

RESOLUTION NO. 174 -22
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Authorizing the Nation to Contract with CAREGEN Group, Inc.,
to Prepare Initial Feasibility and Design Work for Constructing the Fiber
Infrastructure Needed to Provide Broadband Internet Access Services to the
Nation's Residential and Non-Residential Governmental and Commercial
Buildings Across the Nation's Reservation Communities**

WHEREAS: The Yavapai-Apache 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 by Article V(a) of the Constitution; and

WHEREAS: The Council is authorized to enact laws, ordinances and resolutions incidental to the exercise of its legislative powers as provided by Article V (v) of the Constitution; and

WHEREAS: The Council is authorized to manage all tribal economic affairs and enterprises of the Nation and to appropriate and regulate the use of tribal funds, as provided by Article V (i) and (k), respectively, of the Constitution;

WHEREAS: The Tribal Council, in coordination with the Executive Department and the Nation's MIS Department, has determined that the provision of Broadband Internet Access Services within the Nation's Reservation communities for the benefit of the Nation's governmental operations and its community members, is in the Nation's best interests; and

WHEREAS: The Nation has received a grant award of \$500,000.00 from the National Telecommunications and Information Administration (NTIA), under the Tribal Broadband Connectivity Program, Grant Award NT22TBC0290006, for use in the planning and development of broadband distribution to governmental, commercial, and residential areas of the Yavapai-Apache Nation ("NTIA Grant"); and

WHEREAS: The Nation, upon the recommendation of the MIS Department Manager, desires to contract with CAREGEN Group, Inc., to provide preliminary design services for the construction of a Broadband Internet Access Services System within the Nation's reservation communities, as specified in the Agreement for Consulting Services ("Agreement") attached to this resolution as **Exhibit A**, and the Council has determined that approval of 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 Yavapai-Apache Nation to enter into a Consulting Services Agreement with CAREGEN Group, Inc., for the preliminary feasibility and design work needed to define the scope and costs of the fiber infrastructure needed for construction of a Broadband Internet Access Services System to serve the internet connectivity needs of the Nation's residential homes and non-residential governmental buildings (including commercial buildings) throughout all of the Nation's Reservation communities, all 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 the Council hereby appropriates the sum of **Four Hundred Ten Thousand and 00/100 Dollars (\$410,000.00)** from the Nation's above-referenced NTIA Grant Award No. NT22TBC0290006 to pay the Total Contract Amount under the Agreement.

BE IT FINALLY RESOLVED that the Vice Chairwoman is 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 September 29 2022, by a vote of 7 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.



Tanya Lewis, Vice Chairwoman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

Yavapai-Apache Nation
Agreement for Consulting Services
CAREGEN Group, Inc.

Feasibility and Planning for
Broadband Internet Access Services System

September 29, 2022

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

This Agreement for Consulting Services (“Agreement”) is by and between the Yavapai-Apache Nation, A federally recognized Indian Tribal Government, whose address is 2400 West Datsi Street, Camp Verde, AZ 86322 (“Nation”), and CAREGEN Group, Inc., a Corporation organized under the laws of the State of Missouri, whose address is 6100 NW 78th Street, Kansas City Mo 64151 (“Consultant”).

BACKGROUND

The Nation’s MIS Department is responsible for managing the Nation’s communications infrastructure, including telecommunications, internet services, and information services.

The Nation, acting through the MIS Department, has determined that the provision of Broadband Internet Access Services within the Nation’s Reservation communities for the benefit of the Nation’s governmental operations and its community members, is in the Nation’s best interests.

The Nation, upon the recommendation of the MIS Department Manager, desires to contract with Consultant to provide preliminary design services for the construction of a Broadband Internet Access Services System within the Nation’s reservation communities.

Consultant and the Nation mutually desire to enter into an 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 September 29, 2022, the effective date, and shall run through December 31, 2022. All work under this Agreement shall be completed by December 31, 2022. 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:

2.1 Feasibility Report – Viability of building a Fiber Infrastructure to support providing broadband services to existing residential and non-residential buildings (“buildings”) in the Yavapai-Apache Nation reservation community areas of Clarkdale, Rimrock, Camp Verde, Middle Verde (including Tunlii) & Lower Camp Verde. This area encompasses approximately 443 homes and 26 government facilities buildings (including commercial buildings).

2.2 A High-Level Design (HLD) on a KMZ file will be prepared showing planned preliminary routes to all buildings on the Nation’s reservation land. The HLD will include preliminary locations of strategic handholes, manholes, recommended Telecom equipment housing facilities (existing and new) and distribution centers.

2.3 A Bill of Materials (BOM) **will be prepared** outlining infrastructure build requirements and their approximate cost.

2.4 An Engineering Master Summary will be prepared consisting of:

- i. OSP & ISP (Outside Plant and Inside Plant) Engineering & Design – Scope outline and cost,
- ii. Any additional Environmental, geotechnical, cultural or wildlife studies if need to be performed (Note: Fees for additional studies are not included in this proposal and will be negotiated as needed), and
- iii. Permitting requirements – Scope outline and cost.

2.5 A Construction Master Summary will be prepared consisting of

- i. Construction OSP labor cost,
- ii. Construction Material/Equipment cost (not part of BOM), and
- iii. Construction ISP labor cost.

2.6 Future Operation & Maintenance Master Summary consisting of

- i. Operation & Maintenance personnel organization including approximate wage & salary needs, and
- ii. Tools & equipment needed for operation & maintenance and their associated costs

2.7 Price Breakdown for individual parts of the Scope of Services (inclusive of all fees and expenses):

1. Feasibility Report- \$110,000.00
2. High Level Design- \$200,000.00
3. Bill of Materials estimated requirement- \$10,000.00
4. Engineering Master Summary- \$40,000.00
5. Construction Master Summary- \$30,000.00
6. Future Operation and Maintenance summary- \$20,000.00

Total Contract Amount \$410,000.00

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 **Four Hundred Ten Thousand and 00/100 Dollars (\$410,000.00) for the Term (“Contract Amount”)**. All invoices for payment shall be submitted to Manager via email. Compensation shall be payable within Fifteen (15) days of the Nation’s receipt of Consultant’s invoice. **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.**

Consultant shall submit invoices to the Nation subject to the following requirements:

- 3.1 Consultant agrees to submit invoices to the Nation for Services and Costs under this Agreement with a breakdown of hours spent by Consultant and other personnel in support of the Services provided. Consultant shall provide a short (1-2 paragraphs) narrative write-up of the activities accomplished during the month for which the invoice is provided. Invoices which include costs and expenses incurred by subcontractors used by Consultant shall include a copy of such subcontractor's invoice for rendering services, along with reasonable supporting documentation in support of the cost or expense incurred.
- 3.2 Invoices shall be submitted to the Chairperson of the Yavapai-Apache Nation (*via email*), with a copy to the Nation's Grants and Contracts Manager ("Manager") (*via email*). Following the Manager's review of each invoice to verify satisfactory delivery of services by Consultant, the Chairperson, or his/her designated representative, is authorized to review and approve the Consultant's invoices.
- 3.3 Upon receipt of each invoice, the Nation agrees to promptly review each invoice and pay all undisputed amounts within fifteen (15) days of receipt of such invoice.
- 3.4 In the event the Nation disapproves of any item for Services or Costs submitted, the Nation will submit a statement, in writing, to Consultant within fifteen (15) days of receipt of each invoice which states the specific portion of the invoice and the specific reason for the disapproval. If the Nation does not provide this statement to Consultant in writing within fifteen (15) days of receipt of the submitted invoice, the disputed item shall be deemed approved and shall be due and payable to Consultant. The parties agree to attempt to resolve any disputed amount informally. If the dispute cannot be informally resolved, the parties agree to resolve the dispute pursuant to Section ___ below.
- 3.5 If payments become overdue for more than sixty (45) days, then in addition to any other available rights and remedies available to Consultant under this Agreement or under applicable laws or in equity, Consultant shall have the right to suspend the Services until payment is received and recover all related costs arising from or related to the suspension, including demobilization and remobilization costs.
- 3.6 Invoices which remain unpaid for forty-five (45) days after receipt of a submitted invoice shall accrue interest at a rate of 5% annually.

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 Steve Ward. The Consultant shall use its best professional efforts and judgment in providing Services to the Nation under this Agreement.

5. Consultant's Responsibilities

- 5.1 Consultant shall be responsible for furnishing all tools, equipment, staffing and supervision necessary for performance of the Services.
- 5.2 Consultant shall employ labor that is sufficiently skilled and qualified to perform the Services. If any portions of the Services require any professional licenses, Consultant warrants that all such Services will be performed by individuals with such required licenses.
- 5.3 Consultant will be fully responsible and liable for all acts, omissions, and Services provided by any of its employees, agents, and representatives.

- 5.4 Consultant agrees to abide by all applicable laws related to the hiring, employment, and supervision of its labor force at all times during the term.
- 5.5 Consultant shall cooperate with Nation and Nation's other contractors, design professionals, and consultants, if any.
- 5.6 Consultant represents and warrants that it understands and shall abide by all applicable federal, state and local safety requirements related to the Services, including but not limited to OSHA requirements, and Consultant shall at all times maintain such training, certifications and documentation required by such laws.

6. Nation's Responsibilities

- 6.1 Nation shall permit Consultant free and timely access to the project sites and allow Consultant to complete the Services without interruption or disruption.
- 6.2 Nation shall cooperate with Consultant in securing any required building and other permits, licenses and inspections.
- 6.3 Nation shall review and approve or take other appropriate action on permits, submittals and any other Contract Documents and deliverables that require Nation's review and/or approval, promptly and within such time periods that will not delay Consultant's performance of the Services.
- 6.4 Nation shall schedule and coordinate the work of its other contractors (if any) in a manner that does not interfere or impact Consultant's performance of the Services.

7. 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.

8. Independent Consultant

Consultant acknowledges that it is an Independent Consultant and is not an employee of the Nation and understands that as an Independent Consultant, Consultant 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.

9. 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.

10. Confidentiality/Non-Disclosure Agreement

In the course of 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-Consultants, 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.

11. 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.

12. 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.

13. Insurance

Consultant shall purchase and maintain during the Project the following type of coverages and limits of liability:

13.1 Workers' Compensation and Occupational Disease Insurance in accordance with applicable state and federal laws, and Employer's Liability Insurance with a bodily injury per accident limit of liability of at least \$1,000,000, bodily injury by disease limit by employee of \$1,000,000, and bodily injury by disease policy limit of \$1,000,000.

13.2 Commercial General Liability Insurance provided by ISO form CG 0001 with a combined Bodily

Injury and Property Damage limit of at least \$1,000,000 per occurrence, \$2,000,000 products and completed operations aggregate and \$2,000,000 general aggregate.

- 13.3 Comprehensive Automobile Liability Insurance covering use of all owned, non-owned and hired vehicles with Bodily Injury and Property Damage limit of at least \$1,000,000 Combined Single Limit.
- 13.4 Excess or Umbrella Liability Insurance in the amount of \$1,000,000 per occurrence and in the aggregate. Such Excess/Umbrella policy shall be excess over the Employers Liability, Commercial General Liability and Comprehensive Auto Liability policies and shall name Nation, as Additional Insured.
- 13.5 Professional Liability in the amount of \$1,000,000 per occurrence and in the aggregate. This requirement applies only if the Consultant's duties involve professional architectural, engineering, design or consultation work. Any applicable deductibles and/or retention must be noted on the Certificate of Insurance. Policy exclusions are not allowed for pollution, including mold, fungi or bacteria including the vapor produced or arising therefrom. A copy of this policy must be made available upon request.
- 13.6 Any subcontractor employed by Consultant shall have equivalent coverage.

14. Dispute Resolution

- 14.1 **Informal Negotiations.** Nation and Consultant agree to engage in informal negotiations to resolve any dispute arising under this Agreement. In the event that any dispute between Nation and Consultant is not resolved through informal negotiations, the Parties agree that, subject to the Limited Waiver of Sovereign Immunity provided by Owner in Section 14.2 below, the dispute may be resolved through the Nation's Tribal Court. In any informal negotiation under this paragraph, the parties may by mutual agreement enlist the assistance of a mediator of the parties mutual choosing. Any such mediator shall be an attorney licensed in Arizona having a minimum of ten years of construction law experience.
- 14.2 **Limited Waiver of Sovereign Immunity.** The Yavapai-Apache Nation is immune from unconsented lawsuits. Except as provided in this sub-paragraph (b), nothing in this Agreement or other writing is or shall be deemed to be a waiver of the Yavapai-Apache Nation's sovereign immunity from suit, which immunity is hereby expressly asserted and affirmed. However, in order to provide for dispute resolution and the enforceability of this Agreement as provided in this Section 14.2, the Nation grants to Consultant a limited waiver of its sovereign immunity as follows: (1) Nation agrees that all unresolved disputes arising under this Agreement shall be submitted to the Yavapai-Apache Nation Tribal Court as provided under this Section 14.2 and that such tribal court action shall be the exclusive means of dispute resolution under this Agreement; (2) Nation agrees that the Yavapai-Apache Nation Tribal Court shall have subject matter jurisdiction over the resolution of disputes arising under this Agreement, but only as to matters arising under this Agreement, and no other claim or dispute may be brought before the Tribal Court, and no other court or forum shall have jurisdiction to hear any claim or dispute arising under this Agreement; (3) it is acknowledged and agreed between Nation and Consultant that the limited waiver of sovereign immunity provided by this Section 14.2, shall extend only to disputes between Nation and Consultant and shall apply only to an action by Consultant for any claim for breach of the Agreement, and that this limited waiver shall therefore not extend to or be effective as to any claim or action against Nation by any party other than Consultant (including without limitation any purported third party beneficiary of the Agreement); (4) The liability of Nation for any recovery under this Agreement as provided for hereunder shall be limited to actual

unpaid contractual obligations (compensatory damages) and/or specific performance, and shall not in any case include general, consequential, incidental, special, indirect, punitive or any other damages, whether in tort or contract, all of which are hereby expressly declared to be outside of the scope of the waiver of sovereign immunity provided for under this sub-paragraph (b), and Nation's total liability to Consultant for compensatory damages under any judgment entered by the Court as provided for herein shall in no case exceed earned but unpaid amounts owed by Nation to Consultant for the Work provided by Consultant under this Agreement up to but not exceeding the total Contract Amount; (5) The Tribal Court's jurisdiction, as limited hereunder, shall not be construed to empower the Court to enter a judgment that reaches or encumbers the assets or property of the Yavapai-Apache Nation other than the financial assets of the Nation appropriated by the Tribal Council to pay amounts owed to Consultant under this Agreement; and (6) this limited waiver of sovereign immunity shall expire two (2) years after the termination, cancellation or completion of the Agreement, except that this limited waiver of sovereign immunity shall remain effective for any proceeding then pending and all appeals and enforcement proceedings therefore until the underlying legal claim or claims have been finally determined. The parties also agree that this limited waiver of sovereign immunity shall be strictly construed.

15. Waiver of Consequential Damages and Limitation of Liability

Consultant shall not be liable for any lost revenue, lost profits or any other consequential, incidental, special, exemplary, or other damages suffered by Nation under any part of this agreement or any work order, whether or not the possibility of such lost profits or damages has been disclosed to consultant or could have been reasonably foreseen by consultant. The extent of consultant's liability under this Agreement shall be limited to the Contract Amount under Section 3 above.

16. Termination

This Agreement may be terminated at any time and for any reason by either party by providing thirty (30) 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 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.

17. 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:

Office of the Chairperson
Yavapai-Apache Nation
2400 W. Datsi Street
Camp Verde, Arizona 86322

With a copy to:

Robert Mills, Manager
Yavapai-Apache Nation
2400 W. Datsi Street
Camp Verde, Arizona 86322

Consultant designates the following as the representative in connection with this Agreement, whose address for notice is: **Steve Ward, Phone 816-617-3371**

18. Entire Agreement

This Agreement sets forth the entire understanding of Consultant and the Nation with regard to 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.

19. 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.

20. Severability

The provisions of this Agreement are deemed severable. In the event that 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.

21. Binding Affect

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

22. Headings

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

23. 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.


24. 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 the same instrument.

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

SIGNATURES ARE SET OUT ON THE FOLLOWING PAGE

YAVAPAI-APACHE NATION

By: 
Tanya Lewis, Vice Chairwoman


Date 09.29.22

CAREGEN CONSULTING, Inc.

By: _____
Steve Ward, CEO

Date: _____

Approved as to Form:


Anthony Scott Canty, Esq.
Attorney General
Yavapai-Apache Nation