

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

(Approving FY2005 Contract with Southern Arizona Legal Aid, Inc.)

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, 2004; and

WHEREAS, a new contract for another one year term for Fiscal Year 2005 has been prepared with a proposed total of 2000 hours of contract services, and a total contract amount of \$79,000.00; 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

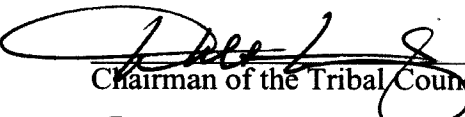
WHEREAS, the Tribal Council has reviewed the proposed contract for public defender services and concurs that it would be in the best interest of the Tribe to approve a one year contract for public defender services.

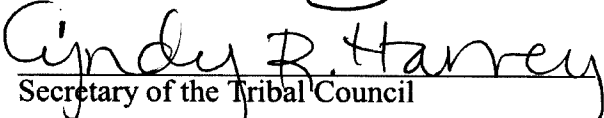
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the renewal of the Public Defender contract with Southern Arizona Legal Aid Inc., in the form attached hereto, for an additional one year term.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that:

1. The proposed contract with Southern Arizona Legal Aid, Inc., as attached and incorporated by this reference is hereby approved.
2. The Tribal Chairman or in his absence the Vice Chairman, is hereby authorized to execute any documents necessary to carry out the intent of this Resolution.

The foregoing resolution was on MAY 11, 2005 duly adopted by a vote of SEVEN 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), (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).


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 _____, 2005, 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 continue providing public defender services to persons residing within the territorial jurisdiction of the White Mountain Apache tribe who are subject to the criminal jurisdiction of the TRIBE; and

WHEREAS, SALA maintains a legal services office within the boundaries of the Fort Apache Indian Reservation, known as White Mountain Apache Legal Services (WMALS), 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 SALA having reached agreement for the provisions 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 ATTORNEYS to provide direct public defender legal services in adult criminal matters in Tribal Court, and to provide secretarial support for said public defender attorneys. The funds provided by the Tribe under this Agreement shall not be utilized for the payment of secretarial staff for legal services, but only for attorney and tribal advocate time in the representation of defendants charged with crimes within the criminal jurisdiction of the TRIBE.

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

4. In consideration of the services to be rendered, SALA shall receive \$79,000.00 for the contemplated one-year term of this Agreement. Four thousand (\$4,000.00) of the \$79,000.00

shall be withheld until the eleventh month of the Agreement for payment of legal services for co-defendants in conflict situations. Payment shall be made quarterly on March 31, June 30, September 30, in the amount of \$18,750.00 each, and on December 31 in the amount of \$22,750.00, less any sums expended for conflict defense services. Quarterly ATTORNEYS shall submit a bill and voucher directly to the Tribe's Office of the Controller for payment. In no event shall the compensation described by this paragraph be less than \$75,000.00 nor more than \$79,000.00, unless made with the express written approval of the Tribal Council of the White Mountain Apache Tribe.

5. ATTORNEYS shall submit a report quarterly on the total hours of public defender services delivered to the Office of the Controller, and more frequently upon inquiry by the Tribal Attorney. Such time shall be accounted as to attorney time and advocate time. Should a question arise as to the details of work performed, ATTORNEYS shall provide the requested additional detail to TRIBE from the applicable SALA time sheets.

6. SALA shall continue to employ a full-time defense advocate to assist the public defender. That advocate shall be a SALA employee in all respects, and shall be subject to the public defender's supervision of his/her work and all applicable SALA personnel policies and guidelines.

7. As agreed in previous years, should the public defender find that his or her caseload has reached maximum capacity, he or she may temporarily shut down intake, and shall advise TRIBE of any temporary shutdown, and likewise advise TRIBE when intake is reopened.

8. In recognition of the fact that SALA cannot continue to provide that amount of time without an increase in the total amount of money awarded under the contract, SALA is authorized to institute eligibility criteria for clients they will accept pursuant to the contract. The proposed criteria for clients to be eligible for services pursuant to the contract are as follows:

- a. Clients must be members of the White Mountain Apache Tribe.
- b. Clients must be financially eligible pursuant to the LSC guidelines.
- c. There can be no conflicts, such as current or prior representation of the victim or adverse witnesses, nor can SALA represent co-defendants in the same case if there is a possibility of conflict.
- d. Other discretionary factors to be considered include the legal merits of the case, prior involvement with the court system, severity of the potential sentence, resources and time required to handle the case, and the current SALA case load.

9. 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 ATTORNEYS 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.

10. This agreement may be terminated by either party by giving sixty (60) days written notice to the other party. If the Agreement is so terminated, SALA shall receive such compensation from the TRIBE or its representative as is determined to be equitably due as of the date of the termination of the contract. The amount due shall be determined by the TRIBE or its representative in consultation with SALA.

11. Should ATTORNEYS fail to provide the full amount of service hours required herein, any unfulfilled hours shall carry over to the next contract year. Should ATTORNEYS or TRIBE terminate this Agreement under Paragraph 10, and if ATTORNEYS have been paid for hours not fulfilled by the termination date, ATTORNEYS shall reimburse TRIBE for any unfulfilled hours at the rate of \$37.64 per hour.

12. ATTORNEYS shall provide a fully-licensed Arizona attorney as defined in Paragraph 13 of this Agreement to perform all necessary public defender services under this Agreement for persons subject to the criminal jurisdiction of the White Mountain Apache Tribal Court. That attorney shall be assisted by a SALA defense advocate, as described above. ATTORNEYS shall provide all necessary public-defender services during 2005, which the parties contemplate to approximate at least 2,000 hours of services. Those hours shall include work performed to date during 2005.

13. ATTORNEYS agree that at least half (1,000 hours) of the total contract hours shall be delivered by an Attorney admitted to the State Bar of Arizona and the White Mountain Apache Tribal Court. Nothing in this Agreement shall prevent ATTORNEYS, in their discretion, from assigning public-defender duties among their attorneys and advocate staff, so long as the approximate hours of legal services are provided within the Agreement year, which for purposes of this Agreement shall commence January 1, 2005 and terminate December 31, 2005.

14. 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.

15. 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 ATTORNEYS will not enter into any contract or other agreement, or incur any debt, liability or obligation of any nature, in the name or on behalf of TRIBE. SALA, their

agents, affiliates, or subcontractors shall pay all salaries, wages, expenses, payments pursuant to Workers' Compensation laws, Social Security taxes, federal and state unemployment taxes and any other similar payroll taxes related to the performance of this Agreement.

16. 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 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 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 malpractice insurance coverage.

17. Should TRIBE receive a client complaint about ATTORNEYS' performance of public defender services, the complaint shall be referred to ATTORNEYS for internal resolution of the dispute in accordance with all applicable laws, ethical rules, standards and opinions of both state and tribal requirements governing the conduct of any of ATTORNEYS' lawyers, paralegals, staff, and agents.

18. 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. Nothing within this Agreement shall be construed to waive the sovereign immunity of the White Mountain Apache Tribe.

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")

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

By: _____
Dallas Massey, Sr.
Tribal Chairman
P. O. Box 1150
Whiteriver, AZ 85941

By: _____
Thomas Berning, Executive Director
Southern Arizona Legal Aid
64 East Broadway Boulevard
Tucson, AZ 85701

Date: _____

Date: _____

By: _____
Frank Johnny Endfield, Jr.
Vice Chairman
P. O. Box 700
Whiteriver, AZ 85941

By: _____
Kim H. Robinson, Managing Attorney
White Mountain Apache Legal Aid
P. O. Box 1030
Whiteriver, AZ 85941

Date: _____

Date: _____