best interests of the Tribe and its member.

**NOW THEREFORE, BE IT RESOLVED,** by the Tribal Council of the White Mountain Apache Tribe, that a limited scope ERISA audit of the Enterprise Plan by an independent certified professional accountant for the year ended April 30, 2019 hereby is authorized and directed.

**BE IT FURTHER RESOLVED,** by the Tribal Council of the White Mountain Apache Tribe, that the CPA firm of Stauffer & Associates shall be engaged to perform a limited scope audit of the Enterprise Plan for the 2018-2019 Plan year, subject to the negotiation of an acceptable engagement letter.

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**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that a benefit plan oversight committee hereby is authorized and created, consisting of the Tribal Treasurer, the Tribal Controller, the Tribe's Human Resources Director, the General Manager of the Hondah Casino and Evelyn Emory of Apache Behavioral Health Services.

**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that the oversight committee hereby is authorized and directed to work with the Tribe's outside legal counsel for retirement matters to develop bylaws detailing the committee's authority and procedures consistent with this Resolution, and to return to the Tribal Council for approval of such bylaws.

**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that the oversight committee shall be authorized to oversee the administration of the 401(k) Plans, to monitor and make changes to Plan investments, to monitor service providers, conduct RFPs, to make all compliance changes required by law, and to take further action as necessary to maintain the Plans or provide benefits consistent with existing and future Council direction.

**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that the oversight committee must obtain approval from the Tribal Council of all substantive changes to the Plan or Trust documents and for all Plan service provider changes, and the oversight committee shall report its activities to the Tribal Council and keep the Tribal Council informed of Plan activities.

**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that the actions authorized herein are subject to the Tribe's reservation of its right to follow final guidance if or when issued under the PPA, and to challenge the DOL's final agency action in the appropriate forum.

**BE IT FURTHER RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that (1) the actions herein are taken by the Tribal Council as a government body not individually, and (2) all actions taken in furtherance of these resolutions are taken by Tribal Council members in their official capacities as such.

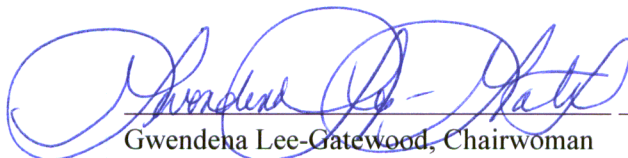
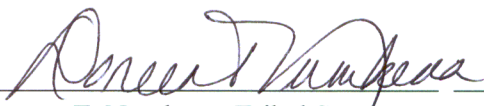
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution 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.

**Resolution No. 06-2019-109**

The foregoing resolution was on **JUNE 10, 2019** duly adopted by a vote of **SIX** 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).

	<u>9/12/19</u>		<u>9-12-19</u>
Gwendena Lee-Gatewood, Chairwoman	Date	Doreen T. Numkena, Tribal Secretary	Date