

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

**(Approving a Fourth Amendment to the 401(k) Plan)**

**WHEREAS,** the White Mountain Apache Tribe, as a federally recognized 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 White Mountain Apache Tribe sponsors the White Mountain Apache Tribe Retirement Savings and 401(k) Plan (the "401(k) Plan") and the White Mountain Apache Tribe Public Safety Pension Plan (the "PSP") for the benefit of its employees; and

**WHEREAS,** the Internal Revenue Service has published certain additional guidance and model amendments in response to the changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); and

**WHEREAS,** the 401(k) Plan and the PSP must be amended to incorporate certain regulatory and legislative provisions.

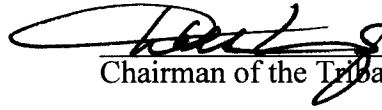
**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Fourth Amendment to the 401(k) Plan, attached hereto in draft form, is hereby approved and adopted, and that the Chair or Vice Chair of the Tribe is hereby authorized and directed, on behalf of the White Mountain Apache Tribe, and in its name, to execute said Agreement, with any changes thereto as may be advised by legal counsel to the extent consistent with these resolutions.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the First Amendment to the PSP, attached hereto in draft form, is hereby approved and adopted, and that the Chair or Vice Chair of the Tribe is hereby authorized and directed, on behalf of the White Mountain Apache Tribe, and in its name, to execute said Amendment, with any changes thereto as may be advised by legal counsel to the extent consistent with these resolutions.

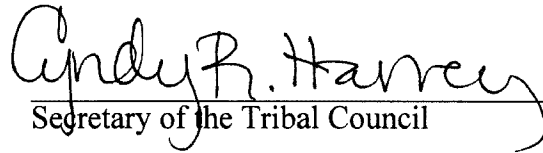
The foregoing resolution was on APRIL 6, 2005 duly adopted by a vote of NINE for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in its by Article IV, Section 1 (a), (b), (i), (t), and (u) of the Constitution of the Tribe, ratified by the

**Resolution No. 04-2005-81**

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

**FOURTH AMENDMENT TO THE  
WHITE MOUNTAIN APACHE TRIBE  
RETIREMENT SAVINGS AND 401(K) PLAN**

Effective May 1, 1991, the White Mountain Apache Tribe, a federally recognized Tribal government (the "Employer"), established the "White Mountain Apache Tribe Retirement Savings Plan", now known as the "White Mountain Apache Tribe Retirement Savings and 401(k) Plan" (the "Plan"). The Plan was most recently amended and restated in its entirety effective as of May 1, 2001. On February 14, 2003, the Internal Revenue Service issued a favorable determination letter regarding the 2001 Plan document and the First Amendment thereto. The Plan was amended thereafter to incorporate certain legislative and regulatory changes, and to coordinate the eligibility provisions of this Plan with the Employer's Public Safety Retirement Plan. By this instrument, the Employer intends to further amend the Plan to revise the Plan's mandatory distribution provisions in accordance with EGTRRA and to make certain other changes.

1. The provisions of this Fourth Amendment shall be effective as of the date of its execution, except as otherwise set forth below.

2. This Amendment shall amend only those sections of the Plan set forth herein, and those sections not amended shall remain in full force and effect.

3. Section 4.11(a) of the Plan, as amended by Section 15.5 of the Plan, is hereby amended and restated in its entirety to read as follows:

(a) CONTRIBUTION. Any Participant who has received a distribution from a plan, contract or account of a type specified below may transfer such distribution to the Trust Fund if such contribution to the Trust Fund would constitute, in the sole and absolute discretion of the

Plan Administrator, a "rollover contribution" within the meaning of the applicable provisions of the Code. Requests to make rollover contributions from the following plans, contracts or arrangements may be considered by the Plan Administrator: (1) a qualified plan described in section 401(a) or 403(a) of the Code; (2) an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions; (3) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code, excluding after-tax employee contributions. Additionally, a Participant may request that the Trustee accept a transfer from the trustee of another qualified plan. The Plan Administrator may, in its sole discretion, decline to accept a rollover contribution or a transfer. Upon approval of the Plan Administrator, the Trustee shall accept such rollover contribution or transfer in the form of cash or other property acceptable to the Trustee. For purposes of this Plan, both a "rollover contribution" within the meaning of the applicable provisions of the Code and a transfer initiated by the Participant from another plan shall be referred to as a "Rollover Contribution."

4. Section 5.3 of the Plan is hereby amended and restated in its entirety to

read as follows:

**5.3. ANNUAL TRUE UP; CORRECTIVE CONTRIBUTIONS.**

(a) TRUE UP. In the event that a Participant makes Employee Basic Contributions to the Plan for less than a full Plan Year, the Plan Administrator may determine whether the Participant has received the appropriate Employer Regular Matching Contribution, if any, for the Plan Year based on the current Employer Regular Matching Contribution formula. If necessary, the Plan Administrator shall cause the Employer to make a true up Employer Regular Matching Contribution on behalf of any affected Participant, which shall be allocated as of the last day of the Plan Year.

(b) CORRECTIVE CONTRIBUTIONS. Notwithstanding anything herein to the contrary, but subject to all applicable limitations of the Code, the Employer may make additional contributions to the Plan as needed to correct any errors in administration which may occur from time to time. Such corrective contributions shall be limited to the extent necessary (including earnings as applicable) to place affected Participants in the position they would have been in but for such error or errors, and

shall be allocated to the account or accounts in which the error was made, subject to all rules and procedures otherwise applicable to such accounts.

5. Section 6.2 of the Plan is hereby amended by adding a new subparagraph

(f) to the end thereof which shall read as follows:

(f) ALLOCATION OF PLAN EXPENSES. All Plan expenses paid out of the Plan pursuant to 10.12 will be allocated in accordance with the uniform and nondiscriminatory policies of the Plan Administrator. The Plan Administrator may determine, in its discretion, to allocate Plan expenses to all current and former Participants of the Plan, to a particular class of Participants (such as former Participants), or to charge the account of a particular affected Participant; provided, however, that such allocations are reasonable and that any allocation to former Participants does not impose a significant detriment on the former Participant's right to leave his or her account balance in the Plan. All expenses which are allocated among Participant accounts shall be allocated as of the last day of the Plan Year during which such expenses were paid and shall be allocated either on an pro rata or per capita basis, as determined by the Plan Administrator in its discretion. No expenses shall be allocated to a Participant if the Participant's Accounts are reduced to zero pursuant to subparagraphs (a) - (e) above.

6. Section 8.6(d) of the Plan, as amended by Section 15.6 of the Plan, is hereby amended and restated in its entirety as follows:

(d) DISTRIBUTION OF SMALL AMOUNTS. Effective March 28, 2005, and notwithstanding any provision of the Plan to the contrary, the Plan Administrator, in its sole discretion, may direct payment of benefits in a single lump sum, without the Participant's consent, if the total amount distributable to the Participant (or a surviving spouse or alternate payee) from all of his accounts does not exceed One Thousand Dollars (\$1,000.00) or such lesser amount determined by the Plan Administrator, in its sole discretion and pursuant to a uniform and nondiscriminatory policy, to be the appropriate small account distribution limit. No distribution may be made pursuant to the preceding sentence after the Benefit Commencement Date unless the Participant and the Participant's spouse, if any, consent in writing to the distribution.

7. The final sentence of Section 8.11(b)(1) of the Plan is hereby amended and restated in its entirety as follows:

Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

8. Section 8.12(d) of the Plan is hereby amended by adding the following additional subsections to the end thereof as follows:

(9) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Code; or

(10) Any other circumstance or expense designated by the Commissioner of Internal Revenue as a deemed immediate and heavy financial need in any published revenue ruling, notice or other document of general applicability.

9. Article X of the Plan is hereby amended by adding a new section to the end thereof which shall read as follows:

**10.12. PAYMENT OF PLAN EXPENSES.**

Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan. Expenses that may be paid by the Plan shall include any expenses incurred by the Plan Administrator or Trustee in the exercise of their duties under the Plan, including, but not limited to, expenses for recordkeeping and other administrative services; accounting expenses fees and expenses of the custodian; expenses for investment education and investment management services; and direct costs that the Employer incurs with respect to the Plan.

IN WITNESS WHEREOF, the Employer has caused this Fourth Amendment to be executed by its duly authorized representative as of the date set forth below.

**WHITE MOUNTAIN APACHE TRIBE**

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

**FIRST AMENDMENT TO THE  
WHITE MOUNTAIN APACHE TRIBE  
PUBLIC SAFETY PENSION PLAN**

Effective September 7, 2003, the White Mountain Apache Tribe, a federally recognized Tribal government (the "Employer"), established the "White Mountain Apache Tribe Public Safety Pension Plan" for the benefit of its full time certified police officers, fire fighters, detention officers and rangers who are regularly assigned to hazardous duties (the "Plan"). On July 31, 2004, the Plan was submitted to the Internal Revenue Service for a determination letter, and that application is pending with the IRS. By this instrument, the Employer intends to amend the Plan to revise the Plan's mandatory distribution provisions in accordance with EGTRRA and to incorporate the model amendment published by the IRS in connection with the final and temporary regulations published under Section 401(a)(9) of the Code.

1. The provisions of this First Amendment shall be effective as of the date of its execution, except as otherwise set forth below.

2. This Amendment shall amend only those sections of the Plan set forth herein, and those sections not amended shall remain in full force and effect.

3. The first sentence of Section 4.2(a) of the Plan is hereby amended and restated in its entirety and shall read as follows:

Members who separate from service before qualifying for a Pension benefit under the PSP shall have the right to receive a Refund Distribution upon termination in lieu of future monthly Pension benefits, subject to the transfer provisions of paragraph (c) below and the lump sum distribution provisions of Section 5.8.

4. Section 4.2(c) of the Plan is hereby amended and restated in its entirety and shall read as follows:

(c) TRANSFER OF REFUND DISTRIBUTION. Effective March 28, 2005, any Refund Distribution payable pursuant to paragraph (a) above and which is not distributed in accordance with Section 5.8 shall automatically be

transferred to the White Mountain Apache Tribe Retirement Savings and 401(k) Plan (the "401(k) Plan"). Following any such transfer, the Refund Distribution shall be held for the benefit of the Member in accordance with the provisions of the 401(k) Plan. No such transfers shall be processed before the close of the second Plan Year following the Plan Year in which the Member's employment is terminated, unless the Member files a written request for an earlier transfer with the Plan Administrator.

5. Section 4.2 of the Plan is hereby amended by adding a new paragraph (e) to the end thereof which shall read as follows:

(e) **INELIGIBLE EMPLOYMENT CLASSIFICATIONS.** A Member whose employment is changed for any reason to an ineligible position with the Tribe or an Affiliate before the Member qualifies for a Pension benefit under the PSP shall not be eligible to receive a Refund Distribution prior to the Member's separation from service with the Tribe and its Affiliates. Such a Member shall have the option of leaving his or her contributions in the PSP until the close of the second Plan Year following the Plan Year in which the Member's PSP eligible employment terminated or transferring his or her Refund Distribution to the 401(k) Plan. At the end of the two (2) year period specified above, the Member's Refund Distribution shall be transferred to the 401(k) Plan automatically.

6. Section 5.8 of the Plan is hereby amended and restated in its entirety and shall read as follows:

**5.8 PAYMENT OF SMALL ACCOUNTS AND CASH OUTS.**

(a) **MANDATORY DISTRIBUTIONS.** Effective March 28, 2005, if the value of all benefits payable pursuant to this Plan to a Member, surviving spouse or any beneficiary is Actuarially Equivalent to a lump sum of One Thousand Dollars (\$1,000.00) or less, the Plan Administrator may direct the Trustee to pay the benefit in the form of a single lump sum distribution without the consent of the Member or the Member's spouse, if any. No distribution may be made pursuant to the preceding sentence after the Annuity Starting Date unless the Member and the Member's spouse, if any, (or where the Member has died, the spouse alone) consent in writing to such distribution.

(b) **DISTRIBUTIONS WITH CONSENT.** Upon receipt of a written request from the Member, and subject to the spousal consent requirements of Section 5.6 and the other provisions of this Article V, the Plan Administrator may direct the Trustee to pay a Refund Distribution in the form of a single lump sum, even if such lump sum benefit exceeds the amount specified in paragraph (a) above.



(c) TIMING RULE. All distributions pursuant to this Section 5.8 must be made not later than the close of the second Plan Year following the Plan Year in which the Member's employment is terminated.

7. The Plan is hereby amended by adding the Code Section 401(a)(9) model amendment to the end thereof as a new Article XIII which shall read as follows:

### ARTICLE XIII

#### MINIMUM REQUIRED DISTRIBUTIONS

##### 13.1 GENERAL RULES.

(a) EFFECTIVE DATE. The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) PRECEDENCE. The requirements of this article will take precedence over any inconsistent provisions of the Plan.

(c) TREASURY REGULATIONS INCORPORATED. All distributions required under this article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

##### 13.2 TIME AND MANNER OF DISTRIBUTION.

(a) REQUIRED BEGINNING DATE. The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's required beginning date.

(b) DEATH OF MEMBER BEFORE DISTRIBUTIONS BEGIN. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70 ½, if later.

(2) If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will

be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(4) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Section 13.2(b), other than Section 13.2(a), will apply as if the surviving spouse were the Member.

For purposes of this Section 13.2 and Section 13.5, distributions are considered to begin on the Member's required beginning date (or, if Section 13.2(d) applies, the date distributions are required to begin to the surviving spouse under Section 13.2(a)). If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 13.2(a)), the date distributions are considered to begin is the date distributions actually commence.

(c) **FORM OF DISTRIBUTION.** Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 13.3, 13.4 and 13.5 of this Article. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

### **13.3 DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR**

(a) **GENERAL ANNUITY REQUIREMENTS.** If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 13.4 or 13.5;

(3) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(4) payments will either be nonincreasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(B) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 13.4 dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);

(C) to provide cash refunds of employee contributions upon the Member's death; or

(D) to pay increased benefits that result from a Plan amendment.

(b) AMOUNT REQUIRED TO BE DISTRIBUTED BY REQUIRED BEGINNING DATE. The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under Section 13.2(b)(1) or (2)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's required beginning date.

(c) ADDITIONAL ACCRUALS AFTER FIRST DISTRIBUTION CALENDAR YEAR. Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

#### **13.4 REQUIREMENTS FOR ANNUITY DISTRIBUTIONS THAT COMMENCE DURING MEMBER'S LIFETIME.**

(a) JOINT LIFE ANNUITIES WHERE THE BENEFICIARY IS NOT THE SPOUSE. If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary, annuity payments to be made on or after the Member's required beginning date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirement in the

preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(b) **PERIOD CERTAIN ANNUITIES.** Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this Section 13.4(b), or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date.

### **13.5 REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE MEMBER DIES BEFORE DATE DISTRIBUTIONS BEGIN.**

(a) **MEMBER SURVIVED BY DESIGNATED BENEFICIARY.** If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Section 13.2(b)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:

(1) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(2) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(b) **NO DESIGNATED BENEFICIARY.** If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(c) DEATH OF SURVIVING SPOUSE BEFORE DISTRIBUTIONS TO SURVIVING SPOUSE BEGIN. If the Member dies before the date distribution of his or her interest begins, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 13.5 will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to Section 13.2(b)(1).

**13.6 DEFINITIONS.**

(a) DESIGNATED BENEFICIARY. The individual who is designated as the beneficiary under Section 2.1(k) of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) DISTRIBUTION CALENDAR YEAR. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's required beginning date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 13.2(b).

(c) LIFE EXPECTANCY. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) REQUIRED BEGINNING DATE. The date specified in Section 5.1 of the Plan (Annuity Starting Date).

IN WITNESS WHEREOF, the Employer has caused this First Amendment to be executed by its duly authorized representative as of the date set forth below.

**WHITE MOUNTAIN APACHE TRIBE**

Dated: \_\_\_\_\_

Its: \_\_\_\_\_