



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## (Authorizing Creation of Separate Trust Fund for White Mountain Apache Tribe Enterprise 401(k) Plan)

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- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation 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 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 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”) for the benefit of its employees; and
- WHEREAS,** the Tribe has operated the Enterprise Plan in reasonable and good faith compliance with the requirements of the Pension Protection Act (“PPA”) since the PPA went into effect in 2007; and
- WHEREAS,** the Department of Labor (the “DOL”) has assessed penalties against the Tribe because the Tribe has not obtained annual audits of the Enterprise Plan by an independent certified public accountant (“CPA”) and filed those audits with the DOL in connection with the annual Form 5500 filing process; and
- WHEREAS,** the Tribe is engaged in litigation with the DOL regarding the penalty assessments and the interpretation of the PPA requirements with regard to the Enterprise Plan; and
- WHEREAS,** the Tribe wishes to take certain voluntary steps to improve its ability to administer the Enterprise Plan in accordance with the PPA and to aid in the resolution of the pending litigation with the DOL; and
- WHEREAS,** the assets of the Government Plan and the Enterprise Plan are held in a single Trust Fund on a commingled basis, as permitted under the PPA guidance issued by the Department of Treasury in 2006 and 2007; and
- WHEREAS,** the Tribe wishes to create a separate Trust Fund for the Enterprise Plan and spin-off the Enterprise Plan assets and liabilities from the commingled Government/Enterprise Plan Trust Fund to the newly created Enterprise Plan Trust Fund.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that a separate Trust Fund for the White Mountain Apache Tribe Enterprise 401(k) Plan shall be created with Principal Financial Group as soon as administratively feasible.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the assets and liabilities of the Enterprise Plan shall be spun-off from the current commingled Government/Enterprise 401(k) Plan Trust Fund to the newly created Enterprise Plan Trust Fund as soon as administratively feasible.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the assets and liabilities of the Enterprise Plan shall be determined by the Tribe, under the supervision of the Tribal Treasurer, on a reasonable and good faith basis, and the Tribe reserves the right to make adjustments to the Government Plan Trust Fund and the Enterprise Plan Trust Fund as necessary in connection with the Tribe's reasonable and good faith compliance with the PPA.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the foregoing actions are not to be construed as a waiver of any arguments or defenses asserted in pending litigation with the Department of Labor, or as a waiver of any arguments, exemptions or transition period relief available pursuant to Internal Revenue Service Notices 2006-89 and 2007-67, including what constitutes an essential government function and/or commercial activity.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the timing and implementation of the foregoing actions may be coordinated with administration, staffing, contracting, and service changes as reasonably required.

**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 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 was on JUNE 15, 2023 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).

Kasey Velasquez 6-26-2023 Vaneyssa Johnson 6/26/2023  
Kasey Velasquez, Chairman Date Vaneyssa Johnson, Tribal Secretary Date