

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

March 7, 2022

KPMG LLP
3 CHESTNUT RIDGE ROAD
MONTVALE, NEW JERSEY 07645

ATTENTION: JOHN KENNEDY, CPA

REFERENCE: 164 Review 018138/Services Contract

Dear Mr. Kennedy:

Attached please find your copy of the approved Services Contract (CO15186) with the Navajo Nation Office of the Controller. The contract has been awarded for the amount of \$6,106,829.22 and obligated into our Financial Management Information System for \$1,146,127.77. Additional funds will be obligated upon funds availability. The term of the Agreement will commence October 1, 2021 and expire on September 30, 2022 with an option to extend to September 30, 2024.

The above contract number must be referenced on all invoices, documents, and correspondence as it relates to this contract.

Should you have any questions, please contact Robert Willie at 928-871-6173.

Sincerely,

A handwritten signature in cursive script that reads "JBen".

Jeremy Ben, Accounting Manager
OOC – Contract Administration

xc: Robert Willie, Navajo Nation Office of the Controller
Jeremy Coleman, Contract Accounting/Navajo Nation Office of the Controller
Contract Folder: CO15186

FORM 1 (ADMINISTRATIVE PURPOSES ONLY)

SERVICES CONTRACT BETWEEN
THE NAVAJO NATION
AND

KPMG LLP

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

6565 Americas Parkway NE, Suite 700, Albuquerque, NM 87110

Consultant's physical address, state and zip code

505-880-3891

Consultant's telephone number

CONTRACT NO: _____

FOR THE PERIOD: BEGINNING October 1, 2021
ENDING September 30, 2022; option to extend to September 30, 2024

PAYMENTS TO BE MADE FROM:

Account: <u>118001/K211514 - 6630</u>	Fees: \$ <u>5,060,824 / \$944,620.56</u>
Account: <u>118001/K211514 - 6640</u>	Expenses: \$ <u>57,116 / \$11,332.74</u>
Account: <u>118001/K211514 - 6630</u>	Taxes: \$ <u>27,483 / \$5,452.92</u>

TOTAL PAYMENTS ON THIS CONTRACT NOT TO EXCEED: \$ 6,106,829.22

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 – Additional and Clarifying Terms and Conditions

EXHIBIT E – Engagement Letter

Employer's Identification No.: 13-5565207

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 KPMG LLP, 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 October 1, 2021, and ending See Exhibit D, paragraph 1.
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 – Additional and Clarifying Terms and Conditions; and
 - EXHIBIT E – Engagement Letter.
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 \$ 6,106,829.22, 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 Office of the Controller (*Contracting Program*), and its Authorized Representative, Elizabeth Begay, Acting Controller, 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:

KPMG LLP	Office of the Controller
John Kennedy, CPA	Elizabeth Begay, Act. Controller
6565 Americas Parkway, NE	PO Box 3150
Suite 700	Window Rock, AZ 86515
Albuquerque, NM 87110	928-871-6308
505-880-3891	

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:

John Kennedy, CPA

KPMG LLP

6565 Americas Parkway NE

Suite 700

Albuquerque, NM 87110

Date

For the Navajo Nation:

Jonathan Nez, President

Branch Chief

The Navajo Nation

Post Office Box 9000

Window Rock, Arizona 86515

Date