

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

**WHEREAS,** the Federal Aviation Administration (FAA) has programmed funds in the amount of \$415,000 for phases one and two of the construction of a helicopter apron and access road at the Whiteriver Airport; and

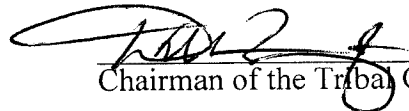
**WHEREAS,** the Tribe has identified Armstrong Consultants, Inc. as the engineer consultant to carry out the planning called for in the FAA grants; and

**WHEREAS,** the Tribal Council has reviewed the draft agreement with Armstrong Consultants, Inc.


**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Agreement attached hereto between the Tribe and Armstrong Consultants, Inc. to undertake planning for the construction of a helicopter apron and access road at the Whiteriver Airport, pursuant to the Tribe's FAA grant awards.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it authorizes the Chairman, or in his absence, the Vice Chairman to sign all documents and agreements necessary to effectuate this resolution.

The foregoing resolution was on 07-27-2004 duly adopted by a vote of 7 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (i), (j), (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).

  
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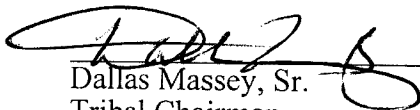
Chairman of the Tribal Council

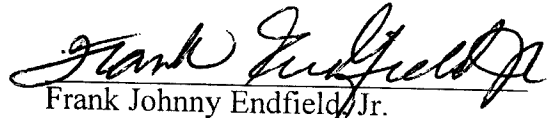
**ACTING**   
\_\_\_\_\_

Secretary of the Tribal Council

Resolution No. 07-2004-145

Signatures of the members of the Tribal Council represent their approval of Tribal Resolution No. 07-2004-145. Dated this 27th day of July, 2004.

  
Dallas Massey, Sr.  
Tribal Chairman

  
Frank Johnny Endfield, Jr.  
Vice-Chairman

\_\_\_\_\_  
Jacob Henry  
District I Council Member

  
Ronnie Lupe  
District I Council Member

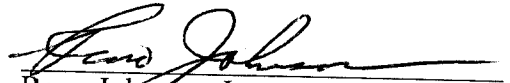
  
Phoebe L. Nez  
District II Council Member

  
Lafa Altaha  
District II Council Member

  
Alvin DeClay  
District III Council Member


\_\_\_\_\_  
Margaret Baha-Walker  
District III Council Member

\_\_\_\_\_  
Mariddie J. Craig  
District IV Council Member

  
Reno Johnson, Jr.  
District IV Council member

\_\_\_\_\_  
Noland Clay  
District IV Council Member

ATTEST:

**ACTING**   
Cyndy R. Harvey  
Tribal Council Secretary

**PROFESSIONAL SERVICES  
AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

THIS IS AN AGREEMENT made as of \_\_\_\_\_, 2004 between the **WHITE MOUNTAIN APACHE TRIBE (OWNER)** and **ARMSTRONG CONSULTANTS, INC. (ENGINEER)**. OWNER intends to improve the Whiteriver Airport (hereinafter called the Project). The Project may include, but not be limited to, the following items:

1. Heliport Construction
2. Perimeter Road Construction
3. Pavement Preservation
4. Install AWOS
5. Update Airport Layout Plan
6. Provide Airport Planning, Engineering, Environmental and Miscellaneous Airport Consulting Services As May Be Required

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER's professional representative for the Project as set forth below and shall give professional consultation and advice to OWNER during the performance of services hereunder.

**SECTION 1-- SERVICES OF ENGINEER (Some of the Following May Not Apply)**

**1.1** Preparation or revision of the Federal Aviation Administration (FAA) grants applications;

**1.2** Consult/Coordinate with Owner, Airport Users, FAA, Airport Staff and other interested parties;

**1.3** Complete Design Engineering in accordance with future Attachments(s) entitled "Further Description of Professional Services";

**1.4** Complete construction period services in accordance with future Attachments(s) entitled "Further Description of Professional Services";

**1.5** Complete Planning and Environmental Services in accordance with Attachment(s) entitled "Further Description of Professional Services";

- 1.6 Perform miscellaneous engineering services as requested by Owner;
- 1.7 Perform all services in conformance with applicable rules and regulations of the FAA.

## **SECTION 2--OWNER'S RESPONSIBILITIES**

OWNER shall:

- 2.1 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, and any budgetary limitations.
- 2.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 2.3 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 2.4 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 2.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 2.6 Provide all accounting, legal, independent cost estimating and insurance counseling services as may be required by the Tribe.
- 2.7 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.
- 2.8 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of Contractor(s).

**2.9** Bear all costs incident to compliance with the requirements of this Section 2.

### **SECTION 3--PERIOD OF SERVICE**

**3.1** This Agreement will be valid for a period of five years from the date signed unless terminated in accordance with Section 7.9 and subject to annual appropriation of funds by the OWNER for services described.

### **SECTION 4--PAYMENTS TO ENGINEER**

**4.1** OWNER shall pay ENGINEER for Services rendered as agreed by future Attachments entitled "Further Description of Professional Engineering Services".

**4.2** ENGINEER shall submit monthly statements. The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt payments in response to ENGINEER's monthly statements.

**4.3** If OWNER fails to make any payment due ENGINEER for services and expenses within 60 days following submittal of a statement in accordance with Article 4.2, the amounts due ENGINEER shall include a charge at the rate of 1 1/2% per month from said due date, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

### **SECTION 5--OPINIONS OF COST**

**5.1** Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his development of an Engineer's Estimate provided for herein is to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional, familiar with the construction industry; but ENGINEER cannot and does not guarantee that bids will not vary from opinions of cost prepared by him. If OWNER wishes greater assurance as to Construction Cost he shall employ an independent cost estimator as provided in paragraph 2.6.

**5.2** If the lowest bid exceeds the Engineer's Estimate, OWNER shall (1) give written approval to increase such estimate, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or quality. In the case of (2) and/or (3) ENGINEER shall, without additional charge, modify the Contract Documents. The providing of such service will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for his services in accordance with this agreement.

## **SECTION 6--GENERAL CONSIDERATIONS**

**6.1 Reuse of Documents.** All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

**6.2 Release of AutoCadd Files.** The Engineer may produce certain Documents in whole or in part on a computer-aided design system (CAD). If the Owner requests electronic files of those Documents, the Engineer and the Owner agree as follows:

**6.2.1** The Engineer agrees to prepare and transmit electronic files containing Drawings as referenced above, such Drawings being devoid of certain title block information and professional seals.

**6.2.2** The Engineer makes no representations as to the accuracy of the information contained on the drawing files, as the design engineering drawings are essentially diagrammatic in nature and are not intended to provide detailed graphic dimensional accuracy. Furthermore, the drawing information on the files may not contain all information resulting from addenda, change orders and field executed changes that have not been incorporated into final record drawings. Therefore, the Owner understands that the use of the information provided is at his own risk. Accordingly, the Owner agrees to indemnify and hold harmless the Engineer from all claims arising out of the use of the information contained in the files provided by the Engineer to the Owner, including defense costs.

**6.3 Controlling Law.** This Agreement is to be governed by the law of the principal place of business of OWNER.

**6.4 Successors and Assigns.**

**6.4.1** OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

**6.4.2** Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

**6.5 Insurance.** The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage, employer's liability and comprehensive general liability insurance coverage.

**6.6 Indemnification.**

**6.6.1** The OWNER hereby indemnifies and holds harmless the Engineer from any and all claims, damages, losses and expenses (including attorneys' fees) arising out of the performance of this Agreement, except when such claims, damages, losses and expenses are caused by the negligent acts, errors or omissions of the Engineer.

**6.6.2** The ENGINEER hereby indemnifies and holds harmless the Owner from any and all claims, damages, losses and expenses (including attorneys' fees) arising out of the performance of this Agreement, except when such claims, damages, losses and expenses are caused by the negligent acts, errors or omissions of the Owner.

**6.7 Changes.** All Change Orders, Contract Extensions, Supplemental Agreements and/or Amendments are subject to FAA and State Aeronautics approval prior to their execution.

## SECTION 7--REQUIRED FEDERAL CLAUSES

### 7.1 Civil Rights Act of 1964, Title VI - 49 CFR Part 21 Contractual Requirements (Version 1, 1/5/90)

**7.1.1 Compliance with Regulations.** During the performance of this contract, the Engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

The Engineer shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21), as they may be amended from time to time, (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract.

**7.1.2 Nondiscrimination.** The Engineer, shall give preference to Native American employess that it may hire for onsite work with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**7.1.3 Solicitations for Subcontracts, including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

**7.1.4 Information and Reports.** The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Owner or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instruction. Where any information required of Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the Owner or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.



**7.1.5 Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to;

Withholding of payments to the Engineer under the contract until the Engineer complies, and/or, cancellation, termination, or suspension of the contract, in whole or in part.

**7.1.6 Incorporation of Provisions.** The Engineer shall include the provisions of the preceding paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Engineer shall take action with respect to any subcontract or procurement as the Owner or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the Owner to enter into such litigation to protect the interests of the Owner and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

**7.2 Airport and Airway Improvement Act of 1982, Section 520 General Civil Rights Provisions (Version 1, 1/5/90)** The Engineer assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

**7.3 Inspection of Records 49 CFR Part 18 (Version 1, 1/5/90)** The Engineer shall maintain an acceptable cost accounting system. The Owner, the FAA and the Comptroller General of the United States shall have access to any books, documents, paper, and records of the Engineer which are directly pertinent to the specific contract for the purposes of making an audit, examination, excerpts and transcriptions. The Engineer shall maintain all required records for five years after the Owner makes final payment and all other pending matters are closed.

**7.4 Rights to Inventions - 49 CFR Part 18 (Version 1, 1/5/90)** All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Owner of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the Owner.

**7.5 Breach of Contract Terms Sanctions - 49 CFR Part 128 (Version 1, 1/5/90)**

Any violation or breach of this contract on the part of the Engineer or subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this Agreement.

**7.6 DBE Required Statements - 49 CFR Part 26**

**Policy.** It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

**DBE Obligation.** The Engineer agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all Engineers shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Engineers shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

**7.7 Trade Restriction Clause - 49 CFR Part 30 (Version 1, 1/5/90)**

The Engineer or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Engineer or subcontractor who is unable to certify to the above. If the Engineer knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list the Federal Aviation Administration may direct through the Owner, cancellation of the contract or subcontract for default at no cost to the Government.

Further, the Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Engineer may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Engineer shall provide immediate written notice to the Owner if the Engineer learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Engineer, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Engineer or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the Owner, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of an Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 17, United States Code, Section 1001.

**7.8 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - 49 CFR Part 29 (Version 1, 1/5/90)** The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/Contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

**7.9 Termination of Contract - 49 CFR Part 18 (Version 1, 1/5/90)**

**7.9.1** Either the Owner or Engineer may, by written notice, terminate this contract in whole or in part at any time, either for convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials accumulated in performing this contract, whether completed or in progress, delivered to the Owner and payment for work performed made to the Engineer.

**7.9.2** If the termination is for the convenience of the Owner, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

**7.9.3** If the termination is due to failure to fulfill the Engineer's obligations, the Owner may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Engineer shall be liable to the Owner for any additional cost occasioned to the Owner thereby.

**7.9.4** If, after notice of termination for failure to fulfill contract obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**SECTION 8 –SPECIAL PROVISIONS, ATTACHMENTS & SCHEDULES**

**8.1** This Agreement is subject to the following special provisions.

**8.1.1** This Agreement is supported by an OWNER'S resolution stipulating that Armstrong Consultants, Inc. is authorized to perform the services as outlined in Attachments to this contract.

**8.1.2** The OWNER'S obligation to make payment under this Agreement is wholly conditional on the funding of the project, including all engineering services, by the U.S. Department of Transportation. This Agreement shall, upon such funding, be supported by an OWNER'S Resolution appropriating the funds to pay for the services to be rendered by ENGINEER. However, if the FAA is willing to fund the project and the OWNER decides to abandon or postpone the project, the monies owed the ENGINEER shall be due and payable by the OWNER within 30 days of the above decision.

**8.2.** This Agreement, together with the Attachments and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings.

This Agreement and said Attachment(s) and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

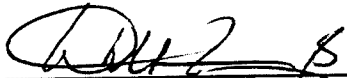
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER:**

**ENGINEER:**

**WHITE MOUNTAIN APACHE TRIBE**

**ARMSTRONG CONSULTANTS, INC.**

  
\_\_\_\_\_  
Dallas Massey, Sr., Chairman

  
\_\_\_\_\_  
Edward A. Armstrong, President