



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Directing the Tribe to Contract with RGP for Additional 401(k) Related Consulting Services)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“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, with any person, association, or corporation...”; and
- WHEREAS,** 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 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 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,** The United States Department of Labor (the “DOL”) has assessed penalties against the Tribe under the Employee Retirement Income Security Act of 1974 (“ERISA”) for failure to file annual Forms 5500 with audited financial statements for the Enterprise Plan; and
- WHEREAS,** On June, 10, 2019, via Resolution No. 06-2019-108, the Council authorized the Tribe to challenge the DOL penalty assessments through a federal court action titled as *White Mountain Apache Tribe v. Su*, 20-CV-1409, currently pending in the United States District Court for the District of Columbia (the “Action”); and
- WHEREAS,** On September 18, 2023, via Resolution No. 09-2023-212, the Council authorized the settlement of the Action, subject to certain confidential settlement terms reviewed by the Council and set forth in an Exhibit to the authorizing Resolution; and
- WHEREAS,** The terms of the proposed settlement with the DOL require significant work by the Tribe on 401(k) Plan projects, including independent audits of the Enterprise Plan by an outside accounting firm previously engaged by the Tribe; and
- WHEREAS,** The Tribe does not have sufficient internal resources at this time to prioritize and complete the 401(k) Plan tasks that are required for compliance with the terms of the

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proposed settlement and legal counsel recommends that the Tribe retain additional consulting services as soon as possible to work on the 401(k) Plan related projects; and

WHEREAS, The consulting firm RGP (“RGP”) currently contracts with the Tribe to provide certain accounting, financial and limited 401(k) services, and RGP has additional personnel available to further assist the Tribe with the 401(k) Plan related tasks that are required for compliance with the terms of the proposed settlement.

NOW THEREFORE, BE IT RESOLVED, by the Tribal Council of the White Mountain Apache Tribe that Tribe shall engage RGP to provide a consultant who can work directly with the Tribe’s Human Resources Department and focus exclusively on the following types of 401(k) Plan projects with the assistance of legal counsel as appropriate:

- Reconcile employee and participant data;
- Complete compliance correction projects as needed;
- Respond to data requests from Principal and Plan auditors;
- Process routine 401(k) Plan transactions as needed to assist the Retirement Office;
- Develop Plan procedures as needed;
- Train internal personnel on Plan administration and operation.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that the consultant engaged through RGP shall be an experienced human resources professional with experience specific to 401(k) plans and ERISA retirement plan audits, that the consultant shall work on a full-time basis (with the majority of that time being onsite at the Tribe) until the Tribal Council determines that the services can be reduced or modified in scope, and that the consulting arrangement for 401(k) Plan related projects is expected to remain in place for 18 to 24 months.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that the Chairman or Vice Chairman is hereby authorized and directed, on behalf of the White Mountain Apache Tribe, and in its name, to execute a service agreement or an amendment to a service agreement with RGP to obtain the consulting services authorized in these resolutions.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe that the Treasurer and finance staff are hereby directed to process payments to RGP as necessary to pay for consulting services necessary to comply with the terms of the DOL settlement and these resolutions; and

BE IT FURTHER RESOLVED, 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.

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

The foregoing resolution, on APRIL 23, 2024 was 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

<u>Kasey Velasquez</u>	<u>4.24.2024</u>	<u>Janeysa Johnson</u>	<u>4/29/2024</u>
Kasey Velasquez, Chairman	Date	Janeysa Johnson, Tribal Secretary	Date