

RESOLUTION NO. 113 -21
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Approving an Agreement for Consulting Services Between the Nation
and Spirit Mountain Partners, LLC., for Updating the Nations Environmental
Protection Plans**

WHEREAS: The Yavapai-Apache Nation Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided under Article V(a) of the Constitution; and

WHEREAS: The Council is authorized to “appropriate and regulate the use of tribal funds” as provided under Article V (k) of the Constitution; and

WHEREAS: The Nation’s Environmental Protection Department (“EPD”) is responsible for protecting the environment and natural resources of the Nation; and

WHEREAS: EPD requires expert assistance in updating several of the Nation’s environmental protection plans; and

WHEREAS: The Manager of the Nation’s Environmental Protection Department recommends that the Nation contract with Spirit Mountain Partners LLC., (“Consultant”) to accomplish the plan updates in accordance with the terms and conditions included in the Agreement for Consulting Services (“Agreement”) attached to this Resolution as **Exhibit A**; and

WHEREAS: Funds to accomplish the work under the Agreement are available under the EPA PPG Grant Funds awarded to the Nation for FY2021; and

WHEREAS: Consultant and the Nation, acting through the EPD, mutually desire to enter into the Agreement under which Consultant will provide expert consulting services to the Nation under the terms and conditions set forth in the Agreement; and

WHEREAS: The Council, as advised by the EPD Manager, has determined that EPA PPG Grant funds provided to the Nation by the United States Environmental Protection Agency (EPA) are available to pay the contract amount under the proposed Agreement and that approving the Agreement is in the best interest of the Nation.

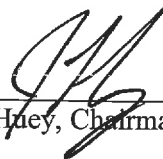
NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby authorizes the Nation to contract with Spirit Mountain Partners, LLC., in accordance with the terms and conditions of the Agreement for Consulting Services attached to this resolution as **Exhibit A** and incorporated herein by reference.

BE IT FURTHER RESOLVED that funding for payment of the Contract Amount under the Agreement, **in the amount of \$5,700.00**, is available under the FY2021 Budget of the Nation’s Environmental Protection Department, specifically the FY2021 EPA PPG Grant funds, as approved by the Tribal Council, and said EPA PPG Grant funds are hereby appropriated and shall be used to pay the Contract Amount under the Agreement.

BE IT FINALLY RESOLVED that the Chairman, and Vice-Chairwoman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on June 22 2021, by a vote of 9 9 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.



Jon Huey, Chairman

ATTEST:

Karla Reimer
Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

**Yavapai-Apache Nation
Environmental Protection Department
Agreement for Consulting Services**

**Spirit Mountain Partners, LLC.
(Update Environmental Protection Plans)**

June 22, 2021

**YAVAPAI-APACHE NATION
AGREEMENT
for
CONSULTING SERVICES**

THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is between the **YAVAPAI-APACHE NATION** (“Nation”), a federally recognized Indian Tribe, 2400 West Datsi Street, Camp Verde, Arizona, 86322, and **SPIRIT MOUNTAIN PARTNERS, LLC.**, (Ondrea Barber, Owner/Manager/Principal), 2330 E. Heatherbrae, Phoenix, Arizona 85016 (“Consultant”).

BACKGROUND

WHEREAS: The Nation’s Environmental Protection Department (“EPD”) is responsible for protecting the environment and natural resources of the Nation.

WHEREAS: EPD requires expert assistance in updating several of the Nation’s environmental protection plans as specified in this Agreement; and

WHEREAS: The Manager of the Nation’s Environmental Protection Department recommends that the Nation contract with Spirit Mountain Partners LLC., (“Consultant”) to accomplish the plan updates in accordance with the terms and conditions included in this Agreement; and

WHEREAS: Funds to accomplish the work under this Agreement are available under the EPA PPG Grant Funds awarded to the Nation for FY2021; and

WHEREAS: Consultant and the Nation, acting through EPD, mutually desire to enter into this Agreement under which Consultant will provide expert consulting services to the Nation under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, it is agreed as follows:

1. Term of Agreement

The Term of this Agreement shall commence on June 22, 2021, the effective date (“Effective Date”), and shall run through September 30, 2021. The Agreement may be amended to extend the Term for such additional time and upon such terms and conditions as the Nation and Consultant mutually agree.

2. Scope of Services

During the Term of this Agreement, Consultant shall provide consulting services to the Nation as follows:

(a) Assist the Yavapai-Apache Nation’s Environmental Department with finalizing and updating the following Environmental Protection Plans:

- 1- Finalize PM10 and PM2.5 Quality Assurance Project Plan (QAPP)
- 2- Update the Integrated Solid Waste Management Plan
- 3- Develop a Funding Strategy for Environmental Department Staff using EPA Grants
- 4- Update Tribal Environmental Plan 2021-2024

(b) Tasks and Costs for the Work

- 1- PM10 and PM2.5 Quality Assurance Project Plan (QAPP) \$2,400
- 2- Integrated Solid Waste Management Plan \$1,400
- 3- Funding Strategy \$500

- 4- Tribal Environmental Plan 2021-2024 \$1,400
- 5- Administrative Fee of 5% (waived) \$0

Total \$5,700.00

(c) **Draft and Final Documents - Scheduling**

Completed draft documents will be submitted to the EPD Manager for review and comment within 60-days of the Effective Date of this Agreement. Final documents will be submitted to the EPD Manager (electronically in an editable format) within 15 days after EPD Manager's final comments/revisions are received by Consultant.

3. Compensation

As full compensation for the Services satisfactorily provided by Consultant under this Agreement, the Nation shall pay Consultant a total flat-fee contract amount, inclusive of all fees and expenses, not to exceed **Five Thousand Seven Hundred and 00/100 Dollars (\$5,700) for the Term**. Payments to Consultant shall be made based on Consultant's submittal of written monthly invoices for payment for that part (percentage of work completed) of the Scope of Services (see section 2 above) satisfactorily completed during the month for which the invoice is submitted. All invoices for payment shall be submitted to Manager via email for review and approval. Compensation shall be payable within Fifteen (15) days of the Nation's receipt and approval of Consultant's invoice. Final Payment shall be made upon satisfactory completion of all work under the Scope of Services as determined by the EPD Manager. **Consultant shall provide Nation a completed IRS Form W-9 for Independent Consultants. Payment to the Consultant under this Agreement will not be made by the Nation unless a completed W-9 is on file with the Nation.**

4. Performance of Agreement by Consultant

Except as otherwise provided, or as may be agreed upon in writing by the Nation, acting through the Manager, and Consultant, all services performed for the Nation under this Agreement shall be performed by or personally supervised and directed by **Ondrea Barber**. The Consultant shall use his best professional efforts and judgment in providing Services to the Nation under this Agreement.

5. Ownership of Work-Product and Intellectual Property Rights

Consultant agrees that the intellectual property contained in work product arising from the services provided hereunder are created by Consultant as a "work for hire" and that all rights and title, including copyright to said intellectual property and work-product, shall be owned by the Nation when the balance of compensation as provided hereinabove is paid in full. Consultant shall not use any portion of the work product created specifically for the Nation for any other purpose without first obtaining the Nation's written consent for such use.

6. Independent Contractor

Consultant acknowledges that she is an Independent Contractor and is not an employee of the Nation and understands that as an Independent Contractor, she is not entitled to any employee benefits as may be set forth in the Nation's Employee Handbook or otherwise available to employees of the Nation, including but not limited to employee tax withholding, sick leave, vacation, disability or unemployment insurance, worker's compensation, or any other employment benefit. Consultant is neither an agent nor employee of the Nation.

7. Consultant Obligations

Consultant is solely responsible for providing, at Consultant's own expense, general liability, automobile liability, disability, unemployment, workers' compensation, and other applicable insurance, training, permits and licenses for Consultant. Consultant is also responsible for paying when due all federal and state income taxes, including estimated taxes or withholding, social security, and other taxes incurred because of the compensation paid to Consultant for services under this Agreement. Consultant agrees to indemnify the Nation from and against any claims, costs, losses,

fees, penalties, interest, or damages suffered by Nation resulting from Consultant's failure to comply with this provision.

Consultant shall satisfy all tax and governmentally imposed responsibilities, including payment of all taxes. No taxes of any kind will be withheld from compensation paid hereunder by the Nation.

8. Confidentiality/Non-Disclosure Agreement

When performing services under this Agreement, Consultant may become privy to or become familiar with information which the Nation may consider confidential. Consultant agrees to keep all such information confidential and not to discuss or divulge any of it to anyone other than appropriate Nation personnel. Upon termination of the Agreement, Consultant will return to the Nation all documents and other materials provided to Consultant by the Nation, unless the Nation has expressly consented to the Consultant's retention of such documents and materials. Nation and Consultant acknowledge that they and their employees, sub-Contractors, agents, and assigns, in performing this Agreement, may have access to or be directly or indirectly exposed to confidential information of the other Party and related organizations (including client organizations), including communications and strategies. Each Party shall hold confidential all such information and shall not disclose such information without the express written permission of the other Party. This Agreement shall constitute permission for disclosure and use of such information in confidential communications or consultations between Consultant and the Nation's authorized designees as needed to fulfill the obligations protected by this Agreement. Both Parties shall use reasonable efforts to protect such confidential information until such information becomes public knowledge through the regular course of business. The confidentiality provision shall survive the terms of this Agreement.

9. Conflicts of Interest

Consultant represents, and the Nation acknowledges, that Consultant will make professional services available to other clients. Consultant represents that Consultant is not currently engaged and will not engage during the term of this Agreement in work that creates an actual or perceived conflict of interest with the Nation unless the Nation approves of that work in advance in writing.

10. Indemnification

The Nation shall have no obligation to indemnify Consultant should any losses, claims, damages, and expenses result, in whole or in part, from the negligent acts, omissions or errors of Consultant in connection with the services provided under this Agreement. Consultant agrees to indemnify and hold harmless the Nation against all liability, loss, or expense, including personal injury, death, or property damage, resulting from the negligent acts, omissions or errors of the Consultant arising from the services provided hereunder, except to the extent that such liability, loss, or expense results from, in whole or in part, the negligence, unlawful or wrongful acts of the Nation or any other person acting in concert with them. Consultant agrees to pay all costs of any such actions resulting from the negligent acts, omissions or errors of the Consultant, except to the extent that such liability, loss, or expense results from, in whole or in part, the negligence, unlawful or wrongful acts of the Indemnified Parties or any other person acting in concert with them, including reasonable expenses and reasonable attorneys' fees. Each party shall give the other prompt written notice of the assertion of any claim or the commencement of any action that may expose the other to liability.

11. Dispute Resolution

The Nation is a federally recognized Indian Tribe and possesses sovereign immunity under law and the Nation's Constitution. All disputes arising under this agreement shall be resolved according to the laws of the Nation (including the laws of the state of Arizona where the Laws of the Nation do not address a particular matter), and the Nation's Tribal Courts shall have exclusive jurisdiction to the extent necessary to interpret and enforce this Agreement in any actions brought by the Nation or Consultant and arising under this Agreement. No other court or tribunal shall have jurisdiction over any action arising under this Agreement and brought by Consultant. No third-party shall have any right to bring an action under this Agreement, whether against the Nation or against Consultant. In all

actions brought by the Consultant against the Nation, the Tribal Courts shall have jurisdiction only to the extent necessary to determine the amount of any earned but unpaid compensation under this Agreement and to order its payment. The Tribal Courts shall not have jurisdiction for any other purpose in any action brought by the Consultant under this Agreement.

12. Termination

This Agreement may be terminated at any time and for any reason by either party by providing fifteen (15) days written or electronic notice to the other.

If this Agreement is terminated by the Nation, the Nation shall compensate Consultant for all fees incurred to the date of termination and reimburse Consultant for any non-cancellable expenses incurred prior to date of termination.

If this Agreement is terminated by Consultant, Consultant shall provide the Nation with all work-product and assign intellectual property rights in the work product created to date to the Nation.

Consultant shall make good faith efforts to avoid incurring additional costs following either Party's notice of termination.

13. Notices

All Notices given under this Agreement shall either be hand delivered or sent by certified mail, return receipt requested. Notice shall be deemed to have been given upon receipt. The Nation designates the Nation's Attorney General as its representative in connection with this Agreement, whose address for notices is:

Attorney General
Yavapai-Apache Nation
2400 W. Datsi Street
Camp Verde, Arizona 86322

With a copy to:
David Lewis, Manager
Yavapai-Apache Nation
Department of Environmental Protection
876 Smiley Avenue
Camp Verde, Arizona 86322

Consultant designates the following as the representative in connection with this Agreement, whose address for notice is:

Spirit Mountain Partners, LLC
Attn: Ondrea Barber
2330 E. Heatherbrae
Phoenix, Arizona 85016
Phone: (602) 526-4358
Email: ondrea.barber@gmail.com

14. Entire Agreement

This Agreement sets forth the entire understanding of Consultant and the Nation concerning the subject matter of this Agreement and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment, extension, or change of this Agreement shall be binding unless in writing and signed by both parties. In the event of any conflict between the terms and conditions of this Agreement and those of any attached exhibits, the terms and conditions of this Agreement shall govern.

15. Assignment Prohibited

No assignment of the obligations of this Agreement shall be made by Consultant without the Nation's express written consent. No assignment or encumbrance shall be made of any interest of the Consultant in the compensation to be paid under this Agreement without such consent. This provision shall not prohibit the change of the name of the firm of Consultant or the relative ownership of the firm of Consultant. Consultant's representatives for Services shall not be assigned under this provision.

16. Severability

The provisions of this Agreement are deemed severable. If any term or provision of this Agreement is found to violate any provision of any applicable law, statute, or regulation, in whole or in part, said provision shall be deemed by the parties to be severed from the Agreement and the remaining provisions and any partially enforceable provisions shall continue in full force and effect.

17. Binding Affect

The obligations under this Agreement shall be binding upon the successors and assigns of the parties.

18. Headings

The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

19. Authorization

The rights and obligations of the Parties under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties. By signing below, the Parties attest that they have the authority to enter into this Agreement on behalf of the entity they represent.

20. Counterparts

This Agreement may be executed by one or more facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

YAVAPAI-APACHE NATION

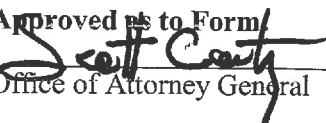
By: 
Jon Huey, Chairman

Date 6/22/21

Spirit Mountain Partners, LLC

By: _____
Ondrea Barber (Principal)

Date: _____

Approved as to Form
 6-22-21
Office of Attorney General