



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

(Approving FY 2009 Contract with Southern Arizona Legal Aid, Inc.)

- WHEREAS,** pursuant to Article IV, Section 1(a) and 1(s) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and
- WHEREAS,** the contract with Southern Arizona Legal Aid, Inc., to provide public defender legal services within the Fort Apache Indian Reservation for criminal defendants in Tribal Court expired on December 31, 2008; and
- WHEREAS,** a representative of Southern Arizona Legal Aid, Inc., did this day present a request to enter into an agreement with the Tribe to provide public defender services; and
- WHEREAS,** a new contract for another one year term for Fiscal Year 2009 has been prepared with a total contract amount of \$100,000.00; and
- WHEREAS,** the Tribal Council recognizes the benefit of making legal defense services available to criminal defendants in Tribal Court, even though no tribal or federal law requires the availability of such services, and, at present, no federal or private grant funding is available to pay for such services; and
- WHEREAS,** the Tribal Council has reviewed the proposed contract for public defender services and concurs that it would be in the best interest of the Tribe to approve a one year contract for public defender services.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the renewal of the Public Defender contract with Southern Arizona Legal Aid, Inc., in the form attached hereto, for an additional one year term.

BE IT FURTHER RESOLVED by the Tribal Council that in the event of any inconsistency between this Resolution and any prior Resolution or Policy, this Resolution shall govern.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairwoman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on July 1, 2009, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (h), (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).

Evangelie Gatewood
Ronnie Lupo, Chairman of the Tribal Council

ACTING

Cyndy R. Harvey
Cyndy R. Harvey, Secretary of the Tribal Council

**PUBLIC DEFENDER SERVICES AGREEMENT
BETWEEN
WHITE MOUNTAIN APACHE TRIBE
AND
SOUTHERN ARIZONA LEGAL AID, INC.**

This Public Defender Services Agreement is made by and between the White Mountain Apache Tribe (hereinafter "WMAT" or "Tribe"), and Southern Arizona Legal Aid, Inc. (hereinafter "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. The parties agree to the following:

1. **Scope of Work to Be Provided.** SALA shall provide WMAT with the following (hereinafter referred to as "Services") pursuant to the charges; terms and conditions of this Agreement:
 - A. Public defender services. SALA agrees to provide direct public defender legal services to enrolled members of the White Mountain Apache Tribe or other federally recognized Tribes or Nations in need of legal representation for adult criminal matters before the Tribal Court of the White Mountain Apache Tribe. The funds provided by the Tribe under this Agreement shall be utilized for attorney and advocate time in the representation of defendants charged with crimes within the criminal jurisdiction of WMAT.
 - B. Licensed attorneys. For the purposes contemplated under this Agreement, SALA shall provide attorneys who are fully licensed members in good standing with the Arizona Supreme Court and the Tribal Court of the White Mountain Apache Tribe, and a tribal court advocate. SALA warrants that and, to the best of their knowledge, no disciplinary proceedings have been instituted against them or the attorneys provided pursuant to this Agreement 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. The attorney and tribal court advocate shall perform all necessary public defender services, as described above.
 - C. Standard of conduct. Attorneys and advocates hired by SALA for the purposes of this Agreement shall be subject to Arizona and Tribal law governing legal practice and professional ethics in the performance of the duties required under this Agreement.
 - D. Eligible Clients. SALA shall provide public defender services according to the following eligibility criteria:
 - (1) Clients must be enrolled members of the White Mountain Apache Tribe or other federally recognized Tribe or Nation.

- (2) There can be no conflicts of interest during the representation of a client. Conflicts include (i) current or prior representation of the victim or adverse witnesses in the same or similar case; (ii) co-defendants in the same case when the interests of the defendants may be adverse, and (iii) compliance with Rule 42 of the Arizona Supreme Court and opinions interpreting that Rule, and pursuant to the Code of the White Mountain Apache Tribe.
- E. Conflict of Interest. SALA shall not represent clients deemed ineligible for reasons of conflict of interest. SALA shall refer all such clients to those licensed advocates or attorneys who may be available to provide legal representation, and shall maintain a list for such purpose.
- F. Complaints. Should WMAT receive a client complaint about SALA's performance of the Services contemplated herein, or about an attorney acting on behalf of SALA in the performance of said Services, the complaint shall be referred first to SALA for internal resolution of the dispute in accordance with all applicable laws, ethical rules, standards and opinions of both the Arizona Supreme Court and the Tribal Court of the White Mountain Apache Tribe. SALA will then inform WMAT, by and through the Tribal Attorney, as to how the matter was resolved. In the event that the matter is not resolved to the satisfaction of WMAT, the parties agree that WMAT may refer the matter to either the Arizona Bar Association and/or the Tribal Court.
- G. Reporting. SALA agrees to provide WMAT with an annual, written report of representation provided that shall include a monthly breakdown of (a) the number of requests for Services, (2) the number of cases turned down for reasons of conflict of interest in representation, and (3) the number of cases taken by the category of criminal case. The annual report shall be provided to the Tribal Attorney no later than February 1, 2010.

2. Fees and Expenses.

- A. Fees. SALA shall bill WMAT monthly for services rendered by attorneys and tribal court advocates at the rate of \$70.00 per hour.
- B. Limitations. The total budget for this Agreement for the Fees and Expenses set forth above is \$100,000.00. Except upon prior authorization of WMAT, WMAT shall have no liability for fees or expenses which exceed the budget amount. SALA shall have no obligation to provide services or incur expenses in excess of such budget amount, except to the extent required to satisfy professional responsibilities.
- C. Expenses. WMAT shall reimburse SALA for any expenses incurred by SALA in connection with the services performed under this Agreement, which shall be separately invoiced.
- D. Conflict of Interest Fund. Five Thousand Dollars (\$5,000.00) of the \$100,000.00 shall be set aside to allow for payment to other advocates in the

event of a conflict of interest in representation by SALA, but no more than 130 cases may be declined by SALA for reasons of conflict without a written agreement between SALA and WMAT. When a conflict arises, the conflict attorney or advocate shall be responsible for billing WMAT, subject to available funds. WMAT will arrange for payment with the conflict attorney or advocate, up to a maximum hourly rate of \$50 per hour, and shall account to SALA for such payments when made. In no event shall such payments cumulatively exceed the Fund, or the total of \$5,000.00, unless prior written agreement is reached between WMAT and SALA. An accounting of such conflict payments will be provided by WMAT to SALA prior to December 1, 2009.

- E. **Billing Statements.** SALA shall submit a billing statement monthly that reports the total hours of public defender services performed by SALA to Janet Wells in the Office of the Tribal Attorney, or to Ms. Well's designee. Each statement shall summarize the nature of the services rendered and the disbursements for which reimbursement is sought. Time billed by SALA shall be accounted for in tenths of an hour as to attorney time and advocate time. Such time shall be attributed to individual clients with specificity as to the work performed, including consultation, letters, telephone conversations, motions, court appearances, research, or time to determine eligibility of potential clients and appropriate advocate training. Time billed shall not include administrative time required for billing, filing or other administrative duties. In the event of a dispute over payment for any hours submitted, the parties agree to attempt mediation with a neutral third party, mutually agreed upon by the parties, before commencing a complaint with the State Bar of Arizona or the Tribal Court, terminating services, or failing to pay for services. Any disputes shall be subject to and in conformance with the procedures set forth under the White Mountain Apache Judicial Code and the rules of the Arizona Supreme Court.
- F. **Payment.** The fees and expenses submitted shall be payable within thirty days following receipt of the statement.

3. **Relationship Between the Parties.** It is understood that SALA shall be an independent contractor, as distinguished from employees of WMAT, and shall not be entitled to receive any benefit to which employees are entitled by virtue of their employment with WMAT. Except as otherwise expressly provided herein, WMAT shall not be responsible for the payment of any taxes, permit fees or licenses incurred or required by the WMAT in order for SALA to perform services under this Agreement. It is understood that SALA is free to contract for similar services to be performed for other persons or entities while under this agreement with WMAT but that the attorney and advocates provided hereunder shall provide the Services contemplated herein solely to WMAT. Nothing in this agreement shall restrict SALA from providing other legal services to WMAT members or to other clients.
4. **Assignment.** Due to the unique nature of the Services rendered pursuant to this Agreement, the parties agree that no assignment of rights and/or delegation of duties shall be permissible. The parties shall not assign any phase or portion of this

Agreement without the prior written approval of the other party.

5. **Modifications.** Modifications or amendments of this Agreement shall be in writing and become effective only upon the execution of both parties.
6. **Indemnification.** SALA hereby agrees to defend, indemnify and hold harmless WMAT and all of its departments, attorneys, agencies, officers, agents, and/or employees from all claims, losses, suits, damages, liabilities, and expenses of whatever kind or 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 SALA, its attorneys or any person employed by SALA, or anyone for whose acts SALA may be legally liable. SALA shall maintain sufficient malpractice insurance at all times during the term of this Agreement.
7. **Drafting.** This Agreement has been arrived at by the mutual negotiations of the parties and no rule of law requiring the Agreement to be construed in favor of or against a party because of drafting shall be applicable.
8. **Entire Agreement.** This Agreement, which includes any attachments, contains the entire agreement of the parties and cannot be changed except by writing signed by the parties. No waiver shall occur unless such waiver is in writing. No waiver shall constitute a waiver of any subsequent breach.
9. **Severability.** If for any reason any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, unenforceable, illegal, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.
10. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
11. **Attorney's Fees.** In the event any claim under this Agreement is filed, the prevailing party shall be awarded reasonable attorney's fees, together with all costs of expert witnesses, costs of litigation, costs of investigation and other related expenses incurred in connection with the proceedings.
12. **Effective Date.** This Agreement shall be effective as of January 2, 2009.
13. **Term.**
 - A. This Agreement shall commence on the effective date prescribed in Paragraph 12 and shall continue in force for one year through to December 31, 2009, subject to renewal pursuant to subparagraph B or earlier termination in accordance with subparagraph C. If the Agreement is so terminated, SALA shall receive such compensation from WMAT or its representative as is determined to be equitably due as of the date of the termination, calculated at the rate of \$70.00 per hour. The amount due shall be jointly determined by WMAT or its representative in consultation with SALA.

- B. This Agreement may be extended by the parties for such additional terms as may be mutually agreeable
- C. Upon sixty (60) days prior written notice to the other party, (i) this Agreement may be terminated, with or without cause, and/or (ii) the scope of work provided hereunder may be modified.

14. Applicable Law and Remedies. This Agreement shall be governed by and construed in accordance with the laws of the White Mountain Apache Tribe. Any dispute arising under this Agreement shall be resolved in the White Mountain Apache Tribal Court, provided that nothing herein shall be interpreted as an express or implied waiver of the Tribe's immunity from suit.

IN WITNESS WHEREOF, this Agreement has been executed and approved by the parties and persons whose signatures appear below.

WHITE MOUNTAIN APACHE TRIBE

By _____
Ronnie Lupe (Date)
Chairman

SOUTHERN ARIZONA LEGAL AID, INC.

By _____
Anthony L. Young, Esq. (Date)
Executive Director