



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Agreement between the Tribe and AHEC for Grant Writing Services, Not to Exceed \$108,000.00)

WHEREAS, The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(b) that the Tribal Council (“Council”) shall exercise the power, “To negotiate, make and perform contracts and agreements of every description...”; and

WHEREAS, The Tribe is in need of a company to assist it with identifying grant opportunities and preparing and submitting grant applications; and

WHEREAS, Al Henderson, doing business as “AHEC”, a sole proprietorship, and his colleague and contract employee Milford Cosen contacted the Tribe and submitted a proposal to provide such services; and

WHEREAS, The Tribe and AHEC have negotiated a professional services agreement (“Agreement”) (attached and incorporated herein), for one year, in an amount not to exceed \$108,000.000; and

WHEREAS, The Council has reviewed the Agreement, and finds that approving it will help the Tribe obtain needed grant funding and is in the best interests of the Tribe and its members.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that attached professional services agreement between the Tribe and AHEC is hereby approved for a period of one year from its execution date.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

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 any and all documents necessary to effectuate the intent of this Resolution.

Resolution No. 05-2022-113

The foregoing resolution was on **MAY 16, 2022** duly adopted by a vote of **TEN** for, **ZERO** against, and **ZERO** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

<i>Kasey Velasquez</i>	<i>5-24-22</i>	<i>Vaneysa Johnson</i>	<i>5/24/22</i>
Kasey Velasquez, Chairman	Date	Vaneysa Johnson, Tribal Secretary	Date

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE
WHITE MOUNTAIN APACHE TRIBE
AND
AL HENDERSON d/b/a AHEC**

This Professional Services Agreement is entered into by the White Mountain Apache Tribe (the "Tribe") of Post Office Box 700, Whiteriver, Arizona, 85941, a federally-recognized Indian Tribe, and Al Henderson d/b/a AHEC (hereinafter "AHEC"), a sole proprietorship (the "Contractor") of 1014 E. Mesa Ave. #1 Gallup, NM 87301 (collectively the "Parties"). The Parties agree to the following:

1. **Services.** Contractor shall provide certain services (the "Services"), primarily within the exterior boundaries of the Fort Apache Indian Reservation. The Contractor understands that the Tribe requires the Services identified herein as part of the essential government services that the Tribe provides as part of its governmental obligations, and thus Contractor's Services are essential to the political integrity and/or health and welfare of the Tribe. The Services include the following:
 - A. **Scope of Work.** Contractor shall assist the Tribe in implementing its economic plan, by:
 1. Working with the Tribe to establish and advice, on an ongoing basis, an economic development committee (the "committee");
 2. Searching and identifying appropriate government and private grant opportunities, then recommending them to the committee;
 3. For those grants that the committee determines are worth pursuing, and that the Council approves via resolution, preparing and submitting timely and complete applications to grantor agencies. Not less than three grants shall be applied for during the contract period, provided that the Tribe approves at least that number of applications; and
 4. Maintaining communications with grantors during the application phase; and
 5. Focusing initially on American Recovery Plan Act-funded opportunities, then pivoting to more general grants as the ARPA grants mature;
 - B. **Direction.** The Contractor shall perform the Services described herein for the benefit of members of the Tribe receiving services from the Tribe's Planning Department. All correspondence related to this Agreement shall be sent to the Tribe's Planning Director.
 - C. **Report.** If required by Tribe, the Contractor shall produce a written report of findings at the conclusion of the Services, including descriptions, spreadsheets and charts within a reasonable period of time mutually agreed upon by the parties.

2. **Fees and Expenses.**

A. Fee. The Contractor's rate shall be billed as follows:

1. Staff time shall be invoiced at \$80.00 per hour;
2. The total amount billed for staff time per month shall not exceed \$9,000.00;
3. Third-party Sub-contractors. Such fee shall not include third party architectural, design, engineering, or other subcontractors' fees, but the Tribe's written, advanced consent shall be obtained before any such fees are incurred, via subcontracts, on the Tribe's behalf. The Tribe shall have no liability to pay any third-party contractors fees, nor other fees not explicitly provided for herein, unless the Tribe's informed consent, including any and all cost estimates and contracts with the Contractor was obtained in writing, before the execution of any subcontracts by the Contractor. Contractor shall not charge the Tribe a markup of more than 5% on the cost to the Contractor to hire the subcontractor.

B. Expenses. Travel and related anticipated to be incurred by the Contractor in connection with the services performed under this Agreement shall be calculated into the Contractor's hourly rate and not specifically reimbursed through invoice. Contractor may not include any add-on fees for equipment procurement, nor overhead.

C. Limitations. The total budget for this Agreement for the Fees and Expenses set forth above is \$108,000.00, subject to available funds as may be appropriated, authorized and budgeted for by the Tribe or applicable funding agency. Except upon prior authorization of Tribe, Tribe shall have no liability for fees or expenses which exceed the budget amount set forth in this paragraph. The Contractor shall have no obligation to provide services or incur expenses in excess of such budget limitation, except to the extent required to satisfy professional responsibilities. The Contractor shall keep Tribe informed of their estimate of the funds necessary to perform the services contemplated in this Agreement if the estimated cost changes more than 5% of the total amount under this Agreement. If not timely notified, the Tribe shall not be responsible for the balance of Contractor's fees in excess of the amount agreed upon herein.


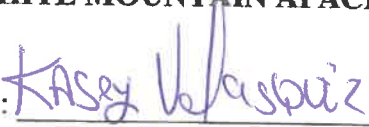
D. Invoices. AHEC shall submit monthly invoices in the form of billing statements for approval to the Tribe for services rendered. Each invoice shall detail the nature and extent of the Services, the names of individuals rendering such Services and a report of the work accomplished. Subject to its right to terminate this Agreement as set forth in Paragraph 14(c), Tribe shall pay render payment to Principal Contractor, AHEC, net of applicable taxes, within 30 days following receipt of the invoice.

3. **Confidentiality.** Contractor acknowledges that the Scope of Work performed on behalf of Tribe shall include access by Contractor to information concerning the Tribe which is proprietary, sensitive, and confidential, (hereinafter, "Confidential Information"), or otherwise protected under applicable law. Contractor hereby agrees that it will protect all such Confidential Information from disclosure to any entity or person for any reason, except as authorized by the Tribe, and for the purposes of accomplishing the Services (eg. Certain required financial disclosures to grantor agencies, and as approved by the Tribal Treasurer). Contractor further agrees that all such Confidential Information shall be considered Tribal property for any purpose, regardless of location or custody of such information.
4. **Relationship Between the Parties.** It is understood that the Contractor shall be an independent contractor, as distinguished from an employee of the Tribe, and shall not be entitled to receive any benefit to which employees are entitled by virtue of their employment with the Tribe. Except as otherwise expressly provided herein, Tribe shall not be responsible for the payment of any taxes, insurance, permit fees or licenses incurred or required by the Contractor in order to perform services under this Agreement. It is understood that Contractor is free to contract for similar services to be performed for other persons or entities while under this Agreement with Tribe.
5. **Assignment.** Unless specifically provided for in this Agreement, the Contractor may subcontract any phase or portion of the Services described in Para. 1(a) without the prior written approval of Tribe, provided that fees for such serves shall be agreed upon as provided for by Section 2(a)(3), herein.
6. **Modifications.** Modifications or amendments of this Agreement shall be in writing and become effective only upon the execution of both Parties.
7. **Insurance and Indemnification.**
 - a. **Insurance.** The Contractor shall provide adequate professional liability insurance according to the standards of the industry to which Contractor belongs and appropriate for the type of Services provided pursuant to this Agreement. In addition, Contractor shall be responsible for adequate comprehensive automobile liability insurance and for workman's compensation insurance as required under Arizona law. Contractor shall provide proof of such insurance described herein to Tribe within five working days of the Effective Date of this Agreement.
 - b. **Indemnification.** The Contractor agrees to defend, hold harmless, and indemnify Tribe against any and all losses, costs, damages, claims, expenses, or other liability whatsoever, including but not limited to accident or injury to persons or property, to the extent caused by the Contractor's negligence or intentional misconduct in the performance of this Agreement, provided that nothing herein shall be construed as an indemnification of Tribe for its own negligence or intentional misconduct.

8. **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.
9. **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.
10. **Severability.** If for any reason any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, unenforceable, illegal, or inoperable, its invalidity shall not affect the validity and effect of the other provisions hereof.
11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
12. **Dispute Resolution.** The Parties agree that in the event of disputes arising under the terms of this Agreement, then shall meet with their representatives, if any, and amicably resolve the dispute.
13. **Effective Date.** This Agreement shall be effective as of the date of the last signature of the Parties.
14. **Term.**
 - A. This Agreement shall commence on the date of last signature of the Parties and shall continue in force through until 365 calendar days after the date of execution, defined as the last signature of the Parties, subject to renewal pursuant to subparagraph B or earlier termination accordance with subparagraph C.
 - B. This Agreement may be extended by the parties for such additional terms as may be mutually agreeable.
 - C. **Early Termination.** This Agreement may be terminated by either party, with or without cause, after provision of thirty (30) days advanced written notice to the other party. The Agreement may also be terminated for-cause or substantial breach of the terms herein, after provision of five (5) days advanced written notice to the party alleged to be in breach. In the event that a Party's actions constitute an imminent threat to the health or safety of the Tribe or an individual, the Agreement may be terminated immediately, and written notice provide to the Party alleged to have caused the threat the following day.
 - D. The scope of work provided hereunder may be modified through a contract amendment, extension, or change order, executed by both parties.
 - E. In the event of termination by either party, the Contractor shall be entitled to retain that portion of any advance payment that equals the amount due for unpaid services which have been performed and expense which have been incurred. Such retention by the Contractor shall be supported by an account summary and report, consistent with the requirements set forth in Paragraph 2(D).

15. **Applicable Law and Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the White Mountain Apache Tribe. By virtue of this Agreement, and the nature of the Services to be performed, the Contractor hereby expressly consents to the civil jurisdiction of the White Mountain Apache Tribe.
16. **Sovereign Immunity.** Nothing herein shall be interpreted as an express or implied waiver of the Tribe's sovereign immunity from suit.
17. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by both of the parties and delivered to the other party.

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

<p>AHEC</p> <p>By:  4/18/2022 Al Henderson d/b/a AHEC (Date) Sole Proprietor</p>	<p>WHITE MOUNTAIN APACHE TRIBE</p> <p>By:  5/18/22 Kasey Velasquez, Chairman (Date) White Mountain Apache Tribe</p>
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