



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

(Approving a Compliance Amendment for the purposes of the Pension Protection Act)

WHEREAS, pursuant to Article IV, Section 1(a) 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 August 17, 2006, the Pension Protection Act ("PPA") was signed into law. If the Tribe desires to maintain its government status under the federal benefit laws, the PPA now requires the Tribe to divide each of its Employee Welfare Benefits Plans into two separate and distinct plans with mirrored provisions – one for the tribal government and one for the Tribe's enterprises; and

WHEREAS, the Employee Welfare Benefit Plan for the Tribe's enterprises requires that the Tribe be subject to claims asserted under the ERISA, COBRA and HIPAA; and

WHEREAS, the Employee Welfare Benefit Plan for the tribal government will continue to be exempt to the fullest extent permitted under the PPA from federal and state law requirements applicable to governmental plans; and


WHEREAS, to effectuate the division of the Tribe's Welfare Benefit Plans, the Tribal Council is required to approve of a Compliance Amendment to the Tribe's Employee Welfare Benefit Plans (attached hereto and made a part hereof), effective January 1, 2007; and


WHEREAS, the Council finds that it is in the best interests of the Tribe to approve the Compliance Amendment to the Tribe's Employee Welfare Benefit Plans and any related documents.

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

1. Approves the Compliance Amendment to the Tribe's Employee Welfare Benefit Plans.
2. Authorizes the Chairman, or in his absence the Vice-Chairwoman, or their designee, to execute the Compliance Amendment and any related documents pertaining thereto, subject to further changes recommended by the Legal Department.

The foregoing resolution was on December 14, 2006, 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), (i), (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

**COMPLIANCE AMENDMENT
TO WHITE MOUNTAIN APACHE TRIBE
EMPLOYEE WELFARE BENEFIT PLANS**

[Good Faith Compliance for Pension Protection Act of 2006]

Preamble:

The White Mountain Apache Tribe (the "Tribe"), a federally recognized tribal government, sponsors various employee welfare benefit plans for the benefit of its employees, and in certain cases, dependants of its employees, as set forth in the eligibility and participation provisions of each individual welfare benefit plan (the "Welfare Benefit Plans").

On August 17, 2006, the Pension Protection Act of 2006 (the "PPA") was signed into law, making certain changes applicable to welfare benefit plans sponsored by tribal governments, beginning as of the first year following its date of enactment.

As of the writing of this Amendment, there is no guidance from the Department of Labor with regard to those changes necessary for compliance with the PPA. The purpose of this Amendment is to adopt only those changes necessary to preserve the Tribe's government status to the fullest extent permitted under the PPA, based upon a good faith interpretation of the newly enacted statutory provisions pending further guidance.

Amendments:

1. **EFFECTIVE DATE / LISTING OF PLANS:** This Compliance Amendment shall be effective as of the first day of the first plan year for each respective Welfare Benefit Plan beginning on or after August 17, 2006 (the "Effective Date"). The Welfare Benefit Plans covered by this amendment, along with a listing of their respective plan years, is attached hereto as **EXHIBIT A**.

2. **SEPARATION OF PLANS:** By this Amendment, the Tribe hereby divides each of its Welfare Benefit Plans into two separate and distinct plans hereafter known as the Governmental Plan and the Enterprise Plan. A separate Governmental Plan and Enterprise Plan shall be established with regard to each Welfare Benefit Plan in place immediately preceding the Effective Date of this amendment for that particular Welfare Benefit Plan.

3. **DIVISION OF PARTICIPANT GROUPS:** The Compliance Amendment shall be implemented in a manner to ensure that all Participants who would otherwise

satisfy the Welfare Benefit Plan participation rules immediately preceding that plan's Effective Date, will continue to participate in either the Governmental Plan or the Enterprise Plan upon the Effective Date of this Compliance Amendment with no loss or gap in plan coverage. In determining whether an employment group within the Tribe (regardless of whether structured as a division, enterprise, authority, tribal corporation or otherwise) shall participate in the Governmental Plan or the Enterprise Plan version of each Welfare Benefit Plan, the Tribe shall be guided by the following:

- (a) **Governmental Plan Eligibility:** The Governmental Plan version of each Welfare Benefit Plan shall include those employees substantially all of whose services are in the performance of Essential Government Functions but not in the performance of Commercial Activities.
- (b) **Enterprise Plan Eligibility:** The Enterprise Plan version of each Welfare Benefit Plan shall include only those employees who fail to satisfy the eligibility criteria for government plan status as set forth in (a) above.
- (c) **Definitions:** The terms "Essential Government Functions" and "Commercial Activities" are not defined in the PPA. Nor, as of the writing of this amendment, has there been any guidance from DOL promulgated under the PPA. Until further guidance is issued, the Tribe shall categorize each employee under a good faith interpretation of the above terms, taking into account such factors as:
 - (1) the historic functions performed by the Tribal government;
 - (2) the Tribe's role as defined in its Constitution, Bylaws, Ordinances, Resolutions, Judicial decisions, customs and traditions;
 - (3) the functions carried on by other governmental employers, including the federal government, states, counties, cities and other local governments;
 - (4) the use of revenues generated by activities in question (whether inuring to the benefit of the Tribe and the provision of public services, or whether inuring to private interests); and
 - (5) whether the entity or division is treated as a non-profit or for-profit entity for tax or other purposes.

4. **PLAN DOCUMENTATION:** Until separate Welfare Benefit Plan restatements can be adopted or until further guidance on additional PPA documentation requirements is issued, the Governmental Plan and the Enterprise Plan version of each Welfare Benefit Plan shall be documented by reference to separate copies of the Welfare Benefit Plan document in effect immediately preceding the Effective Date, with the following changes applicable to that version representing the Enterprise Plan and Governmental Plan respectively:

(a) Enterprise Plan changes:

- (1) Eligibility provisions are modified to reflect Section 3(a) above.
- (2) All references to government status under ERISA Section 3(32) are deleted.
- (3) The plan shall hereafter incorporate by this reference all mandatory provisions (including ERISA, COBRA, and HIPAA) which apply as a matter of law to non-governmental plans.
- (4) The Tribe does not waive tribal court exhaustion to the extent applicable to claims asserted under ERISA, COBRA or HIPAA. The Tribe also reserves the right to implement binding arbitration in lieu of state or federal court litigation.
- (5) All contributions, claim payment and administration expenses attributable to Enterprise Plan Participants shall be segregated and separately accounted for from contributions, claim payment and administration expenses attributable to Governmental Plan Participants.

(b) Governmental Plan changes:

- (1) Eligibility provisions are modified to reflect Section 3(a) above.
- (2) All contributions, claim payment and administration expenses attributable to Governmental Plan Participants shall be segregated and separately accounted for from contributions, claim payment and administration expenses attributable to Enterprise Plan Participants.
- (3) A provision is added to clarify that the Tribe and its Governmental Plan are entitled to all State and federal law exemptions to the fullest extent permitted under the PPA. Provisions to the contrary are hereby deleted.

5. UNDERWRITING AND SERVICE CONTRACTS: The PPA effective date does not provide sufficient time to evaluate the economic impact or options with regard to separate underwriting or negotiation of separate service contracts. Until further amendment or guidance and to the extent applicable, the Governmental Plan and Enterprise Plan shall be underwritten on a control group basis. All service providers shall administer the Governmental Plan and the Enterprise Plan as separate and distinct legal plans with mirrored provisions except as otherwise provided in Section 4 above.

6. CONFORMING AMENDMENTS / ANCILLARY DOCUMENTS: To the extent required for PPA compliance and consistency with this Compliance Amendment, all ancillary documents, including Welfare Benefit Plan service agreements and business associate agreements, are hereby amended to reflect the plan separation as called for hereunder.

7. **RECORDKEEPING and FUNDING:** Plan recordkeeping practices, bank accounts, trusts and other operational functions used in the administration of the Welfare Benefit Plan shall be modified for operational compliance with the terms of this Compliance Amendment.

8. **LIMITED IMPACT:** Nothing in this amendment shall be construed to make federal or state law requirements applicable to the Tribe except to the extent required under the PPA. The Tribe expressly reserves all rights of sovereignty and government status to which it is entitled at law or in equity.

9. **FURTHER CHANGES:** The Tribe reserves the right to make further changes to the Welfare Benefit Plans as permitted under the PPA through any applicable transition date(s), as the same may be modified with further guidance from the Department of Treasury, the Internal Revenue Service, the Department of Labor and other federal agencies as may have jurisdiction over specific changes at hand. Nothing herein shall be construed as a limitation on the Tribe's right to further amend the Welfare Benefit Plans through said transition date(s).

IN WITNESS WHEREOF, the Tribe has caused this Compliance Amendment to be executed by its duly authorized representative on this ____ day of _____, 2006.

WHITE MOUNTAIN APACHE TRIBE



Title: Chairman

WITNESS:
