

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

- WHEREAS.** the Tribal Attorney advises the Tribal Council that the agreement between the White Mountain Apache Tribe and Southern Arizona Legal Aid, Inc. entered into on December 1, 1996 for Legal Aid to provide Public Defender services for indigent criminal defendants on the Fort Apache Indian Reservation has been a tremendous success as over 300 public defender files have been opened by Legal Aid during the contract period; and
- WHEREAS.** the overwhelming majority are clients in adult court proceedings and about 10% motion practice, brief service and juvenile court services; and
- WHEREAS.** the Legal Aid Public Defender has been representing one half to two thirds of the pre-trial calendar and is regularly called to the jail or contacted by relatives to represent new clients; and
- WHEREAS.** the Tribal Legal Aid Office and its attorneys are available on a daily basis in close proximity to both the court and the jail; and
- WHEREAS.** the greatest value of the Public Defender is its intervention in the judicial process as the defendant's advocate so that the prosecution is not placed in the awkward position of having to negotiate directly with the defendant thereby creating a conflict for the prosecutor; and
- WHEREAS.** Public Defender review of arrest evidence and police procedures has provided a checks and balance system to insure that police reports are complete, that charges are accurate and that the sentence fits the actual misconduct; and
- WHEREAS.** the Tribal Council has an interest in providing due process and the fair administration of justice on the Fort Apache Indian Reservation and representation for indigent criminal defendants; and
- WHEREAS.** the initial grant was funded by the Public Welfare Foundation in Washington, D.C. and the Tribal Legal Department has submitted an application for funding for fiscal year 1998 but there is no certainty that the Tribe will receive funding for two years in succession; and

**WHEREAS,** in early December, 1997 Legal Aid began to shut down its intake of new criminal cases because of the dwindling contract hours left in the contract and it cannot represent criminal defendants with non-tribal or federal funding due to a federal law which could result in termination of Legal Aid and a violation of Inspector General Guidelines; and

**WHEREAS,** the only way in which Legal Aid can provide public defender services under federal law is with Tribal funds under a contract basis and it is imperative that interim funding be provided and a contract signed for public defender services in the event that the Public Welfare Foundation monies are not forthcoming and the grant is not awarded; and

**WHEREAS,** lack of funding is now at a critical stage because of the expiration of the public defender contract with the Tribe effective December 31, 1997 and the Public Defender's Office cannot accept any new clients for defense against criminal charges in Tribal Court or Juvenile Court which will create a hardship on indigent criminal defendants and the Tribal Prosecution Office; and

**WHEREAS,** tribal members do not have sufficient funds to hire private counsel or advocates in most instances.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it concludes that it is extremely important that the public perception of fairness in the Tribal Court be upheld and that tribal members who are indigent and criminal defendants be provided due process and adequate representation when they appear in Tribal Court or Juvenile Court on criminal charges.

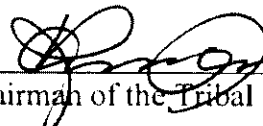
**BE IT FURTHER RESOLVED** by the Tribal Council that it recognizes its responsibility to the people of the White Mountain Apache Tribe and realizes that it cannot rely upon grant funds from the Public Welfare Foundation although such funds are sorely needed to provide public defender services to people on the White Mountain Apache Reservation.

**BE IT FURTHER RESOLVED** by the Tribal Council that, although funding sources are very limited, the Tribal Council concludes that it is an imperative necessity for the welfare and safety of the people that the Tribal Chairman be authorized to enter into an agreement on behalf of the Tribe with Southern Arizona Legal Aid, Inc. to provide Public Defender services in accordance with the proposed contract attached to this resolution and incorporated by reference herein, said contract providing not less than 1,400 hours of attorney legal services to represent defendants charged with crimes within the criminal jurisdiction of the Tribe.

**BE IT FURTHER RESOLVED** by the Tribal Council that it hereby authorizes the contract sum of \$51,400 for the one year term of this Agreement provided that \$3,400 in conflict funds be withheld from the annual amount until the 11th month of the Agreement for payment of legal services for co-defendants in conflict situations and that Legal Aid shall receive payment of the \$51,400 in semi-annual payments with the first one due June 1998 and the second payment December 31, 1998, provided, however, that if the Tribe is successful in obtaining grant funds then said grant funds shall be utilized in substitution of tribal funds for the Public Defender's contract.

**BE IT FURTHER RESOLVED** by the Tribal Council that the Tribal Chairman or in his absence, the Vice-Chairman, is authorized to sign any and all contract documents necessary to carry out the purposes of this resolution.

The foregoing resolution was on February 5, 1998 duly adopted by a vote of nine for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (i), (j), (k), (s) (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
\_\_\_\_\_  
Chairman of the Tribal Council

  
\_\_\_\_\_  
Secretary of the Tribal Council

**AGREEMENT BETWEEN THE WHITE MOUNTAIN APACHE TRIBE**

**AND**

**SOUTHERN ARIZONA LEGAL AID, INC.**

**FOR PUBLIC DEFENDER SERVICES**

**RECITALS**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the White Mountain Apache Tribe (hereinafter "TRIBE"), and Southern Arizona Legal Aid, Inc. (SALA), an Arizona non-profit corporation authorized to engage in the practice of law in the State of Arizona, and doing business on the Fort Apache Indian Reservation in Whiteriver, Arizona, under the name of White Mountain Apache Legal Services (hereinafter "ATTORNEYS" or "SALA" as the case may be).

**WHEREAS**, the TRIBE wishes to provide public defender services for persons residing within the territorial jurisdiction of the White Mountain Apache Tribe who are subject to the criminal jurisdiction of the TRIBE; and

**WHEREAS**, the SALA maintain a legal services office within the boundaries of the Fort Apache Indian Reservation, known as White Mountain Apache Legal Services, and is willing to provide public defender services in the Tribal Court for persons residing within the Fort Apache Indian Reservation who are subject to the criminal jurisdiction of the Tribal Court, and the TRIBE and ATTORNEYS having reached agreement for the provision of said public defender services, it is hereby agreed as follows:

**AGREEMENT**

1. The "TRIBE" hereby contracts with, retains and employs ATTORNEYS, in the matters hereinafter described.

2. It shall be the duty of the ATTORNEYS to provide direct public defender legal services in adult and juvenile criminal matters in Tribal Court, irrespective of financial eligibility as required under the Legal Services Corporation criteria, and to provide secretarial support for said public defender attorneys. The grant funds identified herein shall not be utilized for the payment of support staff for legal services but only for attorney time in the representation of defendants charged with crimes within the criminal jurisdiction of the TRIBE.

3. The ATTORNEYS in the performance of the duties required of them under this Agreement, shall be subject to State and Tribal rules governing professional ethics, as determined by the Tribal Judicial Code.

4. In consideration of the services to be rendered, the SALA shall receive \$51,400.00 for the one-year term of this Agreement. Payment shall be made, semi-annually in the amount of \$25,700.00 each, provided, however, that \$3,400.00 conflict of the \$51,400.00 shall be withheld until the eleventh month of the Agreement for payment of legal services for co-defendants in conflict situations. If after eleven months of the Agreement there does not appear to be any co-defendant or conflict cases, then the balance of the \$3,400.00 shall be remitted to the SALA as payment for legal services rendered. The ATTORNEYS shall submit monthly billing statements to the Tribe's Legal Department detailing the attorney hours worked for that month by case name and brief description of services rendered. The TRIBE and the ATTORNEYS shall confer prior to submitting the monthly billing statement to decide on a mutually agreeable format which will also satisfy the Public Welfare Foundation's year end reporting requirements. In no event shall the compensation in this paragraph be less than \$48,000.00 or more than \$51,400.00, except with the express written approval of the Tribal Council of the White Mountain Apache Tribe.

5. No assignment of the obligation of this Agreement, in whole or in part, shall be made without the prior written consent of the Tribal Council or its authorized representative, nor shall any assignment or encumbrance be made of any interest of the ATTORNEYS in the compensation to be paid under this Agreement without such consent and approval. If such an assignment of the obligations of this Agreement, or assignment or encumbrance of any interest in the compensation to be paid is made in violation of the provisions of this paragraph, this Agreement may be terminated at the option of the TRIBE and no ATTORNEY having any interest in the Agreement or in the fee provided herein shall be entitled to any compensation whatsoever for any services rendered or expenses incurred subsequent to the date of termination.

6. This Agreement may be terminated by either party by giving sixty (60) days written notice to the other party, and if the Agreement shall be so terminated, SALA shall receive such compensation as the TRIBE or its representative determines equitably to be due to date of termination after consultation with SALA.

7. ATTORNEYS shall provide a minimum of one full time Arizona licensed ATTORNEY as defined in Paragraph 9 of this Agreement to perform public defender services under this Agreement for persons subject to the criminal jurisdiction of the White Mountain Apache Tribal Court. The ATTORNEYS agree to provide in the aggregate, no less than 1,400 hours of attorney legal services. Nothing in this Agreement shall prevent the ATTORNEYS from distributing the 1,400 hours within their attorney staff so long as the 1,400 hours legal services is provided within the Agreement year, which for purposes of this Agreement shall commence December 1, 1997 and terminate December 31, 1998.

8. ATTORNEYS stipulate that they are fully licensed members in good standing of the State Bar of Arizona, and to the best of their knowledge, no disciplinary proceedings have been instituted against them by a bar association of any jurisdiction of the United States or its territories, including tribal courts, which are pending and/or unresolved, and they have not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories.

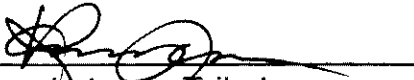
9. Each of ATTORNEYS, their employees, agents, affiliates or subcontractors, will act solely as independent contractors in performing the work. Nothing herein shall be construed to create the relationship of employer and employee, principal and agent, partners or joint venturers between TRIBE and ATTORNEYS or their employees, agents, affiliates or subcontractors. Except as specifically provided in this Agreement, ATTORNEYS shall have no right or authority to act for TRIBE and will not enter into any contract or other agreement, or incur any debt, liability or obligation of any nature, in the name of or on behalf of TRIBE. SALA, their agents, affiliates or subcontractors shall pay all salaries, wages, expenses, payments pursuant to Worker's Compensation laws, Social Security taxes, federal and state unemployment taxes and any other similar payroll taxes relating to the performance of this Agreement. SALA hereby agrees to defend, indemnify and hold harmless the TRIBE and all of its departments, attorneys, agencies, officers, agents, and/or employees from all claims, losses, suits, damages, liabilities and expenses of whatever kind of nature, including reasonable attorney's fees, arising out of or resulting in any way from any negligent, reckless or intentional act, legal malpractice, error, omission, and/or mistake, strict liability of the ATTORNEYS or any person employed by SALA, or anyone for whose acts the ATTORNEYS are legally liable. ATTORNEYS shall maintain at all times during the term of this Agreement legal malpractice insurance coverage.

10. The validity and construction of this Agreement shall be governed by the contract laws of the White Mountain Apache Tribe and any disputes arising hereunder shall be subject to the exclusive jurisdiction of the Courts of the White Mountain Apache Tribe. The execution and performance of this Agreement shall take place within the exterior boundaries of the Fort Apache Indian Reservation.

IN WITNESS WHEREOF, the parties have executed this Agreement in two counterparts, each of which shall be deemed an original on the date first written above.

DONE in Whiteriver, Arizona on the Fort Apache Indian Reservation.

WHITE MOUNTAIN APACHE TRIBE  
"TRIBE"

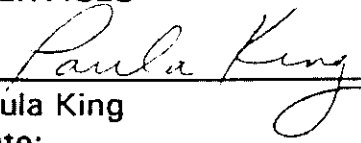
By:   
Ronnie Lupe, Tribal  
Dated:  
P.O. Box 1150  
Whiteriver, Arizona 85941

SOUTHERN ARIZONA LEGAL AID, INC.  
(SALA) "ATTORNEYS"

By: \_\_\_\_\_  
Paul Julien, Executive  
Dated:  
64 E. Broadway  
Tucson, AZ 85701

WHITE MOUNTAIN APACHE  
LEGAL SERVICES

Or: \_\_\_\_\_  
Lafe Altaha, Vice Chairman  
Dated:  
P.O. Box 700  
Whiteriver, Arizona

By:   
Paula King  
Date:  
P.O. Box 1030  
Whiteriver, Arizona 85941