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312100001

Park Estates
45-90113



PROFESSIONAL SERVICES AGREEMENT

This professional services agreement (the "Agreement") is entered into as of the 27th day of September, 2021 ("Effective Date") between Navajo Tribal Utility Authority ("NTUA") and **Narasimhan Consulting Inc.** ("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 certain area of service, 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 to provide professional project and construction oversight tasks and related engineering services of the Contractor for the installation of the jack and bore pipeline under Highway 191 in Sanders, Arizona related to the **Park Estates Water System Improvements Projects**. Services in accordance with 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 Cost of Work attached hereto as Exhibit "B" and shall not exceed **\$16,470.00 dollars**, which shall be inclusive of all applicable taxes including Navajo Nation taxes. Consultant agrees that 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.

All reasonable travel, lodging, and food costs will be reimbursed. NTUA and Consultant shall take all necessary measures necessary to plan travel in as far advance as possible. Consultant shall provide all the necessary documentation for reimbursement.

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, 2021 in accordance with this Agreement. NTUA and Consultant 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 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

Narasimhan Consulting Inc.



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



Ramesh "Ram" Narasimhan, P.E.
President
Date: 9-27-21

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 “B”, 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 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 NTUA. Consultant is

not granted any authority or responsibility, express, implied or apparent, to bind any act on behalf of 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 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 contractors, consultants, employees, and customers, the Contractor shall abide by the NTUA Guidelines to NTUA Employees: COVID-19. In addition, the Contractor 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 Contractor. 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 a results 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 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 standard and practices, and 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.** Contractor acknowledges that this Agreement and any modification of this Agreement shall be signed in accordance with applicable NTUA Procurement Procedure. Any violation of this section shall void such Agreements and modifications. A copy of the NTUA Procurement Procedure will be made available upon request to Contractor.
24. **Signatory Authority.** Contractor 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

(REVISED 4/12/2021)

Attn: David Yazzie; W/WW Project Manager
Phone: 928-729-6284
Email: davidva@ntua.com

To Consultant:
Narasimhan Consulting Inc.
202 E Earll Drive, Suite 110
Phoenix, Arizona 85012
Attn: Stephen Jerge, Vice-President
Phone: (505) 239-8051
Email: Stephen@ncseng.com

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



E N G I N E E R I N G

June 25, 2021

Mr. David Schoultz
Principal Engineer
Navajo Tribal Utility Authority
Water/Wastewater Engineering
PO Box 170
Ft. Defiance, AZ 86504-0170

Re: Park Estates Highway 191 Jack & Bore Engineering & Project Management Services

Dear Mr. Schoultz:

NCS appreciates the opportunity to submit this Scope of Work and Cost Proposal to the Navajo Tribal Utility Authority (NTUA) to provide professional engineering services for the jack and bore tasks under Highway 191 in Sanders, AZ relative to the required infrastructure, equipment, piping improvements for the Park Estates Water System Improvement project. The original design was completed and finalized in early 2018 and the pipeline, meters, fire hydrants, PRV vault has been completed to date. Additional scope modifications and boundary drawings have been developed specific to extending the jack & bore piping to the Highway 191 ROW since the original drawings were completed by NCS. NCS' proposal excludes any additional permitting required for this particular project.

Scope of Work

NCS will provide professional project and construction oversight tasks and related engineering services of the Contractor for the installation of the jack and bore pipeline under Highway 191 in Sanders, AZ related to the Park Estates Water System Improvements Project. NCS Engineers proposes the following tasks for this project which were not included in the original project related phases recently completed due to CARES Act project completion deadlines and funding limitations.

Task 1 - Submittal Reviews

The ENGINEER will review and approve submittals/shop drawings and resubmittals. Approximately two original submittal packages are anticipated. The ENGINEER will review and approve (or take other appropriate action in respect of) shop drawings, samples, test results, and other data which the CONTRACTOR is required to submit, but only for conformance with

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the design concept of the project and compliance with the information given in the Contract Documents. Such review and approval or other action will not extend to means, methods, sequences, techniques or procedures of construction selected by the CONTRACTOR, or to safety precautions and programs incident thereto. The ENGINEER will receive and review (for general contents as required by the Specifications) maintenance and operating schedules and instructions, guarantees, bonds and certificates of inspection which are to be assembled by the CONTRACTOR in accordance with the Contract Documents. If required, NCS will also coordinate with any Navajo Nation EPA or NECA officials to obtain the final site plan design approval(s). This effort will include preparing forms, transmitting final design information and drawings, to include preparing limited correspondence.

Task 2 - Construction Administration Support

The ENGINEER will conduct Construction Progress Meetings, record and distribute meeting minutes. It is anticipated that several field meetings will be conducted each week over a two (2) week construction period. The ENGINEER will also review pay applications from the CONTRACTOR, consider and negotiate change orders from the CONTRACTOR, and project management and coordination activities that are sufficient to oversee the CONTRACTOR's work.

On the basis of on-site examination of materials, equipment, and workmanship, The ENGINEER will keep the NTUA informed of the progress of the work, will endeavor to identify defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents. The ENGINEER will prepare a project schedule and track the construction schedule and prepare the progress reports.

While performing these duties, The ENGINEER will not be responsible for the acts or omissions of any CONTRACTOR, or subcontractor, or any of the CONTRACTOR' or subcontractor(s) agents or employees or any other persons (except The ENGINEER' own employees and agents) at the site(s) or otherwise performing any of the Contractor(s)' work; however, this will not release the ENGINEER from liability for failure to properly perform duties in accordance with this scope of services.

Task 3 - Prepare Record Drawings

The ENGINEER will prepare and submit record drawings to the NTUA after Final Completion. All close out documents with NTUA will be prepared by the ENGINEER and submitted for obtaining final Approval of Construction. The following copies will be submitted: one hard copy on bond paper (22" x 34" sheet size), as well as electronic copies will be submitted. Field data and information, sketches and working drawings, developed by the ENGINEER will be incorporated with the record drawings, along with as-built information maintained by the CONTRACTOR. The record drawings will include all above and below grade changes from the original design drawings for all engineering disciplines. Changes made to reflect the as-installed

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conditions will be made in the same level of detail and to the same degree of drafting quality as the original design drawings and will be completed in CAD format.

Task 4 - Construction and Project Management & Coordination Meetings

The ENGINEER will conduct periodic on site as well as telephonic meetings for the project with the NTUA and CONTRACTOR representatives to assist in overseeing the construction of this jack & bore piping project and provide technical support required for a successful completion of this particular initiative.

FEES

Our proposed cost is time and materials not to exceed \$16,470 which includes Navajo Nation taxes for the above mentioned tasks as reflected in Table 1.

The project will be billed as a lump-sum as authorized by NTUA in accordance with the breakdown from Table 1.

SCHEDULE

The anticipated duration for the above project related activities is estimated to be 28 days.

Please issue a purchase order and amend our contract for this work so we may proceed. Our team looks forward to continuing our professional engineering relationship with NTUA through this project. Please call Mr. Stephen Jerge, Vice-President at (505) 239-8051 if you have any questions or need any additional information.

SUBMITTED BY:



Ramesh "Ram" Narasimhan, P.E.
President

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TABLE 1 - NTUA PARK ESTATES JACK & BORE CM COSTS

Subtask No. (if applicable) and Description		LABOR HOURS BY PERSONNEL CLASSIFICATION (NCS)					Total Task Labor Costs
		Principal Engineer	Senior Engineer	Project Manager	Technician	Checked	
Task 1	Submittal Reviews	2	8		16		\$2,730
Task 2	Construction Administration Support			48			\$5,520
Task 3	Prepare Record Drawings	2	12		8		\$2,590
Task 4	Construction and Project Management & Coordination Meetings	2	4	32			\$4,510
TOTAL HOURS PER PERSONNEL CLASSIFICATION		8	24	80	24	0	\$15,350
Average Billing Rate (\$/hr including overhead and profit)		145	135	115	85	60	
Direct Labor Cost Sub Totals		\$870	\$3,240	\$9,200	\$2,040	\$0	
LABOR TOTALS		\$15,350					
DIRECT EXPENSES							
Printing and Misc. Field Expenses		\$200					
Nevada Nation taxes @ 6.00%		\$821					
TOTAL PROJECT FEES		\$16,470 (Direct labor + direct expense allowances)					