

RESOLUTION NO. 57 -21
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Approving an Amendment to the Amended Bylaws of the Benefit Plans
Administrative Committee

- WHEREAS:** The Yavapai-Apache Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and to act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided under Article V(a) of the Constitution; and
- WHEREAS:** The Council is authorized is authorized to prescribe employee benefits in accordance with the Nation’s employment policies and procedures as provided under Article V(p) and (q) of the Constitution; and
- WHEREAS:** The Council, as the legislative body of the Nation, is authorized to enact laws, ordinances and resolutions incidental to the exercise of its legislative powers as provided under Article V(v) of the Constitution; and
- WHEREAS:** The Nation sponsors several retirement and health and welfare benefit programs for the benefit of its employees, including the Yavapai-Apache Nation Governmental 401(k) Retirement Plan, the Yavapai-Apache Nation Enterprise 401(k) Retirement Plan, the Yavapai-Apache Nation Benefit Plan, various insured benefit programs providing dental, vision, life insurance and disability insurance, and a Code Section 125 Flexible Benefits Plan (the “Plans”); and
- WHEREAS:** The Council has appointed a Benefit Plans Administrative Committee (“Committee”) to serve as the Plan Administrator of the Plans sponsored by the Nation; and
- WHEREAS:** By Council Resolution No. 244-16, adopted on December 15, 2016, the Council approved the Amended Bylaws of the Benefit Plans Administrative Committee, which includes at Section 2.0(b), the designation of the following positions as voting member positions on the Committee: Yavapai-Apache Nation Director of Finance, Yavapai-Apache Nation Director of Human Resources, Cliff Castle Casino Director of Finance, Cliff Castle Casino Director of Human Resources, and Representative of the Yavapai-Apache Nation Business Board; and
- WHEREAS:** By Council Resolution No. 197-20, adopted on December 10, 2020, the Council separated the duties of the Nation’s Treasurer and Finance Director and approved

the duties of the Treasurer, which include participation as a voting member of the Benefit Plans Administrative Committee; and

WHEREAS: The Council desires to amend Section 2.0(b) of the Amended Bylaws of the Benefit Plans Administrative Committee to replace the Yavapai-Apache Nation Director of Finance with the Yavapai-Apache Nation Treasurer as the voting member position on the Committee, as shown on the Amended Bylaws (*attached to this Resolution as Exhibit A and incorporated herein by reference*).

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby amends Section 2.0(b) of the Amended Bylaws of the Benefit Plans Administrative Committee to replace the Yavapai-Apache Nation Director of Finance with the Yavapai-Apache Nation Treasurer as the voting member position on the Committee, as shown on the Amended Bylaws (*attached to this Resolution as Exhibit A and incorporated herein by reference*), effective immediately.

BE IT FINALLY RESOLVED that the Chairman and Vice-Chairwoman, or either of them, are hereby authorized and approved to take such further action as deemed necessary to carry out the purposes and intent of this Resolution.


CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on March 25 2021, by a vote of 9 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.




Jon Huey, Chairman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

Amendment to the Amended Bylaws of the Benefit Plans
Administrative Committee

**AMENDED BYLAWS OF THE
YAVAPAI-APACHE NATION
BENEFIT PLANS ADMINISTRATIVE COMMITTEE**

PREAMBLE

The Yavapai-Apache Nation, a federally recognized Tribal government (the “Nation”), previously established pursuant to Tribal Council Resolution No. 63-2001 a Benefit Plan Administrative Committee and a 401(k) Savings Plan Committee. The Benefit Plan Administrative Committee was granted the authority to administer the health and welfare benefit plans maintained by the Nation for its employees. The 401(k) Savings Plan Committee was appointed as the named fiduciary of the Nation’s 401(k) Savings Plan and was granted the authority to administer the 401(k) Savings Plan on behalf of the Nation.

Pursuant to Tribal Council Resolution No. 244-16, the Benefit Plans Administration Committee (the “Committee”) has been authorized to serve as the administrator of all retirement, health and welfare programs maintained by the Nation for its employees, in accordance with these Amended Bylaws. The Nation hereby adopts these Amended Bylaws in order to direct and authorize the Committee’s management of the Nation’s Governmental 401(k) Retirement Plan, the Nation’s Enterprise 401(k) Retirement Plan, the Nation’s Benefit Plan (providing medical and prescription drug benefits), the Nation’s dental, vision, life insurance and disability insurance programs, and the Nation’s Section 125 Flexible Benefits Plan for Premium Conversion. For purposes of these Amended Bylaws, the Nation’s benefit programs are collectively referred to as the “Plans,” unless a specific retirement program or health and welfare program is specifically mentioned herein. These Amended Bylaws also are intended to provide for the orderly transition and appointment for membership to the Committee.

Effective as of January 1, 2017 and pursuant to Tribal Council Resolution No. 244-16, the Committee also has been appointed to serve as the Trustee of the Nation’s Governmental 401(k) Retirement Plan and the Nation’s Enterprise 401(k) Retirement Plan, and their related Trust Funds.

I GOVERNMENTAL INSTRUMENTALITY

1.0 The Committee shall operate as a governmental entity or instrumentality of the Nation, charged with responsibility of conducting and overseeing day to day administration of the Plans and any related Trust Funds for, and on behalf of, the Nation. The Committee is a subordinate entity of the Nation. It is the Nation’s intent that the Committee be conducted and operated, to the extent possible, in a manner which is consistent with the promotion of tribal self-sufficiency and strong Tribal government. To foster such intent, the Committee is directed to operate the Plans, to the extent possible,

Adopted on December 15, 2016 by Resolution No. 244, as amended on March 25, 2021 by Resolution No-21.

in accordance with the laws, regulations, and exemptions applicable to governmental employers, taking into account the Nation's sovereign status and governmental responsibilities. To the extent that the Plans cover employees deemed by the Nation to be engaged in commercial activities, the Committee will administer those Plans in operational good faith compliance with the requirements of Section 906 of the Pension Protection Act (the "PPA"), pending publication of final guidance under the PPA or further law changes.

II ADMINISTRATION

2.0 RECONSTITUTION OF COMMITTEE.

(a) **Scope.** The Yavapai-Apache Tribal Council (the "Council") originally appointed the Committee, and has now reconstituted the Committee, with the intention of establishing a body to perform the administrative duties of the Plans, to oversee the financial management issues related to the Plans and to serve in the formal role of Plan Administrator of the Plans. Effective January 1, 2017, the Committee also shall serve as the Trustee of the Nation's 401(k) Retirement Plans.

(b) **Membership.** The Committee shall consist of at least five (5) voting members and no more than nine (9) voting members, appointed by position. Effective January 1, 2017, the voting members shall include the individuals holding the following positions:

- Yavapai-Apache Nation ~~Director of Finance~~ Treasurer;
- Yavapai-Apache Nation Director of Human Resources;
- Cliff Castle Casino Director of Finance;
- Cliff Castle Casino Director of Human Resources; and
- Representative of the Yavapai-Apache Nation Business Board, to be designated by the Business Board.

The membership positions designated above shall automatically and with no action of the Nation or the Committee extend to an individual serving in a designated position on an "Acting" or "Interim" basis. If a voting member listed above so chooses, he or she may designate an alternate to attend to Committee business in his or her absence. All alternates shall be designed by voting members during a Committee meeting, with the name and position of the alternate recorded in the minutes of a Committee meeting. Any designated alternates are encouraged to attend Committee meetings on a regular basis to remain apprised of the business of the Committee and to enable the alternate to participate fully in any Committee meetings at which the primary voting member is not present.

A representative of the Nation's Office of the Attorney General shall provide legal counsel to the Committee but shall not vote on Committee business. Additionally, the Committee may invite additional individuals to serve on the Committee as non-voting members, such as a Payroll Manager and/or Benefits Manager, if the presence and participation of such individuals will assist the Committee, improve the administration of the Plan or benefit the employees of the Nation and its enterprises.

(c) Removal/Resignation/Successors. Committee membership is attached to the elected, appointed and employment positions designated in paragraph (b) above and shall transfer automatically to the incumbent of each designated position. Notwithstanding the foregoing, an individual member of the Committee may resign with thirty (30) days notice in writing to the Council, and may be removed by a duly adopted resolution of the Council. Upon resignation or removal of a member or members, the Committee shall operate with full authority with the remaining member(s) until replacement(s) is/are appointed. All successor appointments shall be made through Committee recommendation and confirmation by the Council. If no members remain, the Council itself shall serve in place of the Committee.

2.1 MEETINGS.

The Committee shall meet as needed to fulfill its responsibilities under the Plans. Meetings are expected to be held quarterly, unless the Chair of the Committee determines a meeting is not required, but Committee meetings shall be held no less frequently than annually. The Committee may meet telephonically or electronically, as necessary, and may take any ordinary action without the necessity of meeting in person as a group.

2.2 COMPENSATION.

The Committee members shall serve without compensation. The Committee members shall receive their regular pay and expense reimbursements, pursuant to the applicable employment or Board policies and procedures, while performing Plan duties.

2.3 CHAIR AND VICE CHAIR.

The Yavapai-Apache Nation Director of Human Resources shall serve as the Chair of the Committee. The Committee shall elect a Vice Chair from among its members. The Chair, or in the absence of the Chair, the Vice Chair, shall preside over all meetings. The Chair of the Committee shall appoint an appropriate individual (who may or may not be a member of the Committee) to attend Committee meetings and record all acts and determinations of the Committee and to assist the Chair in the preservation and retention of all Committee records and such other documents as may be necessary for the administration of the Plans or as may be required by law.

2.4 MAJORITY VOTE; QUORUM; AND EXECUTION OF INSTRUMENTS.

Committee action shall require a quorum of three voting members. In all matters, questions and decisions, the action of the Committee shall be determined by a majority vote. All decisions requiring a vote of the Committee shall be adopted by motion, provided that the Chair or Vice Chair may require the Committee to take action pursuant to written or oral resolutions in certain situations. The Chair or Vice Chair must participate to conduct Committee business. The Chair or Vice Chair may execute documents on behalf of the Committee.

2.5 ALLOCATION OF RESPONSIBILITIES AMONG COMMITTEE MEMBERS.

The Committee may allocate responsibilities among its members or designate other persons to act on its behalf. Any allocation or designation, however, must be set forth in writing and must be retained in the permanent records of the Committee.

2.6 CONFLICT OF INTEREST.

No member of the Committee who is a participant in the Plan shall take part in any action in connection with a benefit claim/review submitted by said Committee member with regard to his or her own participation in the Plan. Such action shall be voted or decided by the remaining members of the Committee, or by another individual appointed by the Council to vote on or decide such action if a quorum cannot otherwise be met.

2.7 ADMINISTRATIVE POWERS AND DUTIES OF THE COMMITTEE.

(a) GENERAL POWERS. The Committee shall have the power and discretion to perform the administrative duties, financial management and financial oversight powers described in the Plans. Without limiting the generality of the foregoing, the Committee shall have the power and discretion to construe and interpret the Plans, to hear and resolve claims relating to the Plans, and to decide all questions and disputes arising under the Plans. The Committee shall determine, in the exercise of its discretion, the eligibility of employees to participate in the Plans, the service credited to the employees, the status and rights of a participant, and the identity of the beneficiary or beneficiaries entitled to receive any benefits payable on account of the death of a participant.

(b) BENEFIT PAYMENTS. The Committee shall determine, subject to the terms of the Plan, the manner and time of payment of benefits thereunder.

(c) PLAN AMENDMENTS. The Committee shall have the power and discretion to approve compliance and administrative amendments to the Plan documents. Plan amendments involving discretionary or design changes shall be reviewed by the Committee and referred to the Tribal Council for approval.

(d) PLAN EXPENSES. Expenses of the Plans, to the extent that the Nation does not pay such expenses, may be paid out of the assets of the Plans. Expenses that may be paid by the Plans shall include any expenses incurred by the Committee or Trustee, as applicable, in the exercise of their duties under the Plans, including, but not limited to, expenses for recordkeeping and other administrative services; accounting and legal expenses fees and expenses of the custodian; expenses for investment education and investment management services; and direct costs that the Nation incurs with respect to the Plan. The Committee is authorized to enter into contracts for the provision of necessary Plan services subject to any budgetary constraints imposed by the Tribal Council.

(e) POLICIES AND PROCEDURES. The Committee shall adopt uniform and nondiscriminatory policies and procedures necessary for the proper administration of the Plan. Such policies and procedures shall be consistent with the affected Plan(s) and the applicable legal requirements.

(f) PLAN DESIGN. The Committee shall monitor the Plans and Plan benefits, review Plan documents, and recommend to Tribal Council modifications to the Plans as the Committee deems appropriate.

(g) 401(K) PLAN INVESTMENTS. The Committee shall work with the independent investment advisor(s) engaged by the Nation to manage the investment of the Nation's 401(k) Retirement Plans. The Committee shall oversee the investment advisor's provision of participant education and shall monitor, select and replace investment alternatives as recommended by the investment advisor.

(h) PLAN CONTRIBUTIONS. The Committee shall monitor and oversee the transmission of contributions to the 401(k) Retirement Plan Trust Funds maintained in connection with the 401(k) Retirement Plans. The Committee shall monitor and oversee the collection and appropriate application of health and welfare Plan contributions and the payment of any and all related premium expenses.

(i) EXERCISE OF DISCRETION; DECISIONS FINAL. All powers and duties conferred on the Committee shall be exercised or performed by the Committee in the exercise of its discretion regardless of whether a Plan provision conferring such power or imposing such duty specifically refers to the Committee's discretion.

(j) LEGAL REPORTING AND DISCLOSURE RESPONSIBILITY. The Committee shall file all reports and forms lawfully required to be filed with regard to the

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Plans with any governmental agency or department, as applicable, and shall distribute any forms, reports, statements or Plan descriptions lawfully required to be distributed to participants and others by any governmental agency or department, Tribal, Federal or state. The Committee shall consult legal counsel as to all reporting requirements.

(k) SERVICE PROVIDERS. The Committee shall interface with service providers engaged by the Nation to provide services related to the Plans and shall monitor the performance of such service providers. When necessary or appropriate, the Committee shall recommend to the Tribal Council the replacement of a service provider. The Committee shall conduct searches for Plan service providers and pre-screen candidates for the Tribal Council.

(l) REPORTS TO COUNCIL. The Committee shall report to the Tribal Council regarding the administrative activities of the Plans on a semi-annual basis.

III ADMINISTRATION OF CLAIMS.

3.0 GENERAL AUTHORITY.

The Committee, rather than the Tribal Council, the Tribal Court, or other entities or political bodies, shall have the primary responsibility to administer and/or oversee claims related to the Plans.

3.1 FILING OF CLAIMS AND APPEALS.

A participant or beneficiary entitled to benefits under a Plan shall complete any claim or benefit forms required for the processing of benefits under such program. If a person is dissatisfied with the determination of his benefits, eligibility, participation or any other right or interest under a Plan, such person must follow any published procedures for review as specified in the applicable Plan document. In the absence of such procedures, the individual may provide a written statement setting forth the basis of the claim with the Committee in a manner prescribed by the Committee. In connection with the determination of a claim, the claimant may examine the pertinent Plan documents generally available to participants relating to the claim, and may submit comments in writing.

3.2 DECISIONS AND APPEALS.

A written notice of the disposition of an initial claim or appeal shall be furnished to the claimant in accordance with the applicable Plan provisions or, in the absence of such provisions, within thirty (30) days after the claim is filed with the Committee. Any Notice of Decision shall refer, if appropriate, to pertinent provisions of the applicable Plan, shall set forth in writing the reasons for denial of the claim if the claim is denied

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(including references to any pertinent provisions of the Plan), and where appropriate shall explain how the claimant can perfect the claim. All appeal rights and notices shall comply with applicable law and the Plan documents related to the claim. The Committee may adopt additional or amended claim and appeal procedures from time to time subject to applicable law, which may include outside review where applicable.

3.3 DECISIONS FINAL; PROCEDURES MANDATORY.

To the extent permitted by law, a decision on review by the Committee shall be binding and conclusive upon all persons whomsoever. To the extent permitted by law, completion of the claims procedures set forth in a Plan document or described in this Section shall be a mandatory precondition that must be complied with prior to commencement of a legal or equitable action in connection with the Plan by a person claiming rights under the Plan or by another person claiming rights through such a person. The Committee may, in its sole discretion, waive these procedures as a mandatory precondition to such an action. After exhausting internal claims procedures, a claimant who is still not satisfied may seek judicial review if he or she believes that the Committee has abused its discretion in hearing the appeal, but only after applying to the Tribal Council for permission to bring a legal action.

3.4 TRIBAL SOVEREIGNTY.

The Committee is not authorized to waive the Nation's sovereign immunity from suit in connection with any claim under a Plan, which may be waived only by specific and express action of the Tribal Council. To the extent permitted by law and in accordance with any delegation made by the Tribal Council, all matters and disputes related to the Plan shall be determined within the exclusive jurisdiction of the Yavapai-Apache Nation.

IV. GENERAL MATTERS

4.0 INDEMNIFICATION; INSURANCE.

Each present, former, and future Committee member shall be entitled, without prejudice to any other rights he/she may have, to be reimbursed and indemnified, by the Nation for any of the following: all legal and other expenses reasonably incurred by the Committee member in connection with any claim, action, suit or proceeding of whatever nature in which the Committee member may be involved as a party or otherwise by reason of his or her service as a member of the Committee, or by reason of any action alleged to have been taken or omitted by him or her as a Committee member. Reimbursement and indemnification under this section includes amounts paid or incurred in connection with reasonable settlements made (i) with a view to curtailment of costs of litigation; and (ii) with the approval of

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the Tribal Council. No such reimbursement of indemnification shall relate to any expense incurred or settlement made in connection with any matter arising out of gross negligence or misconduct of such member as determined either by a court of competent jurisdiction or, in the absence of such a determination, by a majority of the Committee members acting on the advice of counsel. The Committee and its members, officers, employees, and agents shall not be liable to anyone for making any determination as to the existence or absence of liability, or for making or refusing to make any payment hereunder on the basis of such determination, or for taking or omitting to take any other action hereunder, in reliance upon the advice of counsel. The Committee may purchase fiduciary, errors and omissions coverage, or other such insurance protection as it deems prudent and consistent with the policies and procedures of the Nation, in order to reduce the Nation's exposure to liability and/or indemnification obligations hereunder or under the Plans.

4.1 AMENDMENT OF BYLAWS

Subject to any provision of law applicable to the amendment of Bylaws, these Bylaws, may be altered, amended, or repealed and new Bylaws adopted as follows:

- (a) Said change must be evidenced by a written document, executed and approved by a minimum of four members of the Committee;
- (b) Said change must obtain the approval of the Council, and be supported by a duly adopted Council resolution.

4.2 STATUTORY AGENT

The Chair of the Committee shall be the agent of the Committee for the purposes of accepting service of process.

4.3 NO WAIVER OF SOVEREIGN IMMUNITY.

The Committee is not authorized to waive the Nation's sovereign immunity from suit. Any such waivers may be granted pursuant to federal and tribal law. Nothing in these Amended Bylaws shall be construed as a waiver of the Nation's sovereign immunity.