



Navajo Nation Department of Emergency Management

PO Box 2908, Window Rock, AZ 86515 | P: (928) 871-6892 | F: (928) 871-7569

March 12, 2024

REQUEST FOR PROPOSAL # 24-03-3269GC

PURCHASE OF A NEW SHERP ALL TERRIAN VEHICLE

THIS IS NOT AN ORDER

DATE ISSUED: March 18, 2024

SEALED BIDS WILL BE RECEIVED AT:

THE NAVAJO NATION
Purchasing Service Department
Administration Building #1 – 1st Floor
Attn: Purchasing Section
Window Rock Blvd
Window Rock, AZ 86515

BID DUE DATES:

March 29, 2024
ANY BIDS RECEIVED AFTER THIS
DATE AND TIME WILL NOT BE
ACCEPTED

The Navajo Department of Emergency Management (NDEM) is inviting bids from interested parties to supply specified equipment. Prospective bidders are encouraged to submit bids using the provided bid form, which should be mailed or delivered to the address provided. Bids transmitted via facsimile will not be considered responsive. Each bid must be enclosed in a sealed envelope with the designated bid number 24-03-3269GC clearly indicated. All bids must be in U.S. dollars and comply with the enclosed instructions and conditions.

NDEM retains the authority to reject any or all bids, negotiate changes, accept partial bids, overlook minor discrepancies, and withhold contract awards if it is deemed beneficial for the Navajo Nation. NDEM cannot be held liable for any misunderstanding of bid requirements on the bidder's part. It is the bidder's responsibility to seek clarification from NDEM regarding any uncertainties regarding the bid's intent or requirements.

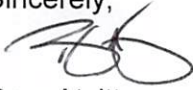
Contracts resulting from this solicitation may be awarded to the bidder offering the most advantageous proposal to NDEM, provided it conforms to the solicitation's terms. NDEM reserves the right to reject any or all offers if doing so serves its best interests, and it may waive minor informalities or standard instructions outlined in the solicitation.

This solicitation does not signify a commitment of any kind nor obligate NDEM to cover any costs associated with bid submission or any other expenses before the formal contract's execution.

Bidders must carefully review the terms and conditions outlined herein. Imposing terms and conditions that conflict with those specified in the invitation to bid will render the bid non-responsive. Any additional terms and conditions submitted by bidders must include a disclaimer acknowledging that the terms and conditions of the invitation to bid prevail in the event of a conflict.

For inquiries or responses regarding this invitation to bid, please contact Josiah Ellison at the Navajo Department of Emergency Management, P.O. Box 2908, Window Rock, AZ 86515, telephone number 505-422-9035, email address jellison@navajo-nsn.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rory Atcitty', with a stylized flourish at the end.

Rory Atcitty
Delegated Emergency Management Director
Department of Emergency Management

INDEX

APPENDIX A	MINIMUM QUALIFICATIONS
APPENDIX B	SPECIFIC TERMS AND CONDITIONS
APPENDIX C	SPECIFICATIONS
APPENDIX D	COST SCHEDULE
APPENDIX E	FORM W-9 (Rev. 2018)
APPENDIX F	DEBARMENT AND SUSPENSION
APPENDIX G	PURCHASE ORDER TERMS AND CONDITIONS
APPENDIX H	PROFESSIONAL SERVICE CONTRACT

REQUIRED DOCUMENTS

REQUIRED FOR BID. Bids will not be considered if the following documents are not completely filled out and submitted at the time of bidding:

1. Cost Schedule
2. **Three (3) COPIES OF THE PROPOSAL ARE REQUIRED:** The original and two (2) copies of the proposals must be delivered and in a seal 10 x 14 manila envelope. The outside of the envelope should be clearly marked with the project name, "**NDEM-SHERP ATV**", and the name and address of the vendor submitting the proposal must be on the face of the envelope. In the lower left corner indication Priority # _ if applicable. No facsimile electronic or telephone proposals will be accepted.

APPENDIX A

MINIMUM QUALIFICATIONS

The items to be purchased through this bid are critical to the operation of the Navajo Department of Emergency Management, any vendor who responds to this bid must meet the following minimum qualifications in order to be considered responsive:

- 1.) Be the original manufacturer, be the distributor/ dealer authorized by the manufacturer that routinely maintains an inventory of the requested product as part of its normal business and is authorized by the original manufacturer to serve.
- 2.) Have the authority and capacity to provide full support for all product warranties, including technical "trouble shooting" support.
- 3.) Be able to provide audited financial statements demonstrating the financial ability to meet the requirements of any order that may result from this solicitation.

The NDEM may conduct an inspection of the supplier's facility to include its offices and inventory of the items being solicited prior to contract award. All bids submitted in response to this invitation to bid must be signed by an individual with the legal authority to submit the offer on behalf of the company. Bids received from manufacturers/suppliers that do not meet these qualifications will not be considered

APPENDIX B

SPECIFIC TERMS AND CONDITIONS

Any contract resulting from this Invitation to Bid shall incorporate the following terms and conditions contained in this bid package.

Method of Bidding: Bids must be submitted in the spaces provided on the bid sheets of this invitation in accordance with the conditions of bid as stated herein. The bid will not be considered to be complete unless all spaces have been filled in. Consideration for award will be provided to complete bids only. If a bidder wishes to supply additional information, it may include same along with the bid in the sealed bid envelope.

Navajo Department of Emergency Management Rights in Regards to Bid: The Navajo Department of Emergency Management reserves the right to reject any of all bids, to waive any informality in bids, to accept in whole or in part such bid or bids as may be deemed in the best interest of the purchaser.

Bidder's Terms and Conditions: Prospective bidders are cautioned to pay particular attention to this clause. Bidder/contractor imposed terms and conditions which conflict with this Invitation to Bid terms and conditions are considered counter offers and, as such, will cause the Navajo Department of Emergency Management to consider the bid non-responsive.

If a bidder attaches additional terms and conditions as part of the bid, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Invitation to Bid and the terms and conditions of the bidder/contractor, the terms and conditions of the Invitation to Bid will prevail.

Assignment: The agreement to be established as a result of this solicitation shall not be assigned by the contractor in whole or in part without the express written consent of the Navajo Department of Emergency Management, nor shall the contractor have the right to authorize or permit the use of the Navajo Department of Emergency Management's equipment or service facilities by third parties without the express written consent of the Navajo Department of Emergency Management.

Hold Harmless: The contractor shall indemnify the Navajo Department of Emergency Management against liability and hold it harmless from loss in respect to any and all claims and demands whatsoever rising out of the performance of this agreement, save and except the contractor shall not be liable for acts of negligence of Navajo Department of Emergency Management employees acting within the scope of their employment. The Navajo Department of Emergency Management shall not be liable for any costs incurred by the bidder in bid preparation.

F.O.B. Point: All prices quoted shall be F.O B. Navajo Department of Emergency Management, P.O. Box 2908, Window Rock, AZ 86515.

Performance Assurances: Before final award of any contract as a result of this Invitation to Bid, awarded vendor will be required to make adequate assurance of performance in the form of verifiable information to the contract officer. Failure to make adequate assurance shall by signature of this bid render the vendor's bid non-responsive to this Invitation.

Addenda: The NDEM procurement officer will attempt to notify all who are known to have received the solicitation documents if any amendments are issued, but it shall be the bidder/offers responsibility to ascertain prior to submitting a bid/proposal that he/she has received all addenda issued

Delivery Date: Your bid should indicate the earliest firm delivery date after receipt of award. NDEM shall fully expect the successful contractor to completely satisfy contract performance requirements in accordance with firm delivery dates offered in the Cost Schedule.

Note: Each bidder shall indicate compliance or exception to each specification item individually in the bid response.

Incurred Costs: The issuance of a solicitation does not obligate NDEM to pay for any bid/proposal preparation costs incurred by bidders/offers and does not obligate NDEM to award a contract for supplies/services. All costs incurred as a result of a solicitation or contract negotiations resulting from a solicitation, including travel and personal expenses, are the sole responsibility of the bidder/offers.

Availability of Funds: NDEM's obligation under any contract is contingent upon the availability of funds to pay for contract purchases. No legal liability on the part of NDEM may arise until funds are made available for a contract and until the Contractor receives written notice of such availability from the procurement officer. Signature by an authorized NDEM representative on the contract award document constitutes written notice of availability of funds.

Public Information: All submitted bids/proposals will be considered confidential until notice of intent to award is issued. After notice of intent to award is issued, all bids/proposals will become public information.

Price: NDEM shall receive the benefit of any general reduction in bidder's/offers price prior to the delivery of supplies or services and in no event shall NDEM be charged higher prices than bidder's/offers similar customers who purchase substantially similar supplies or services under substantially similar circumstances. All prices bid shall be exclusive of any federal, state, or local taxes from which NDEM is exempt.

The bidder shall list any variations from or exceptions to the Terms, Conditions or Specifications of the Solicitation on an attached page.

APPENDIX C

SPECIFICATIONS

2024 Sherp N 1200 ATV or NDEM pre-approved equal.

- 2024 Sherp N 1200 Black with standard options: Air Conditioning, Fuel Canisters in the wheels, Autonomous Heater, Back Up Camera, High Back Adjustable Front Seats, Storage Compartments. 1 Year or 1000-hour warranty
- Engine model Doosan D18
- Engine Power 55 HP
- Fuel Type Diesel
- Skid Steering
- Tires Tubeless, Extra-low Pressure
- Side Mirrors
- 1 Pair Rear Side Windows
- 6 Jumper Seats
- Front 30" LED Light Bar
- Rear LED Flush Mount Lights
- Side LED Flush Mount Lights
- Side 20" Light Bars with Stainless Steel Pods
- Winch Holder
- Prewired for Winch with Anderson Connectors Rear
- Side Vent Grill Covers with Stainless Steel Snaps
- 35,000 BTU Arctic Heater
- Engine Block Heater with Side Vent 110v Plug
- 4 Fans 2-Speed Wired to Defrost Switch
- Winch on a receiver plate pre-wired with Anderson Connector 5k capacity
- Garmin Tread XL GPS Installed
- Kenwood / Viking VM7000 Dual Mobile radios with High Power VHF and Low power VHF bands, Dual
- Control Heads, Dual External Speakers. With programming, thick roof coax cables, and flex-whip antennas
- Whelen 295 Series Siren with two 100W Speakers
- Front 48" Red and Blue Emergency Light Bar
- Side and Rear 20" Red and Blue Emergency Lights
- Provide full support for all product warranties, including technical "trouble shooting" support.

Unit must be available for shipment and use for 2024 Winter Storm/Flood Operation season. Shipment to: 200 Morgan Blvd. Window Rock, AZ.

Vendor must provide complete specification sheet of unit being proposed with bid package

APPENDIX C

SPECIFICATIONS

Sherp Transport Trailer or NDEM pre-approved equal.

- Model- NESTi
- GVWR- 10,000 LB GVWR
- Pull Type – Bumper Pull
- 8 Lug – Oil Bath Axle
- Hot-dip Galvanized Frame
- LED Lights
- 7 Way Electrical Connection
- Aluminum Locking Storage Box
- Full Size Spare Tire
- Adjustable 2 5/16" hitch
- Electric Brakes with Breakaway Kit
- Resting Pads for Storage/Transport

Unit must be available for shipment and used for Sherp N1200 delivery. Shipment to: 200 Morgan Blvd. Window Rock, AZ.

Vendor must provide complete specification sheet of unit being proposed with bid package.

APPENDIX D

COST SCHEDULE

A bidder's failure to provide the information requested in this appendix will be cause for rejection of the offer on the basis of non-responsiveness. All prices quoted must be F.O.B. Navajo Department of Emergency Management, P.O. 2908 Window Rock, AZ 86515. The equipment must comply with the specifications as spelled out in Appendix C.

<u>Description</u>	<u>QTY</u>	<u>Price</u>
<i>Sherp ATV per Appendix C: Sherp N 1200 ATV or approved equal</i>		
#01 Sherp N 1200 ATV	1 EA	\$ _____
#02 Sherp Transport Trailer	1 EA	\$ _____

Year Make and Model: _____

Delivery Date:

NDEM shall fully expect the successful contractor to completely satisfy contract performance requirements in accordance with firm delivery dates offered in the Cost Schedule.

Delivery Date: _____

AWARD CRITERIA: An award will be made to the low, responsive, responsible bidder that meets the requirements as set forth in the specifications and compliance thereof. The Navajo Department of Emergency Management reserves the right to determine that all offered materials will serve the application intended. Award will be made in the aggregate. The bid award is contingent on the availability of Navajo Department of Emergency Management funds.

Should the awarded contractor/vendor not meet the delivery date originally offered with its bid, liquidated damages may assess as follows: The cost of for the weekly rental of similar type of equipment if needed.

NON-COLLUSION AFFIDAVIT: The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association, or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

COMPANY NAME

SIGNATURE BY AND FOR THE BIDDER

COMPANY ADDRESS

PRINTED NAME OF ABOVE BIDDER

CITY, STATE, ZIP

DATE OF BID

CONTACT PHONE NUMBER

CONTACT E-EMAIL

APPENDIX E

FORM W-9 (Rev. 10-2018)

APPENDIX F

DEBARMENT AND SUSPENSION

NAVAJO NATION CERTIFICATION
Regarding Debarment, Suspension, and
Contracting Eligibility

1. Applicant entity acknowledges that to the best of its knowledge that the Applicant entity, either in its present form or in any identifiable capacity, has not, in accordance with 12 N.N.C. § 361:
 - A. Been convicted of the commission of criminal offenses incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of any such contract or subcontract;
 - B. Been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating a lack of business integrity or honesty, which currently, seriously, and directly affect responsibility as a Navajo Nation contractor;
 - C. Been convicted under antitrust statutes arising out of the submission of bids or proposals;
 - D. Violated contract provisions, including:
 - i. Deliberate failure, without good cause, to perform in accordance with the contract specifications or within the time limit provided in the contract,
 - ii. A recent record of failure to perform or of unsatisfactory performance with the terms of any contract, or
 - iii. Any other cause so serious and compelling as to affect responsibility as a Navajo Nation contractor, including debarment by another governmental entity.
2. Applicant acknowledges that if the Navajo Nation determines that the executed Certification provided herein is untrue or not wholly accurate, it shall be grounds for the Navajo Nation to terminate the contract and pursue other legal remedies, at the Navajo Nation's discretion.
3. Applicant certifies to the best of its knowledge that it is eligible to do business with the

Navajo Nation, in its present form or in any other identifiable capacity, pursuant to 12 N.N.C. § 1501 and 5 N.N.C. § 301. Applicant also acknowledges that per 12 N.N.C. § 1505, it will not be eligible to contract with the Navajo Nation if deemed ineligible by the appropriate department or entity of the Navajo Nation which receives the Applicant's request for consideration for a business opportunity.

Applicant Name

Name of individual signing on Applicant's behalf (print)

Applicant Address

Title of individual signing on Applicant's behalf

Applicant Address

Signature of individual signing on Applicant's behalf

Applicant Address

Date

APPENDIX G

PURCHASE ORDER TERMS AND CONDITIONS

EXHIBIT D

Purchase Order Terms and Conditions

4

- A. DELIVERY.** Delivery must be made within thirty (30) days from receipt of this purchase order unless otherwise specified. Time is of the essence and if goods are not delivered within the time specified, the Navajo Nation may reject such goods and cancel the order. Acceptance of later or defective deliveries shall not be deemed a waiver by the Navajo Nation of its right to cancel this order or to refuse to accept further deliveries. The purchase order number, account and project numbers must be shown on all packages, packing slips, invoices and correspondence relating to the order. **BACKORDERS WILL BE ALLOWED ONLY UPON AGREEMENT WITH THE PURCHASING DEPARTMENT.**
- B. F.O.B POINT.** All prices offered herein are F.O.B. destination (on the Navajo Reservation) unless otherwise specified.
- C. REQUIREMENT FOR WRITTEN PURCHASE ORDER.** Shipments will not be accepted and invoices will not be honored unless a valid purchase order in writing, has been issued to the vendor by the Purchasing Section of the Navajo Nation.
- D. TERMS AND ACCEPTANCE.** This order becomes a contract (1) when a signed acknowledgment is received by the Navajo Nation, or (2) when shipment according to schedule of all or any portion of the goods covered by this order shall be made, or (3) when written approval is given vendor by the Navajo Nation of the price and delivery schedule of the goods as stated by vendor if vendor's written acknowledgment of this order contains either (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which the Navajo Nation's approval applies. Except as provided in the preceding sentence, a condition of this order is that any provisions printed or otherwise contained in any acknowledgment of this order, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this purchase order, shall have no force or effect, and that the vendor by such acknowledgment thereby agrees that any such provision therein or any such alteration in this order shall not constitute any part of this contract of purchase and sale. This contract contains the entire agreement of the parties, and failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.
- E. BILLING.**
1. Submit original invoice(s) and 2 copies to the Accounts Payable Section. The Navajo Nation, P.O. Drawer 1660, Window Rock, AZ 86515. **DUPLICATE INVOICES WILL NOT BE HONORED.**
 2. Invoicing must be itemized as to items, quantities, unit prices and extended amounts.
 3. Submit a separate invoice for each purchase order. Do not combine invoicing for more than one purchase order.
 4. Invoices must be submitted immediately upon shipment.
 5. Where pricing differences or discrepancies exist between the purchase order and the invoice submitted, the purchase order will prevail. The purchaser reserves the right to accept or reject all quantities delivered not in compliance with the purchase order specifications or in excess of the quantities specified herein.
- F. CASH DISCOUNT.** The term of any cash discount will be computed from the date of receipt and acceptance of the goods or services procured hereunder, or from the date of receipt of a correct Original invoice, whichever is later.
- G. TAXES.** Except as may be otherwise provided in this order, the contract price includes all applicable federal, state, Indian and local taxes. In addition, the Navajo Nation claims the transaction is in any event immune from state and local sales, gross receipts, use, compensating and transaction privilege taxes under federal Indian law. Vendor expressly warrants that the contract price does include any allowance for state and local sales, gross receipts, use, compensating and transaction privilege taxes. The Navajo Nation will not reimburse or pay vendor any state and local sales, gross receipts, use, compensating and transaction privilege taxes unless the following conditions are met:
1. A governmental authority asserts a liability for such taxes against vendor has not and will not concede its liability for such taxes except as provided in Paragraph G.3(below); and
 2. The Navajo Nation at its expense is given the full opportunity to contest the liability for such taxes for and on behalf of vendor and with vendor's full cooperation; and
 3. A final determination has been made that vendor is liable for such taxes or the Navajo Nation decides it does not wish to contest vendor's liability for such taxes further.
- H. FAIR LABOR STANDARDS ACT.** Vendor must certify that goods were produced in compliance with all applicable requirements of section 6,7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof.
- I. NAVAJO PREFERENCE.** If this purchase order is issued to a vendor claiming preference under the Navajo Nation Business Preference Law, then acknowledgment and/or delivery against this order shall constitute certification of current compliance, on the part of the vendor, with all applicable provisions of this Law.
- J. CHOICE OF LAW.** The laws of the Navajo Nation will govern the interpretation, construction and enforcement of this Purchase Order, including, without limitation, the Navajo Uniform Commercial Code.
- K. CHOICE OF FORUM.** Subject to the limits of applicable law, eg., 1. Navajo Tribe Code et seq., any dispute between the parties will be resolved in the Courts of the Navajo Nation and vendor consents to in personam jurisdiction of such courts in the event of any such dispute.
- L. INSPECTION, WARRANTY.** Goods or services delivered (whether paid for or not) are subject to inspection, testing, and approval by the Navajo Nation before acceptance. Vendor expressly warrants that all articles, materials, services and work will conform to the applicable drawings, specifications, samples or other descriptions given in all respects. Vendor further expressly warrants that the goods or services delivered hereunder will be of good quality, material and workmanship, merchantable and free from defects. The warranty shall survive any inspection, delivery, acceptance or payment by vendor of the goods or services.
- M. OTHER** As used herein, the titles "the Navajo Tribe" and "the Navajo Nation" are synonymous.

APPENDIX H

PROFESSIONAL SERVICE CONTRACT

FORM 1 (ADMINISTRATIVE PURPOSES ONLY)

**SERVICES CONTRACT BETWEEN
THE NAVAJO NATION
AND**

Consultant's Legal Name (this must match the name on the Contractor's W-9 and Certificate of Insurance)

Consultant's physical address, state and zip code

Consultant's telephone number

CONTRACT NO: _____

FOR THE PERIOD: BEGINNING _____
ENDING _____

PAYMENTS TO BE MADE FROM:

Account: _____ - _____ Fees: \$ _____

Account: _____ - _____ Expenses: \$ _____

Account: _____ - _____ Taxes: \$ _____

TOTAL PAYMENTS ON THIS CONTRACT NOT TO EXCEED: \$ _____

UNDER THE TERMS AND CONDITIONS OUTLINED IN:

ATTACHMENT A – Mutual Promises and Agreements

ATTACHMENT B – Scope of Work

EXHIBITS:

EXHIBIT A – Accounting Codes and Budget

EXHIBIT B – Consultant Credentials

EXHIBIT C – Certificate of Insurance

EXHIBIT D – _____

EXHIBIT E – _____

Employer's Identification No.: _____

Or *this number must match Form W-9*

Consultant's Social Security No.: _____

SERVICES CONTRACT

ATTACHMENT A – Mutual Promises and Agreements

This Services Contract (“Contract”) is made and entered into by and between the Navajo Nation, hereinafter called the “NATION” and _____, hereinafter called the “CONSULTANT.” Collectively, the NATION and the CONSULTANT are the “PARTIES.” The PARTIES agree as follows:

1. **Contract Term.** The NATION agrees to use the non-exclusive services of the CONSULTANT beginning _____, and ending _____.
2. **Documents Constituting the Contract.** The following are to be considered collectively as one agreement/contract and the term Contract whenever used herein shall be deemed to include all such documents:
 - this ATTACHMENT A – Mutual Promises and Agreements;
 - ATTACHMENT B – Scope of Work (“Scope of Work”);
 - EXHIBIT A – Accounting Codes and Budget;
 - EXHIBIT B – Consultant Credentials;
 - EXHIBIT C – Certificate of Insurance; and (where applicable)
 - EXHIBIT D – _____; and
 - EXHIBIT E – _____.
3. **Scope of Work.** The CONSULTANT agrees to perform the services described in ATTACHMENT B – Scope of Work. Any changes to the Scope of Work must be agreed to by the PARTIES through a formal Modification of the Contract pursuant to Paragraph 13 below.
4. **Compensation.** The NATION agrees to compensate the CONSULTANT for services performed under this Contract by paying a sum not to exceed \$ _____, as per EXHIBIT A – Accounting Codes and Budget, to include the Navajo Nation and local government sales tax amounts described in Paragraph 18 below, for work performed within the territorial jurisdiction of the NATION.
5. **Authorized Representative.** The CONSULTANT shall work with the _____ (Contracting Program), and its Authorized Representative, _____, in the performance of work or services under this Contract. No payment shall be made unless said Authorized Representative approves the work performed or services provided under this Contract and has approved the invoice(s) submitted by the CONSULTANT. Only the Authorized Representative or someone formally delegated by the Authorized Representative may assign tasks under the Scope of Work. All invoiced expenditures must be supported by receipts.
6. **Contract Number.** Contract Number C- _____ shall cover this Contract, and reference to this number shall be made on all invoices submitted by the CONSULTANT to the NATION for payment.
7. **Availability of Funds.** The liability of the NATION under this Contract is contingent upon the availability of funds. Pursuant to 2 N.N.C. § 223(B), all contracts shall have sufficient funds available to perform the services under the Contract.
8. **Travel Expenses.** The PARTIES recognize that the CONSULTANT may incur reasonable travel expenses in connection with providing services to the NATION. For said travel expenses to be eligible for reimbursement hereunder, the Authorized Representative must approve the travel in writing before said expenses are incurred.
9. **Consultant is an Independent Contractor.** Neither CONSULTANT nor its employees are, or shall be deemed, NATION employees. In its capacity as an independent contractor, CONSULTANT agrees and

represents, and the NATION agrees, that CONSULTANT: (a) has the sole right to control and direct the means, manner, and method by which the services will be performed; (b) shall utilize its own employees, facilities, equipment, tools, and supplies in performing the services; (c) is not eligible to participate in, and is not eligible for coverage under any NATION employee benefit plans or offerings; and (d) is free to make its services available to third parties. Nothing in this Contract shall be construed to create any agency or employment relationship between CONSULTANT or any of its employees and the NATION. Neither Party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other. The CONSULTANT is responsible for payment of all taxes related to this Contract, and except as otherwise provided in Section 18 below, the NATION is not responsible for withholding, and shall not withhold, income taxes, FICA, unemployment taxes, or other taxes of any kind from any payment it owes to CONSULTANT, nor shall the NATION be responsible for remitting the employer's share of employment taxes to federal or state governments.

10. **The Nation's Ownership of Work Product.** The product(s) and title of the CONSULTANT'S work and services under this Contract shall be and will remain the property of the NATION. The NATION may use the work product for any purpose without prior approval or additional payment.
11. **The Nation's Right to Inspect Place of Business and to Inspect and Audit Books and Records.** The CONSULTANT agrees that the NATION may, at reasonable times, inspect the part of the plant or place of business of the CONSULTANT that is related to the performance of this Contract; and CONSULTANT further agrees that the NATION may, at reasonable times and places, inspect and audit the CONSULTANT'S books and records to the extent that such books and records relate to the performance of this Contract. The CONSULTANT shall maintain such books and records, and such books and records of any Subcontractor, for at least five (5) years from the date of final payment under this Contract. Further, CONSULTANT agrees to include in any Subcontractor agreement related to this Contract, provisions that the Subcontractor agrees (a) that the NATION may, at reasonable times, inspect the part of the plant or place of business of the Subcontractor that is related to the performance of this Contract; (b) that the NATION may, at reasonable times and places, inspect and audit the Subcontractor's books and records to the extent that such books and records relate to the performance of this Contract; and (c) that the Subcontractor shall maintain its books and records related to the performance of this Contract for at least five (5) years from the date of the CONSULTANT'S final payment under this Contract.
12. **Contact Information; Final Invoice.** Copies of all correspondence, reports, and invoices under this Contract shall be furnished to:

Insert the NATION'S and the CONSULTANT'S contact and contact information:

NOTE: The final invoice will be due within thirty (30) days after the Contract ends.

13. **Indemnification.** The CONSULTANT agrees to hold harmless and indemnify the NATION against any and all losses, costs, damages, claims, accident or injury to person or property including death, attorneys' fees, expenses, and other liability whatsoever (collectively, "Claims"), arising under, related to, or in connection with this Contract, except to the extent such Claims are directly caused by the gross negligence or wanton and willful

conduct of the NATION or to the extent they result from the negligence of NATION officials or employees as provided for and in accordance with 1 N.N.C. § 551 *et seq.*

14. **Modifications.** Any modifications to this Contract shall be made only by written amendment, signed and executed by all parties to this Contract. If a cost-based selection method, such as the submission and evaluation of bids, was used to procure this Contract, any amendment to increase this Contract that exceeds twenty percent (20%) of the original accepted bid amount shall be handled pursuant to 2 N.N.C. § 223(F).
15. **Disputes; No Waiver of Sovereign Immunity.** Any and all disputes arising under, related to, or in connection with this Contract will be resolved first through negotiation between the PARTIES under the laws of the NATION. If negotiation does not resolve the dispute, the NATION may pursue legal action. Nothing herein shall be construed as a waiver of the NATION'S sovereign immunity.
16. **Termination.** The NATION may terminate this Contract at any time upon ten (10) days advance written notice to the CONSULTANT, in the event that: (a) the NATION, in its sole discretion, determines the CONSULTANT'S work or services provided are not satisfactory; (b) the CONSULTANT fails to submit reports and other documents as requested by the NATION within defined time schedules to the satisfaction of the NATION; (c) the CONSULTANT fails to submit verification of invoices to the NATION for payment to the satisfaction of the NATION; (d) the CONSULTANT is in breach of any material term or condition of this Contract; or (e) funds are not appropriated or otherwise made available to support continuation of this Contract.
17. **Applicable Law and Jurisdiction.** The CONSULTANT shall comply with all Navajo Nation laws, as they may be amended from time to time, including, but not limited to, the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, the Navajo Nation Corporation Act, 5 N.N.C. § 3101 *et seq.*, the Navajo Nation Limited Liability Company Act, 5 N.N.C. § 3600 *et seq.*, the Navajo Uniform Commercial Code, 5A N.N.C. § 1-101 *et seq.*, and applicable regulations. The CONSULTANT agrees to be subject to the jurisdiction of Navajo Nation courts and tribunals.
18. **Pre-Contract Costs.** Costs incurred before the finalization of this Contract deemed reasonable, allowable, and allocable to performance of the Contract as agreed to by the PARTIES may be paid under this Contract.
19. **Navajo Nation Taxes.** The CONSULTANT shall comply with all applicable Navajo Nation tax laws under Title 24 of the Navajo Nation Code and corresponding regulations. The CONSULTANT is subject to and shall be liable for payment of the Navajo Nation Sales Tax, at the prevailing rate, on gross receipts for all work performed within the territorial jurisdiction of the Navajo Nation pursuant to 24 N.N.C. § 601 *et seq.*, and the Navajo Nation Sales Tax Regulations § 6.101 *et seq.*, as amended from time to time, except that work performed within the To'Nanees'Dizi Local Government ("Tuba City Chapter") or the Kayenta Township is subject to their respective local sales taxes as amended from time to time. In addition to being subject to Navajo Nation Sales Tax, the CONSULTANT is subject to local sales tax on gross receipts for all work performed within a governance-certified chapter that imposes a local sales tax pursuant to a duly enacted local tax ordinance and the Uniform Local Tax Code, 24 N.N.C. § 150 *et seq.*

The CONSULTANT shall segregate, on each invoice, the work performed within and outside the territorial jurisdiction of the Navajo Nation, and within and outside the jurisdictions of governance-certified chapters that impose a local sales tax. The NATION shall withhold from each payment to the CONSULTANT the applicable Navajo Nation Sales Tax and/or local sales tax due from the total invoice amount associated with work performed within the Navajo Nation and/or within governance-certified chapters that impose a local sales tax (excluding Tuba City Chapter and Kayenta Township). The amount withheld reflects the Navajo Nation Sales Tax and/or local sales tax due on such invoice amounts. The NATION shall transfer the withheld amount to the Office of the Navajo Tax Commission as payment of the Navajo Nation Sales Tax and/or local sales tax on behalf of the CONSULTANT. The CONSULTANT will then indicate on the quarterly tax return or returns

required for the Navajo Nation Sales Tax and/or local sales tax that this amount has been previously withheld and paid to the Office of the Navajo Tax Commission. It is hereby acknowledged that the NATION withholding amounts pursuant to this section in no way removes responsibility from the CONSULTANT as a taxpayer for timely filing of tax returns and timely payment of any other amounts, which may be owed for taxes.

The CONSULTANT is subject to the Tuba City Chapter Sales Tax on gross receipts for all work performed within the Tuba City Chapter pursuant to the To’Nanees’Dizi Local Government Tax Code, as may be amended from time to time, and shall pay the sales tax directly to the Tuba City Chapter. The CONSULTANT is subject to the Kayenta Township Sales Tax on gross receipts for all work performed within the Kayenta Township pursuant to the Kayenta Township Tax Ordinances, as may be amended from time to time, and shall pay the sales tax directly to the Kayenta Township. The NATION shall not withhold this portion of the tax that is directly payable to Tuba City Chapter or Kayenta Township.

The CONSULTANT is solely responsible for the payment of all applicable taxes.

- 20. **Consultant Debarment; Suspension.** If the CONSULTANT in its present form or any other identifiable capacity as an individual, business corporation, partnership or other entity is deemed ineligible, debarred, or suspended pursuant to the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.* or the Navajo Nation Procurement Act, 12 N.N.C. § 301 *et seq.*, the CONSULTANT is not legally able to enter into this Contract, and this Contract shall be null and void unless the factors that warranted the ineligibility, debarment or suspension have been sufficiently addressed as provided by applicable Navajo Nation laws.
- 21. **Insurance Coverage.** The CONSULTANT shall obtain and maintain adequate insurance coverage as recommended and verified by the Navajo Nation Risk Management Program (“RMP”) for the entire term of the Contract. The insurance coverage shall name the NATION as an additional insured as specified by the RMP, and the CONSULTANT shall notify the contracting program and the RMP, c/o The Navajo Nation, P.O. Box 1690, Window Rock, Arizona 86515, within five (5) days of any change in the insurance policy. Proof of such insurance is attached as **Exhibit C – Certificate of Insurance**. The failure to fully comply with this provision shall render this Contract null and void.
- 22. **Conflicting and Additional Terms.** Any additional terms and conditions of the CONSULTANT are attached hereto and incorporated into this Contract, provided however that in the event of any conflict between the terms and conditions of this Contract and any of the CONSULTANT’S additional terms and conditions, the terms and conditions of this Contract shall control and govern. Any additional terms and conditions not attached to this Contract shall have no force or effect.

SIGNATURES OF THE CONTRACT

For the Consultant:

For the Navajo Nation:

Date

Branch Chief

Date

The Navajo Nation

Post Office Box 9000

Window Rock, Arizona 86515

SERVICES CONTRACT

ATTACHMENT B – Scope of Work (include timeframe)

FIRM NAME

ADDRESS

TELEPHONE NO.

SERVICES CONTRACT

EXHIBIT A – Accounting Codes and Budget

FIRM NAME _____
 ADDRESS _____
 TELEPHONE NO. _____

ACCOUNTING CODES

<u>Account Number</u>	<u>Account Name</u>	<u>Item Totals</u>
_____ - _____	_____	\$ _____
_____ - _____	_____	\$ _____
_____ - _____	_____	\$ _____
TOTAL CONSULTANT FEES AND EXPENSES:		\$ _____

ATTACH A DETAILED BUDGET TO THIS EXHIBIT

The detailed budget total must match the totals above and the totals on Page 1 of the Contract.

Consider using the SAMPLE FORMULAS below:

_____ – *Cost Estimate – Fees*

\$ _____ per day or per hour x _____ work days or work hours outside the Navajo Nation: \$ _____
 \$ _____ per day or per hour x _____ work days or work hours within the Navajo Nation: \$ _____
 _____ Percent Navajo Nation tax on fees for work within the Navajo Nation: \$ _____
Total Fees: \$ _____

_____ – *Cost Estimate – Fees*

Travel (_____ miles x \$ _____ per mile): \$ _____
 Meals (_____ meals x \$ _____ per meal): \$ _____
 Lodging (\$ _____ per night x _____ required overnight stays): \$ _____
 Airfare (\$ _____ per trip x _____ trips): \$ _____
 Materials, supplies, and goods (list each item and associated cost): \$ _____
Total Expenses: \$ _____

SERVICES CONTRACT
EXHIBIT B - Consultant Credentials

FIRM NAME _____

ADDRESS _____

TELEPHONE NO. _____

FOR INTERNAL GUIDANCE ONLY - Include in this section:

1. Consultant's current resume. If Consultant is a firm, use the resume of the primary responsible party,
2. Signed Navajo Nation Certification Regarding Debarment and Suspension,
3. Completed and signed W-9 Form, and
4. Any other credentials that are relevant to the work in this contract.

SERVICES CONTRACT
EXHIBIT C - Certificate of Insurance

FIRM NAME _____
ADDRESS _____
TELEPHONE NO. _____

FOR INTERNAL GUIDANCE ONLY - Include in this section:

1. The Consultant's Certificate(s) of Insurance, and
2. The Risk Management Program's (RMP) signed memorandum indicating that the attached Certificate of Insurance meets RMP's minimum insurance requirements.