

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
24<sup>th</sup> Navajo Nation Council --- Second Year, 2020

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; RESCINDING  
RESOLUTION NO. RDCD-105-18; AND APPROVING THE GRANT OF RIGHT-OF-  
WAY AND LEASES TO ARCADIAN INFRACOM, LOCATED ON NAVAJO NATION  
TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA AND NEW MEXICO)

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

- A. The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations. 2 N.N.C. § 501 (B) (2).

**SECTION TWO. FINDINGS**

- A. Arcadian Infracom ("Arcadian") is a privately funded company developing a large scale long-haul fiber optic communications route through the Navajo Nation connecting Phoenix to Salt Lake City, Phoenix to Denver and Los Angeles to Dallas ("Fiber Project").
- B. The Navajo Nation is in the midst of an unprecedented health, safety and economic emergency due to the COVID-19 pandemic.
- C. The Fiber Project will provide bandwidth sufficient to support data-intensive applications such as high-quality video transmission access to benefit K-12 public education, higher education and life-long learning opportunities, telemedicine and remote working arrangements, which can help mitigate the health, safety and economic effects of the COVID-19 pandemic.
- D. This Fiber Project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Fiber Project revenues and services as compensation for use of Navajo Rights-of-Way, 3) generate new

tax revenues through the construction and operation of infrastructure built on the Navajo Nation, and 4) assist Navajo Nation in providing high speed internet to remote Navajo and surrounding communities.

- E. The original Arcadian network design in 2018 was based on the use of NTUA poles for the aerial installation of the Arcadian fiber network. Based on Arcadian customer requirements for an underground fiber optic network to ensure the security and resiliency of their fiber network, the Arcadian network design has changed to an underground installation method which will no longer require the utilization of NTUA poles. As a result, RDCD-105-18 will be rescinded and this new legislation will be enacted to reflect the revised partnership structure between the Navajo Nation and Arcadian. RDCD-105-18 is attached as **Exhibit C**.
- F. Arcadian will install its fiber optic cable along the routes of the Fiber Project ("Routes") underground for approximately 343 miles within the Navajo Nation largely along public roadways within the Navajo Nation as described on **Exhibit A** ("Rights-of-Ways"). Arcadian will also install its electronic equipment buildings ("Huts") along the Route, placing the buildings approximately 50 miles apart on the Navajo Nation lands.
- G. Arcadian may grant long term rights to use dark fiber, conduits and sell other communications services on the Routes to its customers.
- H. As consideration for the grant of the Rights-of-way for this Fiber Project:
  - (1) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of all collected gross fiber IRU, fiber lease, operations and maintenance ("O&M"), colocation and wavelength service revenue generated from the portions of the Fiber Project installed on the Navajo Nation on a pro-rata basis based on the miles of the Fiber Project located on Navajo Nation that are used to provide those services.
  - (2) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber strands and associated O&M and colocation services on the portion of the Routes located on Navajo Nation lands.



- (3) Arcadian will provide to the Navajo Nation 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
  - (4) Arcadian will provide to NTUA 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
- I. For a period of five (5) years from the effective dates of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation lands to install new fiber optic cables from points within the Navajo Nation that are connected to any facilities outside of the Navajo Nation ("Development Rights").
  - J. The Rights-of-Way will be granted for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods, in Arcadian's name, with the right to assign, pledge or mortgage, all or any portion of the right of way or hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project, without any further approval by the Resources and Development Committee.
  - K. The proposed Rights-of-Way (including Arcadian Hut locations) are set forth in **Exhibit A**.
  - L. In light of the immediate and emergency need for completion of the Fiber Project to mitigate the health, safety and economic effects of the COVID-19 pandemic, Arcadian may immediately commence construction of the Fiber Project and during such construction Arcadian will commence all required environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance Letter, Cultural Resources Compliance Form and Cultural Resources Inventory Report. During construction of the Fiber Project, Arcadian will also commence the required processes for surface disturbing activities, including but not limited to the Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment. Arcadian may commence construction prior to the completion of such approvals and prior to delivery of the consent application for the Rights-of-Way to the Bureau of Indian Affairs ("BIA") for the grant thereof. Due to the unprecedented emergency facing the Navajo people due to the COVID-19 pandemic, any such approvals may occur

after the completion of the Fiber Project. In the event of a discovery ("discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices) all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation must be notified at (928)871-7148.

- M. The Resources and Development Committee finds that given the public health challenge resulting from COVID-19, and because the Rights-of-Way to be granted are limited to previously developed corridors, it is in the best interests of the Navajo Nation to expedite the project review process pursuant to the Navajo Nation Environmental Policy Act and the Navajo Nation Cultural Resources Protection Act. The Resources and Development Committee hereby directs the Navajo Nation Division of Natural Resources, the Navajo Land Department, the Navajo Nation Environmental Protection Administration, Navajo Nation Heritage and Historic Preservation Department, Navajo Fish and Wildlife Department, and any other agency or department of Navajo Nation government, as well as NTUA as a Navajo Nation owned and operated enterprise, to prioritize the Fiber Project and cooperate with the Navajo Nation Department of Justice and the Office of the President and Vice-President to accelerate its immediate construction. Chapters along the Rights-of-Way shall be immediately notified by the Navajo Land Department of the Fiber Project and, should any additional land need to be leased by Arcadian outside of the developed corridors in order to facilitate construction of facilities related to the Fiber Project, the review and approval of such leases shall likewise be expedited.
- N. The Rights-of-Way to be granted, and any leases appurtenant to those Rights-of-Way, are subject to the Nation's standard terms and conditions for Rights-of-Way attached and incorporated herein as **Exhibit B**.

### **SECTION THREE. RESCINDING RDCAU-105-18**

The Resources and Development Committee hereby rescinds RDCAU-105-18 AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO NAVAJO TRIBAL UTILITY AUTHORITY, LOCATED ON NAVAJO NATION TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA AND NEW MEXICO) attached as **Exhibit C**.



**SECTION FOUR. APPROVAL**

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves, as more specifically described in the above findings:
1. The grant of the Development Rights as described above;
  2. And grant of the Rights-of-Way and Hut location leases for all communications purposes, for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods;
  3. The combined cash and in-kind compensation mechanism described in Section 2.G above as consideration paid to the Navajo Nation for use of the Rights-of-Way, Hut location leases and grant of the Development Rights; and
  4. Arcadian providing to third parties rights to use dark fiber and conduit related services including O&M and colocation as well as other communications services along the Routes installed on the Rights-of-Way.
- B. The Resources and Development Committee of the Navajo Nation Council recognizes the unprecedented health, safety and economic emergency facing the Navajo people due to the COVID-19 pandemic and makes such grant recognizing that permitting process approvals described above may be completed following commencement or following completion of construction of the Fiber Project.
- C. The Resources and Development Committee of the Navajo Nation Council further grants to Arcadian approval to assign, with the right to mortgage, all or any portion of the Rights-of-Way or Hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project.
- D. The Resources and Development Committee of the Navajo Nation Council finds that pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):
1. The cash and in-kind compensation agreed in the form of free use of Arcadian dark fibers and wavelength services described in Section 2(H) above that will be provided to the Navajo Nation in exchange for the grant of the

Rights-of-Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best interest.

2. Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs pursuant to 25 C.F.R. § 169.110(b) is in the best interests of the Navajo Nation.
  3. Accepting the agreed upon cash and in-kind compensation described in Section 2(H) above for the grant of the Rights-of-Way is in the Navajo Nation's best interest.
- E. Arcadian is required to commence, but not complete prior to either commencement or completion of construction, all required studies and requests for permissions, including but not limited to the Navajo Nation Historic Preservation Department Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA.
- F. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effect the intent and purpose of this resolution.

#### CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24<sup>th</sup> Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 28<sup>th</sup> day of August 2020.



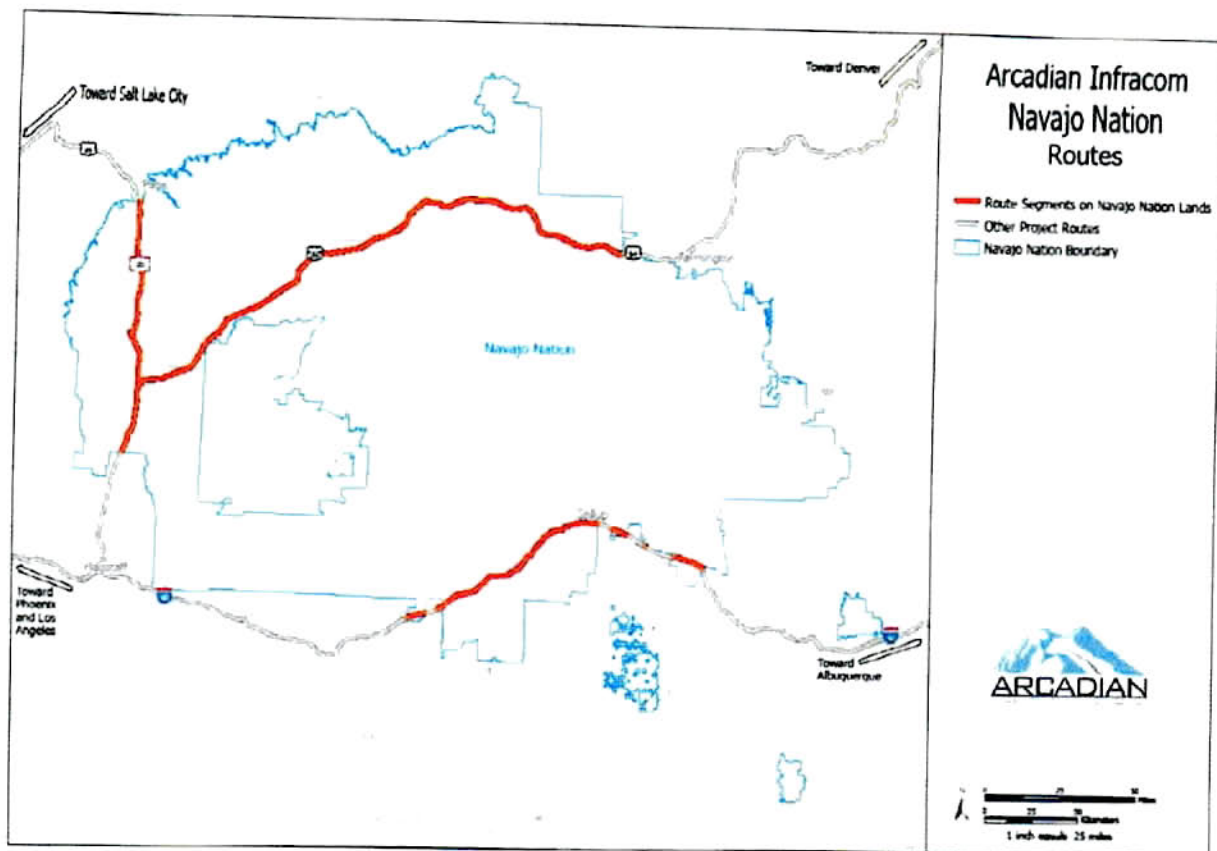
Thomas Walker, Jr., Vice Chairperson  
Resources and Development Committee  
of the 24<sup>th</sup> Navajo Nation Council

Motion: Honorable Kee Allen Begay, Jr.  
Second: Honorable Mark A. Freeland

Vice Chairperson Thomas Walker, Jr. not voting.

## Attachment A

### Rights-of-Way and Leases for Fiber Project with Regeneration Huts



#### Highway 89/Indian Route 20

The easement will be 10 feet wide with the edge offset approximately 5 feet from the western ADOT fence or as construction requires on US89 starting at the intersection of the section line at approximately the midpoint of  $\frac{1}{4}$ SE  $\frac{1}{4}$ SE Section 31 T28N R9E

Proceeding north for approximately 23 miles to the intersection of US160 at  $\frac{1}{4}$ SE  $\frac{1}{4}$ SE Section 11 T31N R9E then continuing north for approximately 16.9 miles to the intersection of Navajo Route 20 at about the middle of  $\frac{1}{4}$ SE  $\frac{1}{4}$ NE Section 31 T34N R9E.

Then crossing beneath US89 to the north side of N20 aligned approximately 5 feet from the fence and proceeding along the fence line or as construction requires for approximately 42.2 miles to the endpoint located at about the middle of  $\frac{1}{4}$ NW Section 16 T40N R9E on the section line.

#### US160/US64

An easement 10 feet wide beginning on the US89 easement at the intersection of US89 and US160 on  $\frac{1}{4}$ SE  $\frac{1}{4}$ SE Section 11 T31N R9E proceeding eastward under US89 and continuing approximately 5 feet from the fence line or as construction requires along US160 for 154 miles to the intersection of US64 in Teec Nos Pos  $\frac{1}{4}$ NE  $\frac{1}{4}$ NE Section 35 T41N R30E and continuing 5



feet from the fence line of US64 for approximately 35.6 miles to the endpoint located on the section line at  $\frac{1}{4}$ NW  $\frac{1}{4}$ NW Section 9 T29N R16W.

I-40 segment 1

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the section line of Section 5 T19N R25E at about the middle of  $\frac{1}{4}$ NE  $\frac{1}{4}$ NE Section 5 T19N R25E and continuing eastward approximately 5.25 miles to the endpoint at the section line on  $\frac{1}{4}$ NE  $\frac{1}{4}$ SE Section 25 T20N R25E.

I-40 segment 2

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the SW corner of  $\frac{1}{4}$ NW  $\frac{1}{4}$ NW Section 23 T20N R26E and continuing easterly approximately 8 miles to the endpoint at the section line on  $\frac{1}{4}$ NW  $\frac{1}{4}$ SE Section 25 T21N R27E.

I-40 segment 3

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the western section line and  $\frac{1}{4}$ SW  $\frac{1}{4}$ NW Section 30 T21N R28E and continuing northeast approximately 1.5 miles to the endpoint at the southern section line in the middle of Section 20 T21N R28E.

I-40 segment 4

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about 400 feet north of the SW corner of  $\frac{1}{4}$ NW  $\frac{1}{4}$ NW Section 23 T21N R28E and continuing easterly approximately 35 miles to the endpoint at the section line on  $\frac{1}{4}$ NW  $\frac{1}{4}$ SE Section 25 T21N R19W.

I-40 segment 5

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the section line near the midpoint of  $\frac{1}{4}$ SW  $\frac{1}{4}$ NW Section 15 T15N R17W and continuing easterly approximately .5 miles to the endpoint at the section line on  $\frac{1}{4}$ SE  $\frac{1}{4}$ NW Section 15 T15N R17W.

I-40 segment 6

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of  $\frac{1}{4}$ SE  $\frac{1}{4}$ SE Section 21 T15N R16W and continuing southeast approximately 6 miles to the endpoint at the section line on SE corner of Section 32 T15N R15W.

I-40 segment 7

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the SW corner of  $\frac{1}{4}$ SW  $\frac{1}{4}$ NE Section 18 T14N R14W and continuing southeast approximately 3.5 miles to the endpoint at the section line on  $\frac{1}{4}$ SW  $\frac{1}{4}$ NE Section 26 T14N R14W.

I-40 segment 8

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning on the westside of  $\frac{1}{4}$ SE  $\frac{1}{4}$ NE Section 31 T14N R13E and crossing to the east side approximately .25 miles to the endpoint at the section line on  $\frac{1}{4}$ SE  $\frac{1}{4}$ NE Section 31 T14N R13W.



#### I-40 segment 9

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of  $\frac{1}{4}$ SW  $\frac{1}{4}$ NE Section 2 T13N R13E and continuing east approximately 11.5 miles to the endpoint at the section line on  $\frac{1}{4}$ SE  $\frac{1}{4}$ NE Section 28 T13N R11W.

#### Equipment Building Locations

Leases of land approximately 100 by 100 feet each and other necessary Rights-of-Way, on or near the Arcadian fiber cable running line, for the construction of up to four (4) 12 foot by 40 foot buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical connections, fiber connections and other necessary appurtenances, at or near the following locations:

- Site 1: At intersection of Hwy 89 and Hwy 160, before mile marker 481 on Hwy 89
- Site 2: Near mile marker 42 on Navajo Route 20
- Site 3: Near mile marker 361 on Hwy 160
- Site 4: Near mile marker 417 on Hwy 160
- Site 5: Near mile marker 465.4 on Hwy 160
- Site 6: Near ADOT mile marker 333 on I-40
- Site 7: Near NMDOT mile marker 53 on I-40

### I-40 segment 9

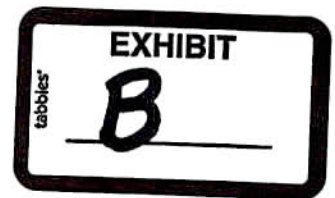
An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of  $\frac{1}{4}$ SW  $\frac{1}{4}$ NE Section 2 T13N R13E and continuing east approximately 11.5 miles to the endpoint at the section line on  $\frac{1}{4}$ SE  $\frac{1}{4}$ NE Section 28 T13N R11W.

### Equipment Building Locations

Leases of land approximately 100 by 100 feet each and other necessary Rights-of-Way, on or near the Arcadian fiber cable running line, for the construction of up to four (4) 12 foot by 40 foot buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical connections, fiber connections and other necessary appurtenances, at or near the following locations:

- Site 1: At intersection of Hwy 89 and Hwy 160, before mile marker 481 on Hwy 89
- Site 2: Near mile marker 42 on Navajo Route 20
- Site 3: Near mile marker 361 on Hwy 160
- Site 4: Near mile marker 417 on Hwy 160
- Site 5: Near mile marker 465.4 on Hwy 160
- Site 6: Near ADOT mile marker 333 on I-40
- Site 7: Near NMDOT mile marker 53 on I-40





## **Attachment B**

### **NAVAJO NATION RIGHTS-OF-WAY ("ROW") TERMS AND CONDITIONS**

#### **ARCADIAN INFRACOM, INC. ("Arcadian" or "Grantee") FOR FIBER PROJECT ROW**

1. The term of the ROW shall be fifty (50) years with two (2) successive twenty (20) year renewal periods, in Arcadian's name, with the right to assign once and/or mortgage to secure Arcadian financing for the Fiber Project (as defined in the Resolution to which these Terms and Conditions are attached) without any further approval.
2. The ROW shall be used only for the purpose of the installation, operation, maintenance, repair, fiber upgrade/expansion and removal of fiber optic communications systems and components thereof including multiple conduits, fiber, handholes, manholes, marker posts, communication equipment huts (including at each equipment hut location up to three (3) 12 foot by 24 foot (or smaller) buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical and fiber connections) and other necessary appurtenances for the same ("Fiber Project Facilities"), and including the use of dark fiber and lit services within the Fiber Project Facilities by Arcadian customers and their end users.
3. Consideration for the ROW shall be paid as follows:
  - (a) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of all collected gross fiber IRU, fiber lease, O&M, colocation and wavelength service revenue generated from the portions of the Fiber Project installed on the Navajo Nation on a pro-rata basis based on the miles of the Fiber Project located on Navajo Nation that are used to provide those services compared to the total miles of the Fiber Project that are used to provide those services,
  - (b) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber strands and associated operations, maintenance and space/power services on the portions of the Routes located on Navajo Nation (as defined in the Resolution to which these Terms and Conditions are attached), and
  - (c) Arcadian will provide to Navajo Nation 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those routes are complete.
4. The Grantee may develop, use and occupy the ROW for the purpose(s) described in Paragraph 2 above. The Grantee may not develop, use or occupy the ROW for any other purpose, nor allow others to use or occupy the ROW for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW for any unlawful purpose.
5. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the

following:

- a. Title 25, Code of Federal Regulations, Part 169; subject to the terms of this ROW; and
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
  - c. The Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
  - d. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. (the "Act"); and
  - e. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
6. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the ROW.
  7. The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
  8. The Grantee shall reclaim all surface lands disturbed related to the ROW, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
  9. The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW and all improvements located thereon and make all necessary and reasonable repairs.
  10. The Grantee shall obtain prior written permission to cross existing ROWs, if any, from the appropriate parties.
  11. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
  12. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of ROW by the Grantee.
  13. Except as otherwise expressly permitted by the Resolution to which these Terms and Conditions are attached, the Grantee shall not assign, convey, transfer or sublet in any manner whatsoever, the ROW or any interest therein, or in or to any of the improvements



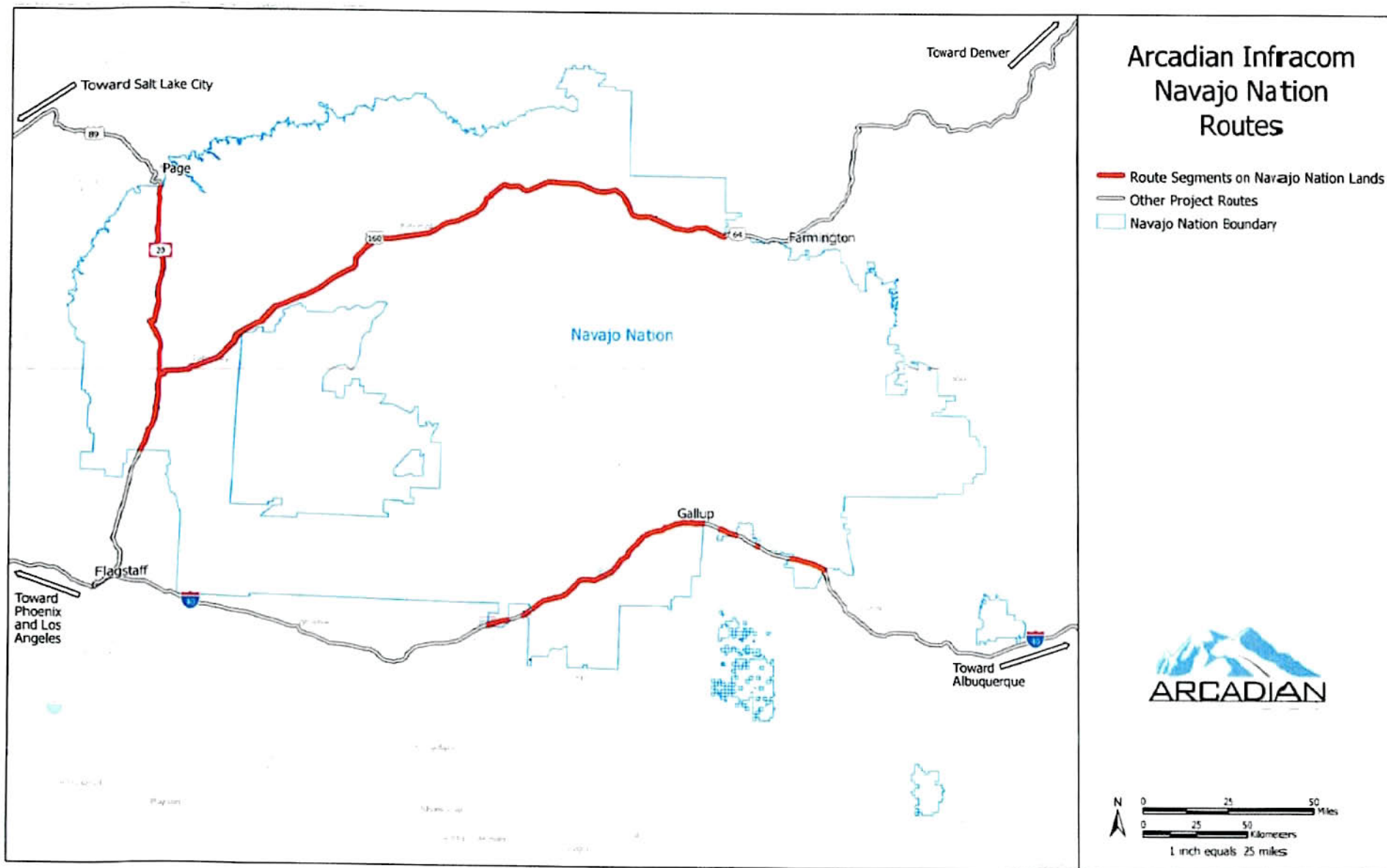
on the land subject to the ROW, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

14. The Navajo Nation may terminate the ROW for violation of any of the terms and conditions stated herein. In addition, the ROW shall be terminable in whole or part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations; and
  - b. A non-use of the ROW for the purpose for which it is granted for a consecutive two-year period; and
  - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted; and
  - d. An abandonment of the ROW.
15. At the termination of this ROW, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
16. Holding over by the Grantee after the termination of the ROW shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the ROW or to any improvements located thereon.
17. The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the ROW, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
18. By acceptance of the grant of ROW, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation
19. By acceptance of the grant of ROW, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the

land subject to the ROW or to the Navajo Nation.

20. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the ROW shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
21. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
22. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
23. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include any such successors, heirs, assigns, executors, administrators, employees and agents.
24. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the ROW and all lands burdened by the ROW, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
25. The Navajo Nation reserves the right to grant ROWs within the ROW referenced herein for electrical and water utilities, provided that such ROWs do not unreasonably interfere with the Grantee's use of the ROW.







RDCD-105-18

**RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
23<sup>rd</sup> Navajo Nation Council --- Fourth Year, 2018**

**AN ACTION**

**RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE  
GRANT OF RIGHT-OF-WAY TO NAVAJO TRIBAL UTILITY AUTHORITY,  
LOCATED ON NAVAJO NATION TRUST LANDS ON THE NAVAJO NATION (UTAH,  
ARIZONA AND NEW MEXICO)**

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations. 2 N.N.C. § 501 (B) (2).

**SECTION TWO. FINDINGS**

- A. The Navajo Nation Council created the Navajo Tribal Utility Authority (hereinafter "NTUA") on January 22, 1959, pursuant to Resolution No. CJA-14-59, by which NTUA was authorized to construct, operate and maintain utility systems throughout the Navajo Nation. NTUA is further authorized to "expand and execute such extensions of existing systems as are efficient and feasible." See 21 N.N.C. § 5(A) (2).
- B. NTUA has been working with MDCMD, Inc. (to be later renamed Arcadian Infracom) to build a large-scale long-haul communications route through the Navajo Nation. This project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Fiber Project revenues and services as compensation for the Rights-of-Way, 3) generate new tax revenues through the construction and operation of over \$500 million of infrastructure built on the Navajo Nation, 4) assist NTUA in providing high speed internet to remote Navajo and surrounding communities, and 5) add value to existing NTUA fiber routes by providing NTUA additional communications capacity and redundancy.



- C. MDCMD intends to construct new fiber cables through the Navajo Nation, from Salt Lake City to Phoenix and Denver to Phoenix. The currently proposed route has not been finalized. The intent of identifying a route through the Navajo Nation is to provide a fiber path that crosses through communities in need of access to communications services.
- D. NTUA will have exclusive rights to use the Fiber Route to provide local telecom and data services on Navajo lands. MDCMD, Inc. will sell dark fiber and wavelengths on the Fiber Route from points within Navajo Nation to points outside of the Navajo Nation.
- E. MDCMD will have exclusive rights to develop these Rights-of-Way to provide fiber connectivity from points within Navajo Nation to points outside of the Navajo Nation.
- F. The Rights-of-Way will be granted for an initial term of twenty (20) years with two (2) successive twenty (20) year renewal periods, in NTUA's name, which NTUA will immediately assign once and/or mortgage, solely to MDCMD, to secure MDCMD financing for the proposed large-scale fiber project without any further approval by the Resources and Development Committee.
- G. As consideration for the Rights-of-Way for this project (1) MDCMD will pay to the Navajo Nation an amount equal to a 3% share of all gross fiber IRU, fiber lease, O&M, collocation and wavelength service revenue generated from the portions of the fiber project installed on the Navajo Nation. (2) MDCMD will provide to NTUA use of twelve (12) dark fiber strands and associated operations, maintenance and space/power services on the fiber routes and 400 gigabits of separate lit capacity on the fiber routes, a portion of which capacity will be used by NTUA to provide services to Navajo Nation. (3) NTUA will deliver up to 2.5 Gb at the 1 Gb price or \$480,000 plus NN tax, to the Navajo Nation within sixty (60) days after services are available to the Nation and the construction and fiber build-out is complete. This results in annual savings to the Navajo Nation of \$720,000. This expands upon an NTUA and Navajo Nation Telecommunications and Utilities Department, Division of General Services contract whereby NTUA agreed to provide redundant direct internet access (DIA) and circuit connection on existing or new building connections at \$40,000 per month for a total of \$480,000 per year for 1 Gb of service.

H. The Navajo Nation reserves the right to regulate the computation of the compensation proposed under this legislation consistent with the terms contained herein. Further, the Navajo Nation recognizes that Federal law governs the interstate nature of the fiber facilities to be installed on the Rights-of-Way by MDCMD.

I. The Navajo Tribal Utility Authority's proposed right-of-way has not been finalized. The legal description is not included. The Grazing Committee or Land Board Member of any proposed route has not certified that there are no grazing permittees in the area.

J. The environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance, Cultural Resources Inventory Report have not been completed. NTUA and MDCMD will complete the required surface disturbing activities, including but not limited to the Navajo Nation Historic Preservation Department Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA for the grant thereof.

K. There has been no review by the Navajo Land Department, Fish and Wildlife, Historic Preservation, Minerals, Navajo Nation Environmental Protection, Division of Natural Resources, and Office of the President and Vice-President.

L. The Resources and Development Committee is providing its consent and approval for a Right-of-Way that will be governed by the framework attached and incorporated herein as **Exhibit A** and the Nation's standard terms and conditions for Right-of Way attached and incorporated herein as **Exhibit B**.

### SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby approves, as more specifically described in the above findings and only after MDCMD completes all required permitting processes for the grant of the Rights-of-Way:



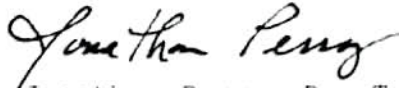
- I. the development of the large-scale fiber route along the Rights-of-Way,
  - II. the combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of Rights-of-Way,
  - III. the grant of the easement to the Rights-of-Way (for an initial term of twenty (20) years with two (2) successive twenty (20) year renewal periods) and, after assignment to MDCMD, the exclusive rights to develop the Rights-of-Way for communications purposes, and
  - IV. The right to sell to third parties rights to use dark fiber in the fiber facilities installed on the Rights-of-Way.
- B. The Resources and Development Committee of the Navajo Nation Council further grants to the Navajo Tribal Utility Authority approval to assign once, and only to MDCMD with the right to mortgage, all or any portion of the Right-of-Way route to the extent necessary for MDCMD to secure financing for the proposed large-scale fiber project.
- C. The Resources and Development Committee of the Navajo Nation Council finds that pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):
- I. The cash and in-kind compensation agreed to be provided for the grant of the Right-of-Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best interest,
  - II. Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs pursuant to 25 C.F.R. 169.110(b) is in the best interests of the Navajo Nation,
  - III. Accepting the agreed upon cash and in-kind compensation for the grant of the Rights-of-Way is in the Navajo Nation's best interest.
- D. NTUA and MDCMD are required to complete all required studies and obtain all required permissions, including but not limited to the Navajo Nation Historic Preservation Department

Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA for the grant thereof.

- E. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

**CERTIFICATION**

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 3 in favor, and 2 opposed, on this 26<sup>th</sup> day of December 2018.



Jonathan Perry, Pro Tempore Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Davis Filfred  
Second: Honorable Alton Joe Shepherd

Pro Tempore Chairperson Jonathan Perry not voting.



**NTUA / MDCMD / RP Infrastructure  
Economic Development Through Technology Term Sheet**



This business arrangement is among MDCMD, Inc., a WY corporation ("Company"), RP Infrastructure, LLC, a Missouri LLC and NTUA. It is intended to create new jobs, provide new revenue sources and provide high speed internet capacity to Navajo Nation and surrounding communities. NTUA, Company and RP Infrastructure will accomplish this by partnering to build:

- Fiber optic cables connecting Navajo Nation lands to Salt Lake City, Phoenix and Denver.

**DUTIES OF THE PARTIES**

- Company will install a high capacity fiber optic cable system with an estimated 288 strand capacity with associated equipment huts, handholes and other necessary ancillary facilities on two (2) routes through Navajo Nation lands, Phoenix to Salt Lake City and Phoenix to Denver, as depicted on Attachment A ("Fiber Project").
- NTUA will work to receive approval from the Navajo Nation Resource and Development Committee for the following: 1) the development of the large-scale fiber route along the Rights-of-Way; 2) the combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of the Rights-of-Way; 3) the grant to MDCMD of exclusive rights to develop the Rights-of-Way for communications purposes, and 4) the right of MDCMD to sell to third parties rights to use dark fiber in the fiber facilities installed on the Rights-of-Way. NTUA will also work to receive a grant of all rights-of-way ("ROW") necessary to build the Fiber Project on the Navajo nation from the Bureau of Indian Affairs (BIA).
- Company will complete all engineering and other necessary route development activities (archeological, environmental, surface disturbing activities and other studies required under Navajo rules and regulations) ("Route Development"), which is anticipated to take up to eighteen (18) months. Upon completion of Route Development and after formal ROW is granted by Bureau of Indian Affairs (BIA) to NTUA and to the extent necessary to secure financing for the Fiber Project, NTUA will assign to Company and/or mortgage to Company all required ROW on Navajo Nation lands along the finalized route of the Fiber Project.
- As consideration for the rights-of-way:
  - 1) Company will pay to Navajo Nation three percent (3%) of all gross fiber IRU, fiber lease, O&M, collocation and wavelength service revenue paid to Company for portions of the Fiber Project installed on Navajo Nation lands as ROW use fees for the Fiber Project. The manner of payment to the Navajo Nation will be identified within the standard Navajo Nation ROW Terms and Conditions.
  - 2) For each Fiber Project route NTUA will have exclusive use through IRU to twelve (12) fiber strands and will receive free associated space/power and fiber O&M services for those strands to provide high speed internet and other communications services to Navajo Nation and surrounding communities. Company will provide breakout points along routes installed on Navajo Nation lands to enable NTUA to provide services to Navajo Nation communities and surrounding communities; and

- 3) NTUA will deliver up to 2.5 Gb at the 1 Gb price or \$480,000 plus NN tax, to the Navajo Nation within sixty (60) days after services are available to the Nation and the construction and fiber build-out is complete. This results in annual savings to the Navajo Nation of \$720,000. This expands upon an NTUA and Navajo Nation Telecommunications and Utilities Department, Division of General Services contract whereby NTUA agreed to provide redundant direct internet access (DIA) and circuit connection on existing or new building connections at \$40,000 per month for a total of \$480,000 per year for 1 Gb of service.
- Company will own all Fiber Project assets installed by the Company.
  - For each Fiber Project route Company will provide to NTUA a 400G lit wavelength from the far end major market location (Salt Lake City, Phoenix and Denver) to a point within the Navajo Nation where NTUA builds its network to connect each Fiber Project route.
  - NTUA, Company and RP Infrastructure will closely partner to manage the contracting of all construction services on Navajo Nation lands to utilize Navajo people as the preferred labor force. All required Navajo Sales Taxes will be remitted on these services.
  - NTUA will be the exclusive contractor to Company, with a right of first refusal for work before the use of any third parties, and paid a market rate fee for all fiber operations and maintenance services for the portions of the Fiber Project installed on Navajo Nation lands. All required Navajo Sales Taxes will be remitted on these services. Company will manage all operational aspects of the O&M services provided.
  - All purchase, installation, maintenance, repair and upgrade costs associated with the Fiber Project will be paid for by Company or its partners.
  - As part of the ROW legislation, Company will have the right to grant to any third party any form of IRU, lease or other use rights to its fiber, conduits, lit bandwidth and other facilities installed as a part of the Fiber Project.
    - Subject to Company receiving by December 31, 2019 financing to complete the Route Development and construction ("Financing"), NTUA will work exclusively with MDCMD and/or RP Infrastructure (each as detailed below), for a period of six (6) years as the developer of Navajo Nation owned or controlled rights of way, real estate rights, utility pole rights and similar matters for the installation, operation, maintenance, upgrade and removal of:
      - For MDCMD: All new installations of fiber optic cable facilities to either (a) connect points within Navajo Nation to any point outside of the Navajo Nation, or (b) traverse Navajo Nation to connect any two or more points outside of the Navajo Nation,
      - For RPI: Newly constructed commercial data center business opportunities on Navajo Nation lands of one (1) megawatt or more in initially installed or planned capacity, and
      - For RPI: Solar and other renewable energy generation, distribution or other renewable energy ecosystem opportunities on Navajo lands serving the Data Center Project.



- If Company does not receive commitments for the Financing by December 31, 2019, then any agreement between NTUA and Company will expire and no longer be of any force and effect.

## Fiber Project

Red Lines: Fiber Project Route

Blue Lines: Existing NTUA Fiber Routes

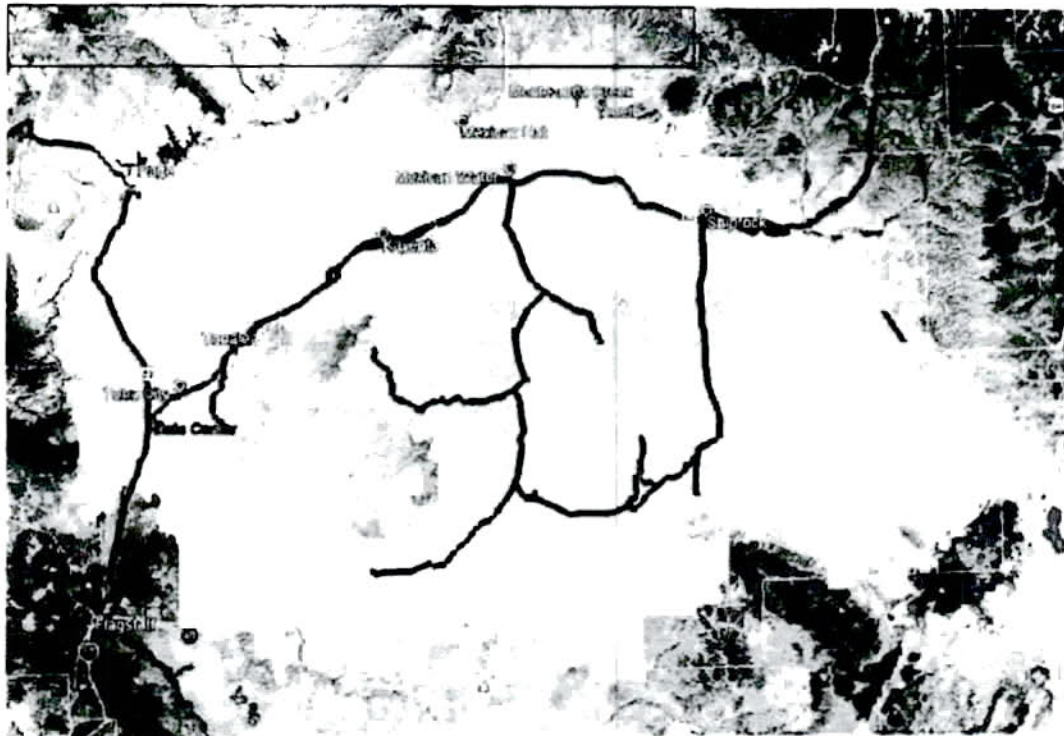






EXHIBIT [insert]  
NAVAJO NATION (GRANTOR) RIGHTS-OF-WAY TERMS AND CONDITIONS

[insert] (GRANTEE)  
FOR [insert] (ROWS)

1. The term of the ROWs shall be [insert].
2. The ROWs shall be used only for the purpose of [insert]
3. Consideration for the ROWs shall be paid as follows:  
  
[insert]
4. The Grantee may develop use and occupy the ROW for the purpose(s) of [insert]. The Grantee may not develop, use or occupy the ROW for any other purpose, nor allow others to use or occupy the ROW for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW for any unlawful purpose.
5. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
  - a. Title 25, Code of Federal Regulations, Part 169; subject to the terms of this ROW; and
  - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
  - c. The Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
  - d. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. (the "Act"); and
  - e. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
6. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the ROW.
7. The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
8. The Grantee shall reclaim all surface lands disturbed related to the ROW, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency

(NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.

9. The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW and all improvements located thereon and make all necessary and reasonable repairs.
10. The Grantee shall obtain prior written permission to cross existing ROWs, if any, from the appropriate parties.
11. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
12. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of ROW by the Grantee.
13. The Grantee shall not assign, convey, transfer or sublet in any manner whatsoever, the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROW, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
14. The Navajo Nation may terminate the ROW for violation of any of the terms and conditions stated herein. In addition, the ROW shall be terminable in whole or part by the Navajo Nation for any of the following causes:
  - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations; and
  - b. A non-use of the ROW for the purpose for which it is granted for a consecutive two-year period; and
  - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted; and
  - d. An abandonment of the ROW.
15. At the termination of this ROW, the Grantee shall peacefully and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
16. Holding over by the Grantee after the termination of the ROW shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the ROW or to any improvements located thereon.
17. The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the ROW, to enter upon the premises, or any part thereof, to inspect the same and any



18. By acceptance of the grant of ROW, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
19. By acceptance of the grant of ROW, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the ROW or to the Navajo Nation.
20. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the ROW shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
21. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
22. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
23. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include any such successors, heirs, assigns, executors, administrators, employees and agents.
24. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the ROW and all lands burdened by the ROW, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
25. The Navajo Nation reserves the right to grant ROWs within the ROW referenced herein for utilities, provided that such ROWs do not unreasonably interfere with the Grantee's use of the ROW.





**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

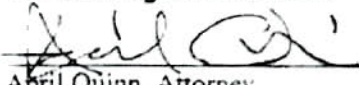
---

ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Mariana Kahn, Attorney  
Office of Legislative Counsel

FROM:   
April Quinn, Attorney  
Natural Resources Unit, Department of Justice

DATE: December 20, 2018

SUBJECT: Navajo Tribal Utility Authority (NTUA) Draft Legislation regarding Project to  
Develop Fiber Optic Route Right-of-Way within the Navajo Nation

Per your request, the Department of Justice (DOJ) has reviewed the draft legislation referenced above. DOJ made edits to the draft legislation in consultation with NTUA, which is being emailed to you with this memorandum. With the inclusion of these edits, DOJ deems the document to be legally sufficient.

As this draft legislation does not follow the Navajo Nation's typical approach with respect to the issuance of rights-of-way, it is possible that DOJ may have additional edits to the legislation as it moves through the Nation's legislative process. But for now, DOJ believes this legislation is adequate to be dropped into the legislative process.

**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FOURTH YEAR 2018**

**COMMITTEE REPORT**

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

**Legislation # 0441-18:** An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to Navajo Tribal Utility Authority, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Sponsor: Honorable Alton Joe Shepherd*

Has had it under consideration and reports a **DO PASS** with the following amendment;

**On Page 4 of 5, Lines 8, 9 and 10,** Delete Paragraph M in its entirety "~~M. The Navajo Nation Executive Branch shall be delegated the authority to negotiate and approved the actual Right of Way. No further approval by the Resources and Development shall be necessary.~~"

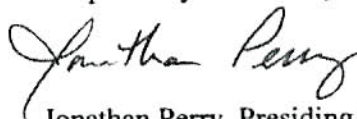
**Page 4 of 5, Line 26 and 27,** delete Paragraph A(v) in its entirety: "~~(v) A delegation to the Navajo Nation Executive Branch to negotiate the complete terms of the Right of Way consistent with Exhibits A and B.~~"

**Amendment # 2:** Exhibit A, Page 3, delete second and third bullet points in its entirety, as follow:

- ~~The parties will work together diligently to obtain, by December 31, 2018, all Navajo Nation tribal or other approvals, permits, agreements and authorities to grant to Company the rights of way on Navajo Nation to build the Fiber Project.~~
- ~~The parties will work together diligently to complete definitive, binding agreements to embody the terms in this Term Sheet b January 31, 2019.~~

Thereafter, approved the legislation.

Respectfully submitted,



Jonathan Perry, Presiding Pro Tem Chairperson  
Resource and Development Committee of  
the 23<sup>rd</sup> Navajo Nation Council

Date: December 26, 2018 - Regular Meeting

Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona

**MAIN MOTION:**

M: Benjamin Bennett                      S: Walter Phelps                      Vote: 3-2-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete

**Amendment # 1:**

M: Walter Phelps                      S: Benjamin Bennett                      Vote: 3-2-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete

**Amendment # 2:**

M: Benjamin Bennett                      S: Walter Phelps                      Vote: 4-0-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete



**RESOURCES AND DEVELOPMENT COMMITTEE**  
**Regular Meeting**

**ROLL CALL**  
**VOTE TALLY SHEET:**

**Legislation # 0441-18:** An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to Navajo Tribal Utility Authority, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Sponsor: Honorable Alton Joe Shepherd*

**MAIN MOTION:**

M: Benjamin Bennett                      S: Walter Phelps                      Vote: 3-2-1 (ProTemCNV)  
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps  
NAYS:  
EXCUSED: Leonard Pete

**Amendment # 1:**

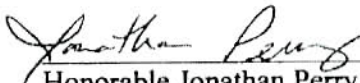
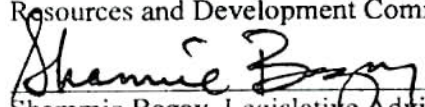
M: Walter Phelps                      S: Benjamin Bennett                      Vote: 3-2-1 (ProTemCNV)  
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps  
NAYS:  
EXCUSED: Leonard Pete

**Amendment # 2:**

M: Benjamin Bennett                      S: Walter Phelps                      Vote: 4-0-1 (ProTemCNV)  
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps  
NAYS:  
EXCUSED: Leonard Pete

December 26, 2018 – Regular Meeting

Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona

  
\_\_\_\_\_  
Honorable Jonathan Perry, Presiding Pro Tem Chairman  
Resources and Development Committee  
  
\_\_\_\_\_  
Shammie Begay, Legislative Advisor  
Office of Legislative Services

Document No. 014541Date Issued: 06/04/2020**SECTION 164 REVIEW FORM**Title of Document: Arcadian Infracom ROW for Fiber Proj/RenContact Name: YAZZIE, ELERINA BProgram/Division: DIVISION OF NATURAL RESOURCESEmail: e\_yazzie@navajo-nsn.govPhone Number: 9285716447

Division Director Approval for 164A: \_\_\_\_\_

**Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days,** except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

**Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council**

|                          |  |       |             |                          |                          |
|--------------------------|--|-------|-------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <b>Statement of Policy or Positive Law:</b>  |       |             | <b>Sufficient</b>        | <b>Insufficient</b>      |
|                          | 1. OAG:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <b>IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)</b> |       |             |                          |                          |
|                          | 1. OMB:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
|                          | 2. OOC:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
|                          | 3. OAG:  | _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

**Section 164(B) Final approval rests with the President of the Navajo Nation**

|                                     |  |                    |                      |                                     |                          |
|-------------------------------------|--|--------------------|----------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/>            | <b>Grant/Funding Agreement or amendment:</b>   |                    |                      |                                     |                          |
|                                     | 1. Division:   | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 2. OMB:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 3. OOC:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 4. OAG:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
| <input type="checkbox"/>            | <b>Subcontract/Contract expending or receiving funds or amendment:</b>                     |                    |                      |                                     |                          |
|                                     | 1. Division:   | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 2. BRD:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 3. OMB:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 4. OOC:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 5. OAG:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
| <input type="checkbox"/>            | <b>Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:</b> |                    |                      |                                     |                          |
|                                     | 1. Division:   | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 2. OAG:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <b>M.O.A. or Letter of Assurance expending or receiving funds or amendment:</b>            |                    |                      |                                     |                          |
|                                     | 1. Division:   | <u>[Signature]</u> | Date: <u>6-17-20</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|                                     | 2. OMB:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 3. OOC:  | _____              | Date: _____          | <input type="checkbox"/>            | <input type="checkbox"/> |
|                                     | 4. OAG:  | <u>[Signature]</u> | Date: <u>6-18-20</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|                                     | 5. CPVP:   | <u>[Signature]</u> | Date: <u>6-22-20</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



|   |        |
|---|--------|
| DOJ                                     |        |
| 6/17/2020                               | 5:30pm |
| DATE / TIME                             |        |
| <input type="checkbox"/> 7 Day Deadline |        |
| DOC #:                                  | 014541 |
| SAS #:                                  |        |
| UNIT:                                   | NEU    |

☐ RESUBMITTAL

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

### CLIENT TO COMPLETE

|                    |                                   |   |                                     |
|--------------------|-----------------------------------|---|-------------------------------------|
| DATE OF REQUEST:   | 6/17/2020                         | DIVISION:   | NATURAL RESOURCES                   |
| CONTACT NAME:      | Michelle Hoskie or Elerina Yazzie | DEPARTMENT:                                       | GENERAL LAND DEVELOPMENT DEPARTMENT |
| PHONE NUMBER:      | x 6447 or x 6423                  | E-MAIL:   | e_yazzie@navajo-nsn.gov             |
| TITLE OF DOCUMENT: |                                   | EOR#14541 Arcadian Infracom ROW for Fiber Project |                                     |

### DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 6/18/20 REVIEWING ATTORNEY/ADVOCATE: Michael D.

DATE TIME OUT OF UNIT:

### DOJ ATTORNEY / ADVOCATE COMMENTS

legally sufficient

|                      |                |                      |                 |
|----------------------|----------------|----------------------|-----------------|
| REVIEWED BY: (Print) | Date / Time    | SURNAMED BY: (Print) | Date / Time     |
| M. Daugherty         | 6/15/20 3:48pm | V. Blackhit          | 6/18/20 12:09PM |

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: (Print) DATE / TIME:

**RESOURCES AND DEVELOPMENT COMMITTEE**  
**24<sup>th</sup> Navajo Nation Council**

**SECOND YEAR 2020**

**ROLL CALL**  
**VOTE TALLY SHEET:**

**Legislation 0185-20:** An Action Relating to the Resources and Development; Rescinding Resolution No. RDCD-105-18; and Approving the Grant of Right-of-Way and Leases to Arcadian Infracom, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Presenter: Honorable Rickie Nez*

Date: August 28, 2020 - Special Meeting (Teleconference)  
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

**Main Motion:**

**Motion:** Kee Allen Begay, Jr.      S: Mark A. Freeland      Vote: 5-0-1 (VCNV)

**In Favor:** Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay, Jr., Herman M. Daniels and Rickie Nez

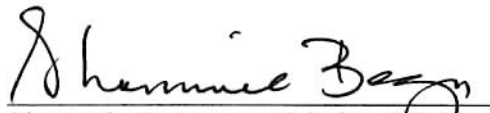
**Oppose:** NONE

**Excuse:** NONE

**Not Voting:** Presiding Vice-Chairperson Thomas Walker, Jr.,



Honorable Thomas Walker, Jr., Presiding Vice-Chairperson  
Resources and Development Committee



Shammie Begay, Legislative Advisor  
Office of Legislative Services