

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

**(Approval of Agreement with Greg Retzlaff)**

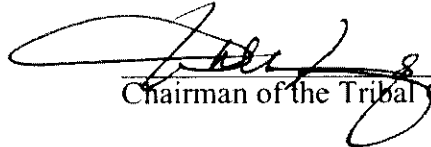
- WHEREAS,** the Tribe more directly involved itself in energy matters in 1999 when it decided to pursue receipt of an allocation of Western Area Power Administration (Western) hydroelectric power from the Colorado River Storage Project (CRSP); and
- WHEREAS,** since that time the Tribe has applied for additional hydroelectric power from the Parker-Davis Project, completed a second feasibility assessment of a biomass-fueled power generation facility and has also intervened in the last Navopache Electric Cooperative rate filing at the Arizona Corporation Commission; and
- WHEREAS,** on October 1, 2004 the Tribe began to receive the benefit of its CRSP power allocation, the proceeds of which are deposited into the "Energy Benefit (or 'CRSP') Account;" and
- WHEREAS,** the need to oversee the management of this power allocation and the growing importance of energy issues to the Tribe and its Reservation requires that the Tribe continue to be involved in energy and related matters; and
- WHEREAS,** knowledgeable staff are needed to help the Tribe track energy and related issues that might affect it; and
- WHEREAS,** Greg Retzlaff worked with the Tribe as an energy consultant on its Department of Energy-funded biomass power generation feasibility study and is knowledgeable about biomass-utilizing facility engineering; and
- WHEREAS,** the Tribe is still evaluating new commercial uses for its forest resources; and
- WHEREAS,** Mr. Retzlaff has negotiated a new contract with the Tribe through the Tribal Attorney that is attached to this Resolution; and
- WHEREAS,** approval of this contract will enable the Tribe to continue to utilize Mr. Retzlaff's consulting services.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the agreement between the White Mountain Apache Tribe and Greg Retzlaff, as attached and incorporated by this reference, is hereby approved and shall be funded out of the Energy Benefit (or "CRSP") Account.

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

**Resolution No. 07-2005-184**

The foregoing resolution was on JULY 6, 2005 duly adopted by a vote of SIX for and FIVE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (b), (h), (i), (s), and (t) 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

CONSULTING SERVICES AGREEMENT  
BETWEEN  
THE  
WHITE MOUNTAIN APACHE TRIBE  
AND  
STRATEGIC ENERGY SOLUTIONS, INC.

This Consulting Services Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the White Mountain Apache Tribe ("WMAT"), P. O. Box 700, Whiteriver AZ 85941, and Strategic Energy Solutions, Inc., ("CONSULTANT"), whose address is 12345 SW Kame Terrace, Sherwood, Oregon 97140-8454. The WMAT and the CONSULTANT agree to the following:

1. **Scope of Work to Be Provided.** CONSULTANT shall assist WMAT with the following (hereinafter referred to as "Services") pursuant to the charges, terms and conditions of this Agreement:
  - A. **Technical Support.** The CONSULTANT shall provide technical support services to WMAT for any services related to the electric power industry such as but not limited to providing assistance evaluating cogeneration proposals, developing power generation facility, evaluating various technologies, providing performance data, completing financial analysis and screening, implementing a development plan, preparation of cost estimates, assessing benefits and risks of various alternatives available to WMAT, identifying potential strategic or financial partners if desired, generally acting as advisor to WMAT regarding power generation opportunities and alternatives. The CONSULTANT agrees to provide energy-related consulting services to WMAT, as requested by the Chairman, his designee, or the Tribal Attorney or Tribal Natural Resources Director or their designees.
  - B. **Reports.** The CONSULTANT shall provide WMAT with a quarterly written report within ten (10) working days of each quarter. The report shall be in narrative form and describe the CONSULTANT's services for WMAT during the previous quarter.
2. **Fees and Expenses.**
  - A. **Fee.** The CONSULTANT's fee, except expert witness services, shall be billed at the rate of \$145.00/hour. Subject to its right to terminate this Agreement as set forth in Paragraph 13(c), WMAT shall pay the Fee to CONSULTANT on a monthly basis beginning on the last date executed by the parties and ending two years from that date. Such fees and expenses

reimbursed to **CONSULTANT** shall be paid from the Tribal Energy Benefit Account or any other account into which proceeds from the Colorado River Storage Project hydroelectric power allocation funds are deposited. Invoices will be prepared at the end of each calendar month.

- B. Expenses. The **WMAT** shall reimburse the **CONSULTANT** for actual and reasonable expenses incurred by them in connection with the services performed under this Agreement, including, but not limited to, long distance telephone calls, printing of documents, actual cost of accessing and using computerized research services and computerized document transmission, Federal Express or similar courier delivery charges, photocopying, travel, meals and lodging incidental to performance of this Agreement, and like expenses. Automobile mileage shall be billed at the prevailing rate recognized by the U.S. Internal Revenue Service. Any applicable sales tax imposed on services rendered by **CONSULTANT** shall be billed to **WMAT**. No reimbursement shall be made to **CONSULTANT** for rent, utilities, or secretarial or other support service expenses that he may incur in association with this contract without prior written authorization of **WMAT**.
- C. Limitations. The total budget for this Agreement for the Fees and Expenses set forth above is \$25,000.00 plus expenses. Except upon prior authorization of **WMAT**, **WMAT** shall have no liability for fees or expenses that exceed the budget amount. The **CONSULTANT** shall have no obligation to provide services or incur expenses in excess of such budget limitation except as is required to be informally available for follow-up needs such as staff questions and other related, limited activities. The **CONSULTANT** shall keep **WMAT** informed of their estimate of the funds necessary to perform the services contemplated in this Agreement.
- D. Statements. The **CONSULTANT** shall submit monthly billing statements to **WMAT**'s Legal Department for approval. Each statement shall summarize the nature of the services rendered and the disbursements for which reimbursement is sought. Such invoices shall be payable within thirty (30) days after receipt of **CONSULTANT**'s invoice, prepared in such form (if any) and supported by such documents as **WMAT** may reasonably require. Any payment that is not received by **CONSULTANT** within said 30 days shall be considered delinquent and the amounts due **CONSULTANT** shall include a charge at the rate of 1.5 percent per month for each month or fraction thereof past due from the date of the invoice. In the event any payment due **CONSULTANT** under the terms of this Agreement remains unpaid after sixty (60) days from the date of the invoice, **CONSULTANT** may at **CONSULTANT**'s election, (a) suspend all Consulting Services until all payment delinquencies have been remedied or (b) terminate this Agreement.

3. **Professional Liability.** The **CONSULTANT** warrants that it will maintain adequate professional liability insurance coverage during the term of this Agreement for the type of services contemplates hereunder, as appropriate. In the event that the **CONSULTANT** does not maintain any professional license or other status for which professional liability insurance is normally obtained, the **CONSULTANT** shall provide proof of general liability coverage that **CONSULTANT** maintains. The **CONSULTANT** shall provide **WMAT** with proof of such insurance prior to **WMAT**'s execution of this Agreement.
4. **Relationship Between the Parties.** It is understood that the **CONSULTANT** 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 **CONSULTANT** in order to perform services under this Agreement. It is understood that **CONSULTANT** is free to contract for similar services to be performed for other persons or entities while under this Agreement with **WMAT**.
5. **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 **CONSULTANT** shall not subcontract any phase or portion of work for **WMAT** without the prior written approval of **WMAT**.
6. **Modifications.** Modifications or amendments of this Agreement shall be in writing and become effective only upon the execution of both parties.
7. **Dispute Resolution.** Both parties agree to try and resolve all disputes related to this Agreement, however, should the parties be unable to resolve a dispute, both parties agree to utilize mediation, with the costs for the mediator being shared equally by the parties unless otherwise stated herein.
8. **Indemnification.** **CONSULTANT** and **WMAT** shall indemnify, save and keep harmless each other against any and all losses, costs, damages, claims, expenses, or other liability whatsoever, which results in direct loss to property or personal injury, from action knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof, arising from performance or non-performance of this Agreement.
9. **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.

10. **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.
11. **Severability.** If for any reason any provision of this Agreement shall be determined by a court or arbitrator(s) of competent jurisdiction to be invalid, unenforceable, illegal, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.
12. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
13. **Attorney's Fees.** In the event that either party is required to retain an attorney to enforce this contract, such party shall be entitled to recover their attorney fees, even though no lawsuit or other legal proceeding is filed. In the event of a lawsuit or other legal proceeding, the prevailing party shall be entitled to recover attorney fees at both the trial and appellate levels.
14. **Effective Date.** This Agreement shall be effective as of the last date of this Agreement's execution by the parties.
15. **Term.**
  - A. This Agreement shall commence on the effective date prescribed in Paragraph 13 and shall continue in force for two years from said date, and renewed pursuant to subparagraph B or earlier termination in accordance with subparagraph C. In the event of termination by either party, the **CONSULTANT** shall be entitled to be paid by **WMAT** for all fees and expenses incurred prior to the termination date less that portion of any advance payment
  - B. This Agreement may be extended by the parties for such additional terms as may be mutually agreeable.
  - C. Upon 30 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 provided the budget is also modified appropriately and agreed to by **WMAT** and the **CONSULTANT**.
16. **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 not resolved by Section 5 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.

17. **Professional Understandings and Consultant's Liability.** The standard of care for all professional services performed or furnished by the Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. The Consultant makes no warranties, express or implied, under this Agreement or other wise, in connection with Consultant's tools or services.

The entire liability of the Consultant under and in connection with this Agreement for breach of contract, negligence, malpractice or tort shall not exceed the total amount earned and actually paid to Consultant for Services performed under this Agreement. In no event shall Consultant be liable for special, indirect or consequential damages of any kind whatsoever.

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

STRATEGIC ENERGY SOLUTIONS, INC.	WHITE MOUNTAIN APACHE TRIBE
By: _____ (Date)	By: _____ (Date)
Name: Greg Retzlaff	Dallas Massey, Sr.
Position: President	Chairman