

RESOLUTION NO. 176 -22
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Approving an Agreement for Consulting Services Between the Yavapai-Apache Nation and Water Quality Technology, LLC for Work in Support of the Nation's Clean Water Act Section 106 Water Quality Program

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 for under Article V(a) of the Constitution; and

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

WHEREAS: The Nation, as recommended by the Environmental Protection Department, proposes to enter into an Agreement for Consulting Services (“Agreement”) as follows:

1. Department/Program: Environmental Protection
2. Consultant: Water Quality Technology, LLC
3. Services to be provided: Specified services under the Nation’s Water Quality Programs, as funded by the United States Environmental Protection Agency and administered under authority of Section 106 of the Clean Water Act.
4. Term: **October 1, 2022 – September 30, 2023**
5. Contract Amount: **\$15,500.00**
6. Funding Source: **U.S. EPA PPG Grant Funds** within the Environmental Protection Department’s General Fund Operating Budget for FY-2022-23

WHEREAS: The Council has determined that it is in the Nation’s best interest to authorize execution of the above-described Agreement.

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 an Agreement for Consulting Services, as described above, with Water Quality Technologies, LLC, in accordance with the Terms and Conditions set out in the form of Agreement attached to this resolution as **Exhibit A** (together with Contractor’s Work Plan and Budget), under which Contractor will provide the above described services.

BE IT FURTHER RESOLVED that the Nation’s funds shall be used to fund compensation under the Agreement and shall be appropriated from the U.S. EPA PPG Grant Funds within the Environmental Protection Department’s General Fund Operating Budget for FY-2022-23.

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.



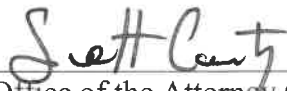
Tanya Lewis, Vice Chairwoman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

TO

YAVAPAI-APACHE NATION

AGREEMENT FOR CONSULTING SERVICES

WATER QUALITY TECHNOLOGY, LLC

WORK PLAN AND BUDGET FY-2022-23

CWA SECTION 106 WATER QUALITY PROGRAM

SEPTEMBER 29, 2022

EXHIBIT A

TASKS, DELIVERABLES, AND WQT WORK PLAN AND BUDGET

YAVAPAI-APACHE NATION CLEAN WATER ACT SECTION 106 WATER POLLUTION CONTROL PROGRAM FISCAL YEAR 2022-2023

Task #	Task Description	Task Deliverables	WQT Budget
1	<p>Environmental Outcome: To evaluate and report on performance under the grant</p> <p>COMPONENT: Bi-annual Reporting to self-evaluate & joint- evaluate annual performance under the grant including:</p> <ul style="list-style-type: none"> • Status of each work plan goal, task, and deliverable • Status of expenditures for reporting period • Summary of accomplishments including the reporting of environmental results and discussion of problems impacting or expected to impact performance • Commitments not on schedule and proposed dates of completion 	Bi-annual reports submitted to EPA	\$1,000
2	<p>COMPONENT: Assist in the implementation of the Tribal water quality monitoring plan in accordance with EPA and EPA-approved approved QAPP</p> <p>Task 1 (a) Follow a monitoring strategy approved by EPA</p> <p>Task 1(b: Coordinate sampling events with the laboratory</p> <p>Task 1(c):Conduct monitoring including: Determine the physical, chemical and biological conditions of water body(s) and evaluate them against water quality indicators(WQIs)</p> <p>Task 1(d: Maintain water quality monitoring data base</p> <p>Task 1 (e): Conduct annual assessment of monitoring program, QAPP, and database to ensure water quality goals are being met; revise as necessary , and submit to EPA fort approval.</p>	<p>Provide assistance with the following:</p> <ul style="list-style-type: none"> - monitoring activities conducted during the reporting period -findings from assessment of QAPP, monitoring program , & database Submit to EPA -Revision of QAPP for review& approval (if necessary) -Submission of data to CDX 	\$2,250

3	<p>COMPONENT: Assist in the development of the Annual Water Quality Assessment Report with associated Water Quality Assessment Template</p> <p>Task 2(a): Consolidate all annual water quality data</p> <p>Task 2(b): Prepare annual assessment report for Surface Water per Appendix A of EPA's CWA 106 Tribal Guidance</p> <p>Task 2 (c) Prepare EPA Assessment Template per CWA 106 guidelines</p>	<p>Provide assistance with the following:</p> <ul style="list-style-type: none"> - a final Annual Assessment Report for Surface Water for submittal to EPA - a final Water Quality Assessment Template for submittal to EPA 	\$5,750
4	<p>COMPONENT: Continue a Program to Acquire Verde River Flow Information on the YAN Reservation</p> <p>Commitment 3a: This task involves continuing steps to acquire flow data on the Verde River which could potential impact water quality on the YAN Reservation.</p> <ul style="list-style-type: none"> • Research and collect existing flow data collected by various entities such as the 	-Prepare a summary Report of Completed Activities	\$4,000
6	<p>COMPONENT: Produce next FY CWA water quality work plans</p> <p>Commitment 6(a): Secure guidelines of all CWA program</p> <p>Commitment 6(b): Produce next FY CWA water quality work plans</p>	<p>CWA work plans</p> <ul style="list-style-type: none"> -106 program -319 program (base and competitive) 	\$2,500
Total			\$15,500

Tribal employee training will be provided as part of each task.

CONSULTANT:

Water Quality Technology, LLC.
Name: Terry Geiselman
Title: President

YAVAPAI-APACHE:

YAVAPAI-APACHE NATION
Name: Tanya Lewis
Title: Vice Chairwoman

Signature

Date: _____

Signature

Date: _____

EXHIBIT A

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

**WATER QUALITY TECHNOLOGY, LLC
CWA SECTION 106 WATER QUALITY PROGRAM**

SEPTEMBER 29, 2022

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

**U.S. Clean Water Act, Section 106
Water Pollution Control Program
FY-2022-23**

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 Water Quality Technology, LLC, Terry Geiselman, President, PO Box 270085, Fort Collins, Colorado 80527 (“WQT” or “Consultant”).

BACKGROUND

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

Consultant and the Nation, acting through YAN EPD, 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 October 1, 2022, the effective date, and shall run through September 30, 2023. 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:

Consultant agrees to provide the Nation, through its Environmental Protection Department, with the following Services under the Nation’s Water Quality Programs, as funded by the United States Environmental Protection Agency and administered under authority of Section 106 of the Clean Water Act (“CWA”):

Provide all Task and Deliverables as set forth in Consultant's **Exhibit A, "Tasks, Deliverables, and WQT Work Plan and Budget,"** Yavapai-Apache Nation, U.S. Clean water Act, Section 106 Water Pollution Control Program Fiscal Year 2022-2023 (hereinafter "WQT Budget and Work Plan"), a copy of which is attached to and incorporated into this Agreement as **Exhibit A.**

As an Independent Contractor, Consultant will determine the method, details, and means of performing the above-described services, provided that Consultant shall report to the Nation’s Manager of the Environmental Protection Department and provide him with progress reports on a regular basis.

3. Compensation

As full compensation for the Services provided by Consultant under this Agreement, as detailed in the attached Exhibit A, WQT Work Plan and Budget, the Nation shall pay Consultant compensation,

inclusive of all fees and expenses, a fixed-fee total contract amount of **Fifteen Thousand Five Hundred and 00/100 Dollars (\$15,500.00)** for the Term of this Agreement.

- (a) Consultant will invoice Nation monthly for services performed and expenses incurred.
- (b) Consultant's invoice shall be payable by the Nation upon its determination that Consultant has satisfactorily completed that portion of the above-referenced Services for which a monthly invoice is submitted (invoice "approval").
- (c) Compensation payable under each such invoice shall be payable by the Nation within thirty (30) days of the Nation's receipt and approval of the Consultant's invoice.
- (d) **Consultant must provide Nation with a completed IRS Form W-9 for Independent Contractors. 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.**
- (e) Invoices shall be submitted electronically to the Nation, through its Environmental Protection Department Manager at the following email address: dlewis@yan-tribe.org.

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 **Terry Geiselman**. 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 he is an Independent Contractor and is not an employee of the Nation and understands that as an Independent Contractor, he 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 (if any), 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

While 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. Any and 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 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 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:

Water Quality Technology, LLC,
Terry Geiselman, President,
PO Box 270085
Fort Collins, Colorado 80527

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. 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.

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 the same instrument.

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

YAVAPAI-APACHE NATION

By: 
Tanya Lewis, Vice Chairwoman


Date 09.29.22

WATER QUALITY TECHNOLOGY, LLC

By: _____
Terry Geiselman, President

Date: _____

Approved as to Form:


Office of Attorney General
Yavapai-Apache Nation