

5.11

312166661

Park Estates  
45-89133



## PROFESSIONAL SERVICES AGREEMENT

This professional services agreement (the "Agreement") is entered into as of the 1<sup>st</sup> day of September 2021 ("Effective Date") between Navajo Tribal Utility Authority ("NTUA") and Navajo Engineering and Construction Authority ("Consultant") (as used herein "Parties" refers collectively to NTUA and Consultant, and "Party" refers to NTUA or Consultant by the context).

WHEREAS, NTUA wishes to engage Consultant to assist NTUA in providing assistance in a specific area of professional services, as described below ("Services"); and

WHEREAS, Consultant desires to provide such services to NTUA pursuant to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the promises, the covenants and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Terms and Conditions. The Terms and Conditions attached hereto as Exhibit "A" are incorporated into this Agreement by reference as if fully set forth herein.
2. Services. NTUA hereby retains Consultant to provide professional consulting services for the Park Estates Water System Improvement Project located in Sanders, Arizona. Professional services will be in accordance with and reflect the Scope of Work, attached as Exhibit "B". Consultant shall perform such services and provide additional services as NTUA should require. Consultant shall act diligently and in accordance with all applicable laws in performing the Services.
3. Compensation. Consultant shall be compensated at all applicable rates in accordance with the Scope of Work attached hereto as Exhibit "B" and shall not exceed \$271,637.00, which shall be inclusive of all applicable taxes including Navajo Nation taxes. Consultant agrees that the Services under this Agreement shall not continue for the remainder of the Agreement, unless otherwise agreed to and modified in writing, if such Services shall exceed the allocated amount.
4. Time and Availability. Consultant shall devote the time necessary to satisfactorily perform the Services for NTUA. Consultant shall give due regard in selecting dates and time to perform Services and shall consider the needs of NTUA's business functions when performing such Services.
5. Term. This Agreement shall commence as of the Effective Date and shall continue in full force until December 31, 2022, in accordance with this Agreement. NTUA and the Consultant

(REVISED 4/12/2021)

may negotiate to extend the term of this Agreement and the terms and conditions if NTUA deems it necessary. NTUA may terminate this Agreement without cause upon five (5) days written advance notice to Consultant. Termination shall not discharge or modify any of the obligations of the Parties arising prior to the effective date of Termination, including obligations to pay for Services performed prior to the effective date of termination.


IN WITNESS WHEREOF, NTUA and Consultant have executed this Agreement as of the date set forth herein.

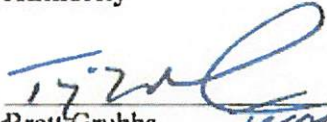
NTUA

Consultant

Navajo Tribal Utility Authority

Navajo Engineering and Construction Authority

  
\_\_\_\_\_  
Walter W. Haase, P.E.  
General Manager  
Date: 9/28/2021

  
for 1720 Brett Grubbs  
General Manager  
Date: 28 Sept 21  
*Terry Gorsuch, Mgr. of Engineering*

**EXHIBIT A**

**Terms and Conditions**

1. **Terms and Conditions.** The Terms and Conditions (“Terms”) apply to the Services provided to NTUA by Consultant as set forth in this Agreement to which these Terms are attached. The Terms are incorporated into the Agreement and constitute the entire agreement between the Parties with respect to the Services provided unless otherwise stated in this Agreement. The Agreement is expressly reserved to these Terms and any changes which modify or alter the Terms, or the Agreement are expressly rejected unless agreed to mutually by both parties.
2. **Compensation.** The Compensation for the Services shall be set forth in Exhibit “C”, unless otherwise stated.
3. **Invoice.** The Consultant shall invoice NTUA monthly for fees and expenses incurred in performance of the Services. Such invoice shall provide a reasonable description and documentation of the Services provided and costs incurred. NTUA shall pay the amounts invoiced within sixty (60) days of receipt of an invoice from the Consultant. In the event of any dispute as to payment Parties shall act expeditiously and in good faith to resolve the dispute. Consultant shall separate, on each invoice, work performed within or outside the territorial jurisdiction of the Navajo Nation. Such invoices shall break out all hours by personnel name, travel, out-of-pocket and labor expenses in separate line items, with a reasonable description and documentation of the tasks completed and costs incurred.
4. **Taxes.** Consultant shall be responsible for all taxes payable with respect to amounts paid to Consultant by NTUA hereunder, and unless required by law, NTUA shall not withhold any taxes from amounts payable to Consultant. Consultant shall promptly provide NTUA with any certificates necessary to evidence its exemption from withholding. Consultant understands that it is responsible to pay all applicable taxes and shall, when requested by NTUA, properly document to NTUA that any and all taxes have been paid. In the event Consultant fails to pay Navajo Nation taxes required by Navajo law, NTUA shall have the right, but not the obligation, of withholding Navajo Nation taxes on each invoice presented for payment for work performed within the Navajo Nation.

Work physically performed within the Navajo Nation is subject to Navajo Nation taxes. “[T]he taxpayer shall be responsible for paying the Sales Tax only on the gross receipts received for that portion of the work when the taxpayer is physically located within the Navajo Nation.” (Navajo Nation Sales Tax Regulation §6.106). The applicable Navajo Nation tax shall be paid directly to The Office of the Navajo Tax Commission by Consultant.

5. **Independent Contractor.** Consultant is an independent contractor and will not, through performance of Services, be or become an agent, partner or employee of the NTUA. Consultant is not granted any authority or responsibility, express, implied or apparent, to bind any act on behalf of the NTUA.

6. **Benefits.** Consultant shall not be entitled to participate in any benefits or programs maintained by NTUA for its employees including, but not limited to pension, retirement, life, medical and disability benefits, profit sharing or other fringe benefits. No workers' compensation insurance shall be obtained by NTUA to cover the Consultant.
7. **Insurance.** Throughout the term of this Agreement, Consultant shall maintain comprehensive liability insurance and workers compensation insurance on all its employees, and Consultant shall carry coverage of not less than the following amounts:(i) Commercial General Liability Insurance (including contractual liability coverage) with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence, naming NTUA as an additional insured thereunder; (ii) Commercial Auto Liability insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence, naming NTUA as an additional insured thereunder and (iii) workers compensation insurance as required by law. At the time of execution of this Agreement, Consultant shall provide NTUA with a certificate of insurance evidencing the insurance coverages required under this Section, and thereafter Consultant shall provide NTUA with certificates evidencing any renewal thereof. Any modification, renewal, replacement or cancellation of such insurance coverages to the extent feasible by Consultant's insurer, will be provided to NTUA with thirty (30) days prior written notice to NTUA. Approval of Consultant's insurance shall not relieve Consultant of any obligation contained herein, including without limitation, Consultant's defense and indemnity obligations. Consultant's insurance shall be primary and non-contributory and is required to respond and pay prior to any other insurance or self-insurance available.
8. **Indemnification.** Consultant agrees to defend, indemnify and hold NTUA and its affiliates, officers, directors, employees, agents, successors and assigns harmless from any and all losses, liabilities, damages and claims and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) ("Loss" or "Losses") related to or arising from any third-party demand, claim or suit for damages, injunction, or other relief, on account of or arising from any actual or alleged: (i) breach of any representation, warranty, covenant or provision of this Agreement; (ii) damage to any property; (iii) infringement of any intellectual property rights or ownership rights; (iv) public charges and penalties; or (v) demand, liability or lien, provided the foregoing arise in connection with (1) negligent acts or omissions or willful misconduct of Consultant or any of its officers, directors, employees, and agents (other than those acting in a capacity for NTUA) in connection with the construction, installation, maintenance, presence, use or removal of systems, channels, equipment or software not provided by NTUA which are connected or are to be connected to Services; and (2) claims for infringement or misappropriation of any patent, trade secret, copyright, or other intellectual property rights, arising from the use of equipment and software, apparatus and systems not provided by or approved for use in connection with the Services by NTUA. Consultant shall not, however, be responsible for any Losses caused by the sole negligence or willful misconduct of the NTUA and its officers, directors, employees, agents, successors and assigns (other than those acting in capacity for Consultant).
9. **COVID-19.** The parties agree that in order to maintain a safe and healthy environment for all consultants, employees, and customers, the Consultant shall abide by the NTUA Guidelines to

NTUA Employees: COVID-19. In addition, the Consultant shall abide by applicable COVID-19, instructions consistent with the Guidelines, or applicable Navajo Nation executive orders, public health orders, or legislation will be borne by the Contactor. Nothing herein shall be construed as NTUA agreeing to be liable for any loss, death or injury of any kind whatsoever, that is caused by or is a result of the novel coronavirus (COVID-19).

**10. Termination.** The following events are also deemed to be events of default pursuant to which NTUA has the right to terminate as set forth below:

- a) NTUA may terminate this Agreement upon five (5) days written notice to Consultant;
- b) If default shall be made in any of Consultant's covenants, agreements, or obligations contained in this Agreement and Consultant fails to cure said default within fifteen (15) days after written notice is provided to Consultant by NTUA, or in case of any assignment or transfer of this Agreement in violation above, NTUA may, at its option, terminate this Agreement by serving five (5) days' notice in writing upon Consultant. Notwithstanding the foregoing, NTUA shall have the right to terminate this Agreement immediately if Consultant fails to provide evidence of insurance as required in **Section 7**.

**11. Warranties.** Consultant warrants that:

- (a) Consultant's agreement to perform the work pursuant to this Agreement does not violate any agreement or obligation between Consultant and a third party; and
- (b) The work as delivered to NTUA will not infringe any copyright, patent, trade secret, or other proprietary right held by any third party; and
- (c) The Services provided by Consultant shall be performed in a professional manner, and shall be of a high grade, nature, and quality. The Services shall be performed in a timely manner and shall meet deadlines agreed between Consultant and NTUA; and
- (d) The Services will be of a professional quality conforming to generally accepted industry standards and practices that will be performed in a timely manner in accordance with the terms and conditions of this Agreement.

**12. Survival of Obligations.** Neither termination nor expiration of this Agreement shall terminate the obligations of the NTUA to Consultant for charges and reimbursements due to Consultant for performance of services under this Agreement, nor of Consultant with respect to the protection of NTUA's confidential information, supplied by NTUA to Consultant or prepared by Consultant for NTUA nor any indemnity obligations for the benefit of either party, all of which obligations shall survive any termination or expiration hereof.

**13. Confidentiality.** In performing consulting Services under this Agreement, Consultant will be exposed to certain "Confidential Information" (defined below) of NTUA. Consultant agrees that it will not use such Confidential Information in any way for the benefit of anyone other than NTUA and will not disclose such information without the prior written authorization of

the General Manager of NTUA, either during or after the term of this Agreement, for as long as such information is classified as Confidential Information.

Confidential Information shall include, but is not limited to information concerning patents, trade secrets, unpublished rates, confidential processes, material, research and development, proprietary software, analysis, techniques, material and designs useful to NTUA, vendor names, customers, supplier lists, databases, management systems, sales and marketing plans of NTUA, confidential development or research, confidential current or future agreements, or any other confidential or proprietary information of NTUA.

14. **Intellectual Property Rights.** Consultant agrees that any computer programs, software, copyrightable work, discoveries, drawings, plans, improvements and any other work developed for the benefit of NTUA (hereinafter called "Protected Work") developed by Consultant or resulting from the performance of Consultant's responsibilities and obligations pursuant to this Agreement, are works made for the benefit of NTUA and the property of NTUA. If for any reason the Protected Work would not be considered a work made for the benefit of NTUA under applicable law, Consultant hereby sells, assigns and transfers to NTUA, its successors and assign, the entire right, title and interest in and to the Protected Work, including but not limited to exclusive rights to produce, distribute, prepare derivative works, display and perform the Protected Work. This provision shall survive expiration and termination of this Agreement.
15. **Retention of Payment.** NTUA may retain 10% of Compensation to confirm that all Services are satisfactorily completed. NTUA will determine if a retention is required and whether it will be imposed per invoice or at the final payment depending on the project and the circumstances. Once NTUA determines that all Services have been completed, the retention withheld by NTUA shall be released. In the event of a dispute between NTUA and Consultant, NTUA may withhold from the final payment an amount not to exceed 100% of the disputed amount.

#### **MISCELLANEOUS**

16. **Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND THE LEGAL RELATIONS BETWEEN THE PARTIES DETERMINED IN ACCORDANCE WITH LAWS OF THE NAVAJO NATION, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. ANY DISPUTE HEREUNDER REQUIRING JUDICIAL RESOLUTION SHALL ONLY BE MADE THE SUBJECT OF AN ACTION BROUGHT IN A COURT OF COMPETENT JURISDICTION OF THE NAVAJO NATION AND THE PARTIES EACH ACCEPT THE EXCLUSIVE JURISDICTION OF SUCH COURTS TO THE EXTENT AUTHORIZED BY THE NAVAJO SOVEREIGN IMMUNITY ACT, 1 N.N.C. §551, *ET. SEQ.*
17. **Complete Agreement.** This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the Parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement.

18. **Severability.** If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity of any other provision of this Agreement.
19. **Waiver.** Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.
20. **Successors and Assigns.** All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of NTUA and Consultant to the same extent as if each such successor and assign was named a party to this Agreement.
21. **Navajo Preference.** In performing the work under this agreement, the Consultant shall comply with all applicable laws, policies, rules and regulations of the Navajo Nation and the NTUA, including without limitation the Navajo Preference in Employment Law, codified at 15 N.N.C. Sections 601, *et seq.*, (the "NPEA"), and the Navajo Nation Business Opportunity Act, codified at 15 N.N.C., Sections 201, *et seq.*, (the "NNBOA"). The terms and provisions of the NPEA and NNBOA are specifically incorporated herein, and become a part of this agreement, and breach by the Consultant of any terms and provisions of such law shall constitute a breach of this agreement and provide grounds for the suspension or termination of the agreement or other remedy as specified in the NPEA and NNBOA.
22. **Assignment.** Consultant may not assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the NTUA, which consent shall not be unreasonably withheld or delayed. Any attempted assignment by Consultant in violation of this section shall constitute a breach of this Agreement and shall be voidable by NTUA in its sole and absolute discretion.
23. **Procurement Procedure.** Consultant acknowledges that this Agreement and any modification of this Agreement shall be signed in accordance with applicable NTUA Procurement Procedures. Any violation of this section shall void such Agreements and modifications. A copy of the NTUA Procurement Policy or Procedure will be made available upon the Consultant's request.
24. **Signatory Authority.** Consultant warrants that the signatory to this Agreement has the appropriate authority to execute such Agreements.
25. **Notices.** Any notice required by this Agreement shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

To NTUA:  
Navajo Tribal Utility Authority  
P.O. Box 170  
Fort Defiance, Arizona 86504

Attn: David Yazzie; W/WW Project Manager  
Phone: 928-729-6284  
Email: [davidya@ntua.com](mailto:davidya@ntua.com)

To Consultant:  
Navajo Engineering and Construction Authority  
P.O Box 969  
No. 1 Uranium Blvd.  
Shiprock, New Mexico 87420  
Attn: Terry Gorsuch  
Phone: 505-210-7070  
Email: [terry@navajo.net](mailto:terry@navajo.net)

26. **Sovereign Immunity.** Nothing in this Agreement shall be construed as limiting or waiving NTUA's sovereign immunity rights except to the limited extent provided in the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §551 *et seq.*
27. **Order of Precedence.** Where there is a conflict between the Terms and Conditions set forth in Exhibit A and the other attachments including but not limited to Exhibit "B" attached hereto, the Terms and Conditions set forth in Exhibit A shall control.



**EXHIBIT "B"****Scope of Work****Navajo Engineering And Construction Authority**

P.O. Box 969  
No. 1 Uranium Blvd.  
Shiprock, NM 87420

Phone: (505) 210 7070  
Fax: (505) 210 7009

<b>To:</b>	Navajo Tribal Utility Authority HQ	<b>Contact:</b>	Daniel Stevens
<b>Address:</b>	P.O. Box 170 Fort Defiance, AZ 86504 USA	<b>Phone:</b>	(505) 729-5721
<b>Project Name:</b>	Park Estates Water Sys. Improvments - Cmpltn Mod. July 6, 2021	<b>Fax:</b>	
<b>Project Location:</b>	Sanders, Arizona	<b>Bid Number:</b>	
		<b>Bid Date:</b>	7/6/2021

Mr. Stevens,

As requested, NECA is providing pricing to complete the Park Estates project scope. NECA's price includes the items installed but not paid for through the original contract, material increases and the changed scope related to the Highway 191 bore crossing. NECA's quote also includes using HDPE in lieu of PVC due to availability of pipe and the steel casing material increase. NECA also corrected the quantity error for the 6" waterline. Please give us a call if you have questions.

Regards,

Terry Gorsuch  
Manager of Engineering

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization	1.00	LS	\$25,000.00	\$25,000.00
2	Install 6" C 900 PVC Waterline - Total Installed At Completion, Including Pipe Through The Bore Casing, Will Be 26,637 (190' More Than The Original Bore Schedule).	190.00	LF	\$52.00	\$9,880.00
3	Install 8" C-900 PVC Waterline - Need For Transition To PRV	140.00	LF	\$64.00	\$8,960.00
4	Install 45 & 90 Degree Bends - Unit Price From Original Contract To Make Tie-in On West Side Of Highway 191	2.00	UNIT	\$950.00	\$1,900.00
5	1" PE House Service Line - Quantity Installed In Addition To The Original Anticipated Quantity Of 85 - Installed A Total Of 96	11.00	EACH	\$2,776.00	\$30,536.00
6	Meter Can Installations - Quantity Installed In Addition To The Original Anticipated Quantity Of 85 - Installed A Total Of 96	11.00	EACH	\$840.00	\$9,240.00
7	Tie-in Services To Houses - Not Part Of NECA's Original Scope	1.00	LS	\$38,567.91	\$38,567.91
8	Bollards - Quantity Installed In Addition To The Original Anticipated Quantity Of 48 - Installed A Total Of 51	3.00	EACH	\$1,900.00	\$5,700.00
9	6" MJ Gate Valves, CIP - Unit Price From Original Contract To Make Tie-in On West Side Of Highway 191	1.00	EACH	\$2,300.00	\$2,300.00
10	Air Release Valves - Installed, But \$19,845 Still Remains Unpaid From The Original Contract -	1.00	LS	\$19,845.00	\$19,845.00
11	12" Steel Road Casing, Hwy 191 - Original Bore Was To Be 80' Bore To Be Installed Will Now Be 200'	200.00	LF	\$338.50	\$67,700.00
12	Tie-in To Main - Tie Into System Recently Installed And The Existing System On The West Side Of Highway 191	2.00	EACH	\$5,400.00	\$10,800.00
13	Hydrovac Exploration - West Of Highway 191	1.00	LS	\$5,404.41	\$5,404.41
14	Weekend Work - NTUA Requested A Weekend Rate And One Was Provided By NECA. Support Documentation Has Been Provided By NECA.	1.00	LS	\$14,000.00	\$14,000.00

15	Increase To Utilize HDPE (DIP Size) In Lieu Of Certalok Pipe - HDPE Is More Readily Available And Will Work With The Spacers And End Seals That Have Already Been Procured	1.00 LS	\$4,614.00	\$4,614.00
16	Steel Casing Pipe Increase	200.00 LF	\$9.07	\$1,814.00

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## Navajo Engineering And Construction Authority

P.O. Box 969  
No. 1 Uranium Blvd.  
Shiprock, NM 87420


Phone: (505) 210-7070  
Fax: (505) 210-7009

<b>To:</b>	Navajo Tribal Utility Authority HQ	<b>Contact:</b>	Daniel Stevens
<b>Address:</b>	P.O. Box 170 Fort Defiance, AZ 86504 USA	<b>Phone:</b>	(505) 729-5721
<b>Project Name:</b>	Park Estates Water Sys. Imprvmnts - Crmpltn Mod - July 6, 202	<b>Fax:</b>	
<b>Project Location:</b>	Sanders, Arizona	<b>Bid Number:</b>	
		<b>Bid Date:</b>	7/6/2021

**Bid Price Subtotal: \$256,261.32**

**Total Navajo Nation Sales Tax 6.00%: \$15,375.68**

**Total Bid Price: \$271,637.00**

<b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and are hereby accepted. <b>Buyer:</b> _____ <b>Signature:</b> _____ <b>Date of Acceptance:</b> _____	<b>CONFIRMED:</b> <b>Navajo Engineering And Construction Authority</b>  <b>Authorized Signature:</b>  <b>Estimator:</b> Terry Gorsuch terry@navajo.net
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