



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

**(Authorization Limited Waiver of Sovereign Immunity
Over ABHS Software Agreement)**

- 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,** on May 25, 2006, the Tribal Council of the White Mountain Apache Tribe adopted and approved the Bylaws for the Apache Behavioral Health Services, Inc. "(ABHS);" and
- WHEREAS,** the ABHS Bylaws authorize ABHS to agree to suit in the Courts of the Tribe and other courts of competent jurisdiction, but do not specifically address federal intellectual property and copyright laws, as required by some contracts; and
- WHEREAS,** ABHS has negotiated a computer software contract agreement with Anasazi Software, Inc., and Anasazi has requested that contract disputes be submitted to the Federal District Court of Arizona to adequately handle any federal intellectual property or copyright law issues that may arise; and
- WHEREAS,** Anasazi Software, Inc., further requests that in the event that the Federal District Court does not assume jurisdiction, that the Tribe authorizes and directs the White Mountain Apache Tribal Court to appoint a sitting or retired Arizona State Court Judge as a visiting Tribal Court Judge for the purpose of hearing any legal issues that may arise; and
- WHEREAS,** ABHS has concluded that the requested consent for Federal Court jurisdiction over its legal matters is not expressly authorized by ABHS Bylaws and for this reason, ABHS requests the Tribal Council's approval over this jurisdictional matter; and
- WHEREAS,** the Tribal Council understands that by consenting to Federal Court jurisdiction, ABHS is vulnerable to law suits in Federal District Court in the event that a legal issue arises with respect to Intellectual Property or Copyright Laws and any governmental protections afforded by sovereign immunity that might apply to ABHS under such circumstances, would be waived; and
- WHEREAS,** the Tribal Council takes the Tribe's sovereign immunity very seriously, but acknowledges the importance of the services provided by Anasazi Software to ABHS and therefore finds it in the best interest of the Tribe to consent to Federal Court jurisdiction on matters related to intellectual property or copyright law and further finds that should other legal issues require litigation, the Tribal Council shall direct the Tribal Court to appoint an Arizona State Court Judge as a visiting Tribal Court Judge to handle the case; and
- WHEREAS,** given the urgency of this request and the possibility that the negotiated agreement may fail without action by the Tribal Council, the Tribal Council further finds that this Resolution should be considered and made outside of the Council's regularly scheduled meeting; and

WHEREAS, the Tribal Council further finds that: (1) this Resolution may be voted upon by signature of a member of the Tribal Council where a signature indicates a vote for this Resolution, (2) the Tribal Council Secretary should attempt to obtain signatures for members of the Tribal Council personally, (3) no signature would mean that the respective Tribal Council members is against this Resolution, (4) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves and authorizes ABHS to consent to a limited waiver of sovereign immunity to allow Federal Court jurisdiction over the contract agreement between ABHS and Anasazi Software, Inc., as governed by the contract (excerpt) attached hereto.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Court to appoint a retired or sitting Arizona Court Judge as a visiting Tribal Court Judge in the event that a legal matter arises that is not subject to Federal Court jurisdiction.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that given the urgency of the request described herein, this Resolution may be voted upon outside of Council's regularly scheduled meeting as follows: (a) by signature of a member of the Tribal Council, including the Chairman of the Tribal Council and the Vice-Chairwoman of the Tribal Council, where a signature indicates a vote for this Resolution, (b) the Tribal Council Secretary shall attempt to obtain signatures for members of the Tribal Council personally, (c) no signature shall mean that the respective Tribal Council member is against this Resolution, (d) the Tribal Council Secretary should wait no longer than a reasonable period of time to obtain a vote by signature or by no signature, and so indicate that this Resolution was presented to the respective member of the Tribal Council for a vote.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a 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 **March 24, 2010** duly adopted by a vote of _____ for and _____ 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), (i), (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).

Ronnie Lupe, Chairman of the Tribal Council

Cyndy R. Harvey, Secretary of the Tribal Council