

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

(Approving an Agreement with Leonard Gold, Energy Consultant)

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 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, Leonard Gold has worked with the Tribe as an energy consultant since 2000; and

WHEREAS, Mr. Gold's contract with the Tribe expired in February, 2005; and

WHEREAS, Mr. Gold 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 retain Mr. Gold'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 Leonard Gold, 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.

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

Resolution No. 07-2005-183

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
L.S. GOLD & ASSOCIATES, 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 **L. S. Gold & Associates, Inc., an Arizona Corporation, ("Consultant")**, whose address is 4645 South Lakeshore Drive, Suite 16, Tempe, Arizona 85282. The parties 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 energy-related matters including but not limited to electric rate and load data analyses, review and analysis of third party on-Reservation utility systems, on-Reservation utility formation and management activities, hydroelectric power allocation management, energy and utility-related regulatory analysis and energy billing analysis. 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 \$140.00/hour. Expert witness services, including, but not limited to, preparation of testimony, review of filings and presentation of testimony will be billed at the rate of \$200.00/hour. Subject to its right to terminate this Agreement as set forth in Paragraph 15(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.
 - 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. Approved fees and expenses shall be payable within thirty days following receipt of the statement. **WMAT** agrees that any sums billed, not disputed in written form setting forth specific exceptions and unpaid after thirty (30) days from date of receipt, shall be subject to a late payment charge of one (1.0) percent for each month or fraction thereof past due.

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 contemplated 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 he 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. The 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. As specified in Paragraph 7, the Parties agree to use mediation to resolve dispute with the costs for the mediator being shared equally by the parties.

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 14 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.

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 Paragraph 7 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.

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

<p>L.S. Gold & Associates</p> <p>By: _____ (Date)</p> <p>Name: _____</p> <p>Position: _____</p>	<p>WHITE MOUNTAIN APACHE TRIBE</p> <p>By: _____ Dallas Massey, Sr. (Date) Chairman</p>
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