

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE NAVAJO NATION,**

**ARIZONA STATE UNIVERSITY**

**AND**

**NORTHERN ARIZONA UNIVERSITY**

CONTRACT NO.: ; \_\_\_\_\_

**FOR THE PERIOD:**

**August 7, 2017 through April 30, 2022**

Pursuant to A.R.S. Sections 15-1625 and 15-1626 and 2 N.N.C. Sections 222-223

Memorandum of Agreement  
Among  
The Navajo Nation,  
Arizona State University  
And  
Northern Arizona University

**A. Authority and Purpose**

**1. Authority**

This Memorandum of Agreement ("Agreement"), having an effective date of **August 7, 2017** (the "Effective Date"), is entered into by and among the President of the Navajo Nation (hereinafter "NATION") pursuant to 2 N.N.C. §§ 222-223, and the Arizona Board of Regents for and on behalf of Arizona State University (hereinafter "ASU"), and the Arizona Board of Regents for and on behalf of Northern Arizona University (hereinafter, "NAU") pursuant to A.R.S. §§ 15-1625 and 15-1626.

**2. Purpose**

The Navajo Generating Station ("NGS") is a 2,250 MW coal fired power plant located three miles from the City of Page, Arizona. Salt River Project ("SRP"), the operating owner of NGS, has announced the possibility of shutting down NGS in the near future – likely in the year 2019. Shutdown of NGS will produce an economic impact on the NATION, the Hopi Tribe and others in northern Arizona and potentially all of Arizona.

The purpose of this Agreement is for ASU and NAU (together, the "Universities") to assist the NATION in its planning related to the possible closure of NGS and in addressing the economic impact of such changes with the NATION. Specifically, ASU and NAU will assist the NATION as follows:

- a. Assist the NATION in conducting outreach to—and producing discussion with—Navajo communities, including chapter houses, regarding the potential benefits associated with renewable energy development and how renewable energy development could complement existing land uses, such as grazing. This outreach would be conducted in conjunction with NATION agencies and enterprises such as the Department of Natural Resources, the Navajo Division of Economic Development, and the Navajo Tribal Utility Authority (NTUA).
- b. Collaborate with NATION stakeholders and decision makers in developing and shepherding an auditable decision process that is methodologically sound, workable with the available data, appropriate in its application, unbiased and unanchored in its range of options, and that yields timely and useful aids to decision makers. The decision process will include, where appropriate, explicit consideration of stakeholders and their concerns, will consider the multiple (and sometimes conflicting) attributes characterizing decision impacts (financial, environmental, cultural, regulatory, health and safety, etc.), and will include consideration of key uncertainties, contingencies, and flexibility options. The decision process is not a means of making decisions but structured as an aid to decision makers in addressing a multi-stakeholder, multi-objective decision with uncertainties and with a range of possible decision paths forward.

- c. Work with the NATION's Department of Natural Resources, the Navajo Division of Economic Development, and the Navajo Tribal Utility Authority to facilitate an energy conference hosted on the NATION to market opportunities for energy and economic development options, as well as to give a voice to both internal and external stakeholders during the conference.
- d. Provide comments to the Navajo Tribal Utility Authority on its public distributed generation planning documents.
- e. Conduct an evaluation of the existing geographic and socio-economic attributes of the chapter houses and other communities, to ascertain the viability of utilizing more distributed generation and microgrid technology within the NATION, without increasing the existing energy rates for the Navajo people.
- f. Complete an initial categorization of homes, chapter houses, and communities as candidates for grid extension, microgrid, or solar home systems based on information from the viability assessment, and support such categorization with detailed techno-economic analyses of selected examples.
- g. Develop a workforce training structure around renewable energy system installation, design, construction, operation, and maintenance for utility scale, microgrids, and distributed generation to create transitional job opportunities from NGS and mining related employment.
- h. Evaluate existing legislation, regulations and policy ("Regulatory Framework") within the NATION and with outside local, regional, state or federal jurisdictions and ascertain how to optimize such Regulatory Framework to promote the development of more utility- scale renewable energy within the NATION to promote revenue production for the NATION.

**B. The parties mutually agree as follows:**

1. The Universities desire to provide, and the NATION desires to receive, the services specified herein, and the Universities have the capability to perform such services.
2. Each activity undertaken by the parties hereunder will be preceded by detailed discussions and a written scope of work (each, a "Scope of Work") that addresses information pertaining to such activity, including statement of work, duration, cost, and other terms as the parties may deem necessary, advisable or appropriate. A form Scope of Work is attached hereto as Exhibit A. Each Scope of Work will be subject to and governed by this Agreement. Each party will dedicate appropriate type and level of staffing and expertise to ensure the timely completion (in accordance with the timeline established by the parties) of each Scope of Work.
3. Each party will appoint one individual from their respective institutions to work collaboratively on each Scope of Work and to oversee the performance of the activities covered by the Scope of Work. Each party's point of contact, at the present time, is as follows:

For the NATION:

Michelle Henry, Administrative Services Officer

Division of Natural Resources  
PO Box 9000  
Window Rock, AZ 86515  
michellehenry@navajo-nsn.gov  
928-871-6592 / 6593

For NTUA:  
Derrick Terry, Renewable Energy Specialist  
NTUA  
P.O. Box 170  
Fort Defiance, Arizona 86504

For ASU:  
Gary Dirks, Director  
Julie Ann Wrigley Global Institute of Sustainability  
Arizona State University  
P.O. Box 875402  
Tempe, Arizona 85287-5402

For NAU:  
Chad Hamill, Vice President  
Office of Native American Initiatives  
Northern Arizona University  
P.O. Box 4085  
Flagstaff, Arizona 86011  
928-523-3849  
Chad.Hamill@nau.edu

**C. The Universities' Duties and Responsibilities**

1. ASU will provide technical and professional resources to consult with and advise the NATION concerning its efforts to address the possible shutdown of NGS and, specifically, to undertake the tasks described in Section 2 of Paragraph A.
2. The Universities will utilize reasonable efforts to seek and secure sources of funding to support the work undertaken pursuant to this Agreement, including grants from foundations and government agencies where appropriate.
3. NAU will provide technical and professional resources to consult with and advise the NATION concerning its efforts to address the possible shutdown of NGS and specifically to undertake several of the tasks described in Section 2 of Paragraph A.
4. ASU and NAU will produce a quarterly written report detailing the progress of the projects contained in the MOA to date, as well as projections on future activities, to be provided to the Navajo Nation, ASU and NAU.

**D. NATION Duties and Responsibilities**

1. The NATION will supply access to information, and will review materials and make decisions in a timely manner consistent with the timelines established by the parties pursuant to each Scope of Work and consistent with the Universities' reasonable requests.
2. The NATION will assist the Universities in their efforts to seek sources of funding to support the work undertaken pursuant to this Agreement, including grants from foundations and government agencies where appropriate. Further to Section 1 of Paragraph D., the NATION will fully cooperate with the Universities' efforts to satisfy any and all contractual requirements, rules and/or regulations imposed by any third party funding source that supports the work undertaken pursuant to this Agreement.

#### **E. Evaluation**

An evaluation of the activities undertaken pursuant to this Agreement will be the joint responsibility of the Universities and the NATION. The results of the evaluation will be submitted to the appropriate administrator at each institution.

#### **F. Budget and Payment**

The parties acknowledge and agree that the scope of activities under this Agreement will be subject to such financial assistance as may be obtained by the Universities from external sources. The Universities will utilize reasonable efforts to seek such financial assistance but make no guarantees to the NATION that such assistance can or will be secured.

Each Scope of Work under this Agreement will include a budget for the activity addressed by the Scope of Work. As provided above, in connection with each Scope of Work the parties will work together to identify available funding sources to support the proposed activity. If outside funding is available for an activity, the parties will agree upon the payment terms in the Scope of Work subject to the requirements of the funding source. Unless otherwise agreed in writing, the NATION shall not be responsible for providing funding for the work undertaken pursuant to this Agreement.

#### **G. Term and Termination**

This Agreement will begin on the Effective Date and continue through April 30, 2022 (the "Initial Term"). Thereafter, this Agreement may be renewed, upon mutual written agreement of the parties, for additional two (2) year terms (each, a "Renewal Term"). The Initial Term, together with any Renewal Term(s), is referred to herein as the "Term".

This Agreement may be terminated at any time by mutual written agreement of the parties. Additionally, any party may terminate its participation in this Agreement upon thirty (30) days advance written notice to the other parties.

Upon termination or expiration of this Agreement, the Universities shall be solely responsible for meeting any and all obligations from any funding resources that the Universities' secured in relation to this Agreement, subject to the NATION's obligations set forth in Paragraph D. The NATION shall not be responsible for any payments or reimbursements for any services provided under this Agreement. Upon termination, property purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise.

#### **H. Protection of Information**

The parties agree that disbursement of any information collected, created, developed, and/or shared between the NATION and the Universities will comply with the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 et seq. and the Arizona Public Records Act, Arizona Revised Statutes §§ 39-121 through 39-127 and 15-1640.

**I. Ownership of Records**

All documents, data, or records acquired or generated by the parties in the performance of this Agreement will be the property of the NATION and will be delivered to the NATION or otherwise disposed of by the Universities as the NATION may direct upon completion or termination of this Agreement. The Universities will make available any documents, data, or records for viewing and/or copying by the NATION upon fifteen (15) working days written request.

**J. Research and Data Collection**

All research activities involving the use of human subjects must be reviewed and approved by ASU and the NATION's respective Institutional Review Boards and must be undertaken in compliance with all policies of the NATION and ASU and the Arizona Board of Regents before data collection can begin. Researchers may not solicit subject participation or begin data collection until they have received written approval from both respective Institutional Review Boards.

**K. Dispute Resolution and Sovereign Immunity**

1. Limited Waiver of Sovereign Immunity. For purposes of this Agreement, and subject to the terms of this section, each party consents and agrees to a limited waiver of its sovereign immunity from suit and consents to be sued on an arbitration award as provided in this Paragraph K. The NATION represents that this limited waiver of sovereign immunity has been duly approved by the NATION's Tribal Council, as authorized by the Arbitration and Sovereign Immunity Acts of the Navajo Nation. No party is waiving its right to assert the defense of sovereign immunity except as expressly set forth, referred to, and provided for, in this Paragraph K. This limited waiver is enforceable solely by the parties as limited hereunder and does not create any additional third party beneficiary rights to suits or private causes of action in favor of third parties. The parties agree that this Paragraph K. provides a limited waiver of sovereign immunity solely for the purpose of enforcing the provisions of this Agreement and enforcing any arbitration award hereunder and for no other purpose.
2. Dispute Resolution. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute. If the Dispute cannot be resolved informally within thirty (30) days after the meeting is held, then the presidents of ASU, NAU and the NATION will attempt to resolve the Dispute. If the Dispute is not resolved by the presidents, the parties hereto agree to abide by arbitration as set forth below and that an order compelling arbitration or a judgment enforcing the arbitration award will be the only relief of any kind provided by the State or Tribal Court.
3. Arbitration. Any Dispute that cannot be resolved will be finally and exclusively settled by submission of such Dispute to the American Arbitration Association ("AAA") under its then prevailing procedural rules contained in the AAA's Commercial Arbitration Rules to the extent that such rules will not be interpreted to diminish, limit, or void the limited waiver of sovereign immunity set forth in Section 1 above or to increase the enforcement rights of the

parties. Within ten (10) days after any party gives the other parties notice of intent to arbitrate, the Universities and the NATION will each select one person to act as arbitrator and the two selected will select a third arbitrator within ten (10) days of their appointment. The third arbitrator will be a practicing attorney, actively engaged in the practice of law for at least ten (10) years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators will be knowledgeable with federal Indian law and one arbitrator will have AAA-acknowledged expertise in the appropriate subject matter. By agreement of the parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the parties may agree to select a single arbitrator to resolve a Dispute. All arbitration proceedings will be held in Maricopa County or at such other place as will be agreed by the parties.

4. Award. The award will be made within sixty (60) days of the filing of the notice of intent to arbitrate and the arbitrators will agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the majority of the parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding will be final and binding upon all parties to the proceeding. Any action to enforce the arbitration award must be filed within one hundred and eighty (180) days from the issuance of the award.
5. Governing Law. This Agreement, including any claim or Dispute arising hereunder submitted to binding arbitration, will be governed by the laws of the State of Arizona.
6. Enforcement. Judgment upon any award rendered by the arbitrators against the NATION may be entered in the NATION's tribal court system or against the State of Arizona in the Arizona Superior Court and interpreted and/or enforced pursuant to the terms of this Agreement, and/or pursuant to the terms of the AAA's Commercial Arbitration Rules, and/or pursuant to the terms and provisions of the statutes, rules and regulations governing or providing for interpretation or enforcement of judgments applicable in any State of Arizona or Navajo Nation court.

**L. Notices**

Any notice required or permitted to be given hereunder will be deemed given upon the earlier of (a) actual receipt by the other party or (b) three (3) days after deposited into the United States Postal Service, postage prepaid, certified or registered mail. Notice will be provided to the above designated contacts at each individual institution.

**M. Assignment**

No party may assign any rights hereunder without the prior written consent of the other parties.

**N. Nondiscrimination**

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or**

**individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

**O. Conflict of Interest**

This Agreement is subject to Section 38-511 of the Arizona Revised Statutes. This Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Universities is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

This Agreement is subject to the Navajo Nation Ethics in Government Law, 2 N.N.C. 3741 et seq., which prohibits Navajo Nation officials, including employees, from using or attempting to use their official or apparent authority for their private economic gain.

**P. Failure of Legislature to appropriate**

If the Universities' performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then NAU or ASU (as applicable) may provide written notice of this to the NATION and cancel this Agreement without further obligation. Appropriation is a legislative act and is beyond the control of the Universities.

Pursuant to 2 N.N.C. § 223(A), the availability of funds for this Agreement is contingent upon the availability of annual and/or special appropriations by the Navajo Nation Council.

**Q. Relationship of the Parties**

Each party is an independent contractor and is independent of the other parties. This Agreement does not create a partnership, joint venture or agency relationship of any kind among the parties. No party will have any right, power or authority under this Agreement to act as a legal representative of the other party(ies). No party will have any right or authority to bind or obligate the others or make any representation or warranty on behalf of the others. Under no circumstances will any employees of one party be deemed the employees of any other party for any purpose. Each party is responsible for the direction and compensation of its employees. The relationship of the parties will be non-exclusive.

**R. Service Marks and Trademarks**

No party will do any of the following without, in each case, the prior written consent of the others: (i) issue a press release or public statement regarding this Agreement; or (ii) represent or imply any endorsement or support of any product or service on the part of the other party(ies) in any public or private communication. No party will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of any other party ("Marks"), or the name of any representative or employee of any other party in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the party that owns the Marks in each instance. Use of any party's Marks must comply with the owning party's requirements,

including using the “®” indication of a registered trademark where applicable.

**S. Responsibility**

Each party will be responsible for the negligence, acts and omissions of its employees and agents when acting under such party’s direction and supervision.

**T. Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

**U. Modification**

Any modification or amendment of this Agreement or any Scope of Work hereunder will be effective only if made in writing and signed by the parties.

The undersigned parties to this Agreement, having duly considered the content herein, place endorsing signatures herewith effective as of the Effective Date.

**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**ARIZONA STATE UNIVERSITY**

**THE NAVAJO NATION**

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**Michael M. Crow**  
President

---

**Russell Begaye**  
President

**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**NORTHERN ARIZONA UNIVERSITY**

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**Rita Cheng**  
President

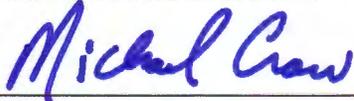
Pursuant to 1 N.N.C. §554(J)(2) and K(2), Navajo Nation Department of Justice approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. §1101 et seq.

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Navajo Nation Department of Justice

The undersigned parties to this Agreement, having duly considered the content herein, place endorsing signatures herewith effective as of the Effective Date.

**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**ARIZONA STATE UNIVERSITY**



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**Michael M. Crow**  
**President**

**THE NAVAJO NATION**

---

**Russell Begaye**  
**President**

**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**NORTHERN ARIZONA UNIVERSITY**

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**Rita Cheng**  
**President**

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Navajo Nation Department of Justice

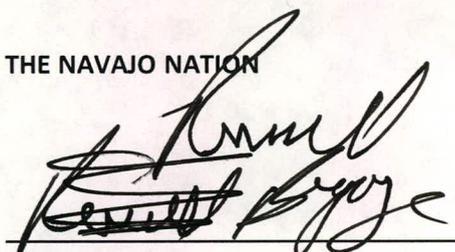
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**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**ARIZONA STATE UNIVERSITY**

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**Michael M. Crow**  
President

**THE NAVAJO NATION**



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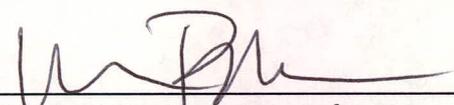
**Russell Begaye**  
President

**THE ARIZONA BOARD OF REGENTS**  
for and on behalf of  
**NORTHERN ARIZONA UNIVERSITY**

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**Rita Cheng**  
President

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Navajo Nation Department of Justice

**EXHIBIT A**  
TO MEMORANDUM OF AGREEMENT  
Among  
The Navajo Nation,  
Arizona State University  
And  
Northern Arizona University

**Form of Scope of Work**

This Scope of Work, dated \_\_\_\_\_, 201\_, is issued pursuant to, made part of, and governed by the Memorandum of Agreement, dated \_\_\_\_\_, 201\_ (“MOA”), by and among the Navajo Nation (“NATION”), the Arizona Board of Regents for and on behalf of Arizona State University (“ASU”) and the Arizona Board of Regents for and on behalf of Northern Arizona University (“NAU”).

**1. Contact Details.**

Point of Contact for the NATION:

Michelle Henry, Administrative Service Officer  
Division of Natural Resources  
P.O. Box 9000  
Window Rock, AZ 86515  
Telephone: 928-871-6592/6593  
E-mail: michellehenry@navajo-nsn.gov

Point of Contact for ASU:

Gary Dirks, Director  
Julie Ann Wrigley Global Institute of Sustainability  
Arizona State University  
P.O. Box 875402  
Tempe, AZ 85287-5402  
Telephone: 480-889-4820  
E-mail: garydirks@asu.edu

Point of Contact for NAU:

Chad Hamill, Vice President  
Office of Native American Initiatives  
Northern Arizona University  
P.O. Box 4085  
Flagstaff, Arizona 86011  
Telephone: 928-523-3849  
E-mail: Chad.Hamill@nau.edu

**2. Scope of Work.**

Description of Services:

Deliverable(s), if any:

**3. Timeframe.**

**4. Rate Schedule.**

[Insert ASU or NAU, as appropriate]

ASU Payment Address

Attention: [\_\_\_\_\_]

[Address]

Arizona State University

P.O. Box [\_\_\_\_\_]

Tempe, Arizona 85287-[\_\_\_\_\_]

Fax: [\_\_\_\_\_]

NAU Payment Address:

Attention: [\_\_\_\_\_]

[Address]

Northern Arizona University

P.O. Box [\_\_\_\_\_]

Flagstaff, AZ 86011

Fax: [\_\_\_\_\_]

**5. Other Terms.**

IN WITNESS WHEREOF, the parties have executed this Scope of Work as of the date first set forth above.

**THE ARIZONA BOARD OF REGENTS  
FOR AND ON BEHALF OF  
ARIZONA STATE UNIVERSITY**

**THE NAVAJO NATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**THE ARIZONA BOARD OF REGENTS  
FOR AND ON BEHALF OF  
NORTHERN ARIZONA UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_