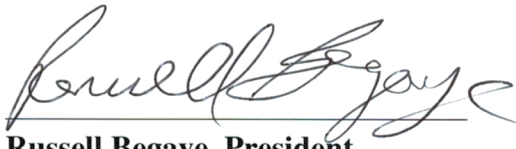




THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

TO: Honorable LoRenzo Bates, Speaker
Navajo Nation Council

FROM: 
Russell Begaye, President
THE NAVAJO NATION

DATE: November 9, 2015

SUBJECT: Resolution No. CO-41-15: RELATING TO BUDGET AND FINANCE COMMITTEE AND NAABIK' ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AUTHORIZING A SENIOR UNSECURED GENERAL OBLIGATION TAX-EXEMPT TERM LOAN TO ACQUIRE NEW AIRCRAFT AND TO PURCHASE EQUIPMENT NECESSARY TO MAINTAIN THE NAVAJO NATION'S NEW AIRCRAFT AND TO PAY RELATED FINANCING AND LEGAL COSTS; APPROVING TERM SHEET; DELEGATING AUTHORITY TO NEGOTIATE, EXECUTE AND DELIVER FINAL LOAN DOCUMENTS; AND RELATED MATTERS

Pursuant to 2 N.N.C. 1005 (C)(10), action for Legislation CO-41-15 is being submitted to the Navajo Nation Council, through the Office of the Speaker within the ten (10) day requirement. Furthermore, the Navajo Nation President has veto authority pursuant to 2 N.N.C. 221 (B) for resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council and shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto, unless the Navajo Nation Council specifically authorizes and directs a different effective date.

After careful consideration and consultation with the Divisions, I have decided to exercise my veto authority and veto **authorizing a senior unsecured general obligation tax-exempt term loan to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation's new aircraft and to pay related financing and legal costs; approving term sheet; delegating authority to negotiate, execute and deliver final loan documents; and related matters.**

The justification for use of the President's veto authority is set forth below.

The Office of the President and Vice-President issued a memorandum dated July 9, 2015 that outlined four (4) issues with this legislation. In the memorandum we requested the following: 1) justification for a \$20 million dollar loan; 2) source of funds that will be used to pay the loan; 3) whether the indemnification clause is an additional waiver of sovereign immunity; and 4) whether the non-impairment clause is too broad. Although the memorandum was part of the legislation that was approved by the Navajo Nation Council, the concerns of this Office were not addressed. As such these issues remain outstanding and this Office cannot support this legislation. I reiterate our concerns below.

First, the legislation fails to provide sufficient justification for a \$20 million dollar loan. Before considering a loan, it is highly recommended that a comprehensive feasibility study is developed identifying the options available to the Nation, including the ability to service debt. The study would also include the equipment, aircraft, expenses such as maintenance costs and supplies. If not, to the least comparable valuations or proposals should be offered to justify this amount. This information is not provided. This administration is not going to support efforts blindfolded.

Second, this legislation fails to identify the source of funds and any collateral that will be used to pay this loan. This is not just a concern from the Office of the President and Vice-President, but from the Navajo Nation's Controller and financial advisors. We have made requests to the Controller to identify a source of funds. As of today's date, those source of funds are not yet identified. We must be prudent in making these decisions, as leaders of the Navajo Nation we are also fiduciaries in the use of the Navajo people's funds.

Third, the indemnification clause in the term sheet remains the same. As stated in our memorandum, we are of the opinion the language is a limited waiver of sovereign immunity that would require an additional waiver of sovereign immunity from the Navajo Nation Council. The vote to the legislation was 13 to 5 which is not a 2/3 vote which is the number of votes needed to approve a limited waiver of sovereign immunity. Furthermore, any waiver of sovereign immunity must be "expressed" within the legislation. The waiver was not written into the legislation. As such, this legislation appears to be out of order.

Fourth, the non-impairment clause remains too broad. I understand the financial institution's concern is the Navajo Nation would not enact a law that would allow for the Nation to not carry out its obligations under the loan. We recommend the language to be written very narrow and clear it is limited just to this loan.

For all the above reasons, I decided to exercise my veto authority, pursuant to 2 N.N.C. 221 (B).

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - FIRST YEAR, 2015

AN ACTION

RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AUTHORIZING A SENIOR UNSECURED GENERAL OBLIGATION TAX-EXEMPT TERM LOAN TO ACQUIRE NEW AIRCRAFT AND TO PURCHASE EQUIPMENT NECESSARY TO MAINTAIN THE NAVAJO NATION'S NEW AIRCRAFT AND TO PAY RELATED FINANCING AND LEGAL COSTS; APPROVING TERM SHEET; DELEGATING AUTHORITY TO NEGOTIATE, EXECUTE AND DELIVER FINAL LOAN DOCUMENTS; AND RELATED MATTERS

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 12 N.N.C. §1330-1350, the Navajo Nation Council has authority to consider and approve the issuance of general obligation bonds, as such term is defined in Section 1310(J) of the Bond Financing Act (the "General Obligation Bonds" or the "Bonds"); and
- B. The Navajo Nation is authorized to incur indebtedness for financing the cost of capital improvement through the issuance of bonds or other debt obligations (including bank loans and financing agreements) ("Bonds") under 12 N.N.C. §1300 et. seq. of the Navajo Nation Code, as amended (the "Bond Financing Act").
- C. Bonds may include "general obligation bonds" backed by the "full faith and credit" of the Navajo Nation, as such terms are defined in § 1310 of the Bond Financing Act; and
- D. The Navajo Nation finds and determines that a critical need exists for the Navajo Nation Air Transportation Department to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation's new aircraft (collectively, the "Aviation Projects") and that the interests of the Navajo Nation are best served by securing financing for all or a portion of the capital costs associated with the Aviation Projects including paying related financing and legal costs through the issuance of general obligation bonds. As required by the Bond Financing Act, the Aviation

Projects constitute a major project that is not recurring on an annual basis, has a useful life in excess of five years and is in a dollar amount greater than \$50,000, and the Controller has determined that the dollar amount of the Aviation Projects requires debt financing; and

- E. The Office of the Controller has obtained a proposal from KeyBank to finance the Aviation Projects and the Office of the Controller recommends approval and the execution and delivery of the Proposed Terms and Conditions dated June 17, 2015 submitted to the Nation by KeyBank, in substantially the form attached hereto as Exhibit A (the "Term Sheet"), with respect to a general obligation bond to be issued in the form of a privately negotiated Senior Unsecured General Obligation Tax-Exempt Term Loan (the "Loan") in an aggregate principal amount not to exceed Twenty Million Dollars (\$20,000,000); and
- F. The Office of the Controller has reviewed the terms and conditions of the Loan and performed the necessary calculations and evaluated the debt service requirements of the Loan and has determined that such indebtedness will comply with the requirements of the Bond Financing Act; and
- G. The Navajo Nation Council finds and determines that the Aviation Projects constitutes a "capital improvement" within the meaning of the Bond Financing Act.
- H. The obligations of the Navajo Nation in connection with the Loan will be backed by the "full faith and credit" of the Navajo Nation (as defined in § 1310(I) of the Bond Financing Act), including all assets and revenues of the Navajo Nation except (i) those assets and revenues held in trust by the United States for the benefit of the Navajo Nation, (ii) assets and revenues subject to a restriction on alienation or other federal or Navajo Nation legal prohibition or requirements (in case of the Navajo Nation, existing on the closing date of the Loan), including the Permanent Trust Fund, the minimum Unreserved, Undesignated Fund Balance required to be maintained in the General Fund and restricted federal grant and program moneys, (iii) real property of the Navajo Nation, (iv) fiduciary funds of the Navajo Nation, (v) the Sihasin Fund, and (vi) any assets or

revenues identified in writing by the Navajo Nation and accepted by KeyBank to be secured or financed by current or future additional obligations of the Navajo Nation (the "Available Assets"); and

- I. The Loan may bear interest at variable or fixed interest tax-exempt rates, subject to the approving opinion of Bond Counsel, ("Bond Counsel") to the Navajo Nation concerning the tax-exempt status of interest on the Loan.

Section Two. Approval

- A. The Navajo Nation Council hereby finds that there is an immediate need to secure and close the Loan to fund the Aviation Projects.
- B. The Navajo Nation Council, pursuant to its authority under the Appropriations Act and the Bond Financing Act, hereby approves the Loan and the Term Sheet and authorizes and directs the President of the Navajo Nation and the Acting Controller of the Navajo Nation (the "Authorized Officers"), to execute and deliver the Term Sheet on behalf of the Navajo Nation, which execution and delivery by the Authorized Officers shall be conclusive evidence of approval thereof, and to do and perform any and all such further action as the Authorized Officers deem necessary or appropriate in connection with the Term Sheet based on the advice of the Navajo Nation Department of Justice and Bond Counsel; and
- C. The Navajo Nation Council hereby authorizes and directs the Authorized Officers to negotiate, execute and deliver all documents necessary to consummate the transactions contemplated by the Term Sheet in connection with the Loan, consistent with the material terms and conditions set forth in the Term Sheet and in compliance with the Bond Financing Act, including, but not limited to, a credit agreement, promissory note, tax certificate and closing certificates in connection with the Loan (collectively, the "Loan Documents"); based on the advice of the Attorney General of the Navajo Nation and Bond Counsel to the Navajo Nation, the financial advisor (the "Financial Advisor") to the Nation; and

- D. Upon negotiation of the final Loan Documents, the Authorized Officers are hereby authorized and directed to execute and deliver the Loan Documents, which execution and delivery by the Authorized Officers shall be conclusive evidence of approval thereof, and to do and perform any and all such further action as the Authorized Officers deem necessary or appropriate in connection with the Loan, having received the advice of the Navajo Nation Department of Justice, Bond Counsel, and the Financial Advisor; and
- E. The Navajo Nation Council hereby ratifies, approves and confirms all actions previously taken by the Authorized Officers in connection with the Loan consistent with the purposes and intentions of this resolution; and
- F. The Navajo Nation Council hereby acknowledges and affirms that all actions, requirements, terms and conditions of the Bond Financing Act for the due authorization, execution, delivery, validity and enforceability of the Loan Documents have been taken or satisfied and that the Loan Documents shall upon execution and delivery by the Authorized Officers be legal, valid and binding obligations of the Navajo Nation enforceable against the Navajo Nation in accordance with their terms.

Section Three. Dispute Resolution, Jurisdiction and Governing Law with Respect to the Loan

- A. The Navajo Nation Council hereby finds that the consent to arbitration and jurisdiction and related dispute resolution and remedial provisions contemplated by the Term Sheet and that will be included in the Loan Documents (the "Arbitration Provisions") comply with Navajo Nation law (including, but not limited to, the Bond Financing Act, the Sovereign Immunity Act, and the Arbitration Act). Upon execution and delivery of the Loan Documents, such Arbitration Provisions shall constitute a valid and enforceable limited exception to the Navajo Nation's defense of sovereign immunity, and no such defense of sovereign immunity shall prevent the enforcement of such obligations under 1 N.N.C. §§ 554 (J) and (K), Sovereign Immunity Act. Since authority to waive such sovereign immunity has been properly delegated pursuant to 1 N.N.C §§ 554 (J) and (K), Sovereign Immunity Act; the arbitration clause shall not constitute a waiver of sovereign immunity pursuant to 2 N.N.C. § 223 (C); and

- B. The Loan and the Loan Documents shall be governed by Navajo Nation substantive and procedural law. Where no applicable Navajo Nation law exists, Navajo custom, the law of the State of Arizona or applicable federal law will apply as provided in the Navajo Nation Code. All actions arising out of the execution and delivery of the Loan and the loan Documents and the transactions they represent as evidence shall be brought in the courts of the Navajo Nation.

Section Four. Loan Secured by the Full Faith and Credit of the Navajo Nation and Payable from Available Assets

The obligation of the Navajo Nation to pay the Loan and all obligations of the Navajo Nation under the Loan Documents shall be secured by the full faith and credit of the Navajo Nation and payable from any and all legally Available Assets of the Navajo Nation as described in Recital G of this Resolution.

Section Five. Savings Clause

If any provision of this resolution or the application of any provision of this resolution is held to be invalid, the remainder of this resolution shall not be affected with respect to the same.

Section Six. Licenses and Approvals

The Navajo Nation Council hereby finds that, as a matter of tribal law, no licensing, registration, certification or eligibility requirements of any kind (other than those expressly set forth in the Loan Documents) apply, and shall not in the future apply, to KeyBank or any other parties to the Loan Documents. Additionally, the Navajo Nation Council finds that none of the obligations contained in the Loan Documents or in connection with the Loan require any additional actions, reviews, approvals, ruling or vote.

Section Seven. Effective Date

The action is effective upon its approval pursuant to 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 5 opposed, this 20th day of October 2015.



LoRenzo Bates, Speaker
Navajo Nation Council

Oct. 30, 2015

Date

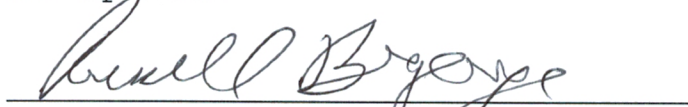
Motion: Honorable Seth Damon
Second: Honorable Kee Allen Begay

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of _____ 2015.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this 9th day of November 2015 for the reason(s) expressed in the attached letter to the Speaker.



Russell Begaye, President
Navajo Nation

3. I hereby line-item veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10) and 2 N.N.C. §164 (A) (17), on this _____ day of _____, 2015. The justification of my line-item veto is set forth by memorandum.

Russell Begaye, President
Navajo Nation



THE NAVAJO NATION

Senior Unsecured General Obligation Tax-Exempt Term Loan

June 17, 2015

Respectfully Submitted By:

KeyBank | Native American
Financial Services

SENIOR UNSECURED GENERAL OBLIGATION TAX-EXEMPT TERM LOAN

KeyBank National Association ("KeyBank") is pleased to present this term sheet for financing. Please note that this term sheet is for discussion purposes only, and is not to be construed as a formal offer to finance. It is to be used for internal use only and not to be disclosed to outside third parties without KeyBank's consent. This financing term sheet is intended as an outline of certain material items of the Facility and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive documentation for the facility contemplated hereby.

This term sheet and its terms are submitted on a confidential basis and shall not be disclosed to third parties (other than the Borrower's officers, directors, employees and advisors charged with reviewing and/or implementing the transactions hereby).

Proposed Terms and Conditions

Borrower:	The Navajo Nation (The "Nation" or "Borrower") a federally recognized Indian Tribe located on the Navajo Reservation, an area spanning New Mexico, Arizona, and Utah.
Lender:	Key Government Finance, Inc. (collectively "KGF" or "Lender")
Administrative Agent:	KeyBank National Association ("KeyBank" or "Administrative Agent")
Term Loan/ Use of Proceeds:	Up to \$20,000,000 Senior Unsecured General Obligation Tax-Exempt Term Loan (the "Term Loan") to be used to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation's new aircraft, and to pay costs associated with the financing (the "Equipment").
Full Faith and Credit:	<p>The obligations of the Nation under the Term Loan shall be a full faith and credit general obligation of the Nation. The Nation will promise to pay the principal, interest and premium if any on the Term Loan when due or upon acceleration from any legally "Available Assets" of the Nation. The Nation will not enter into any obligations which results in a lien on any Available Assets.</p> <p>"Available Assets" means all assets and revenues of the Nation except (a) those assets and revenues held in trust by the United States for the benefit of the Nation; (b) assets and revenues subject to a restriction on alienation or other federal or Nation legal prohibitions or requirements (in the case of the Nation, existing on the Effective Date), including the Permanent Trust Fund, the minimum Unreserved, Undesignated Fund Balance required to be maintained in the General Fund and restricted federal grant and program moneys; (c) real property of the Nation; (d) fiduciary funds of the Nation; (e) the Sihasin Fund; and (f) any assets or revenues identified in writing by the Nation and accepted in writing by the Lender to be secured or financed by current or future additional obligations of the Nation.</p>
Maturity:	The maturity date of the Term Loan will be up to 10 years from the closing date. The Lender will purchase the Term Loan for an initial period of 7 years (outlined below). Any revisions to the amortization that will lengthen the Average Life of the Term Loan will require a revision in the interest rate provided below.
Mandatory Tender:	Lender will purchase the Term Loan for an initial period of 7 years from the closing date ("Initial Tender Date"). If the Nation selects a maturity longer than 7 years, the Term Loan will be subject to mandatory tender for

	purchase on the Initial Tender Date. The Lender, in its sole discretion, may elect to waive the mandatory tender on the Initial Tender Date and continue to hold the Term Loan for another fixed period of time, at an interest rate, with prepayment terms, and a subsequent tender date subject to written agreement of Lender and the Nation. If the parties do not enter into a such a written agreement prior to the Initial Tender Date, the Term Loan will be tendered by the Lender and the Nation shall have the obligation to purchase the Term Loan on the Initial Tender Date, at a purchase price equal to the outstanding principal amount and accrued but unpaid interest.
Amortization:	Principal and interest payments will be required monthly to amortize the debt to maturity (level monthly repayment).
Borrowing Rates:	<p>The interest rate options outlined below are based on current market rates as of the date of this term sheet, and are subject to change based on market conditions and KeyCorp cost of funds index between the date of this term sheet and the final closing date of any draw completed under the credit facility.</p> <p>Option #1 - 7 year fixed interest rate with 7 year maturity – 2.57% Option #2 - 7 year fixed interest rate with 10 year maturity – 2.83% Option #3 - Variable interest rate with 7 year index period, 7 year maturity – (1 Month Libor * 65%) + 1.68 % = 1.80% Option #4 - Variable interest rate with 7 year index period 10 year maturity – (1 Month Libor * 65%) + 1.77 % = 1.89%</p>
Origination Fee:	Origination fee will equal 50 bps of the Term Loan amount.
Taxes:	None of the Term Loan, interest or premium paid thereon nor the transactions or the activities of Lender and its agents in connection therewith shall be subject to any tax, license or fee by the Nation.
Prepayment:	<p>Beginning twelve months after the initial draw, the Borrower may prepay the Credit Facility in whole at any time without premium or penalty.</p> <p>The Variable Rate Option shall be subject to prepayment in whole without penalty on any interest payment date with 3 days prior written notice to Lender.</p>

Financial Covenants:	<p>Financial Covenants are to be tested annually on the financial statements of the Navajo Nation unless otherwise specified. The following financial covenants will be in effect for the Term Loan:</p> <p>Maximum Leverage Ratio: The Borrower will maintain a Maximum ratio of a) Total Funded Debt to b) Total Net Assets of not greater than fifteen percent (15%). The Maximum Leverage Ratio is to be tested and certified annually. To be tested on the Statement of Net Assets of the Navajo Nation.</p> <p>Total Funded Debt: shall include all interest bearing indebtedness of the Borrower, including any that is secured by or guaranteed with a pledge of the Nation's full faith and credit, capital leases, bank loans and all interest-bearing contingent liabilities of the Nation.</p> <p>Total Net Assets: means at any date without duplication all assets of the Nation including its governmental, and business-type activities less the liabilities of the included activities calculated based upon the same accounting basis used to prepare the Nation's annual audited financial statements. That basis will either be the Modified Accrual Budget Basis of Accounting currently utilized by the Nation or the Modified Accrual Basis of Accounting (GAAP). Net assets of the Nation's component units (for example, Navajo Tribal Utility Authority and Diné College) are excluded from this computation.</p> <p>Minimum Debt Service Coverage Ratio: The Borrower shall maintain a Debt Service Coverage Ratio of at least ten to one (10.0:1.0). Compliance by the Nation with the Debt Service Coverage Ratio shall be established by the financial statements of the Nation and shall be certified by the Controller to the Lender annually. "Debt Service Coverage Ratio" means the ratio of Annual Unrestricted Recurring Revenue to Annual Debt Service on Total Funded Debt.</p> <p>Minimum Liquidity: The Borrower will be required to demonstrate on an annual basis that it has cash and cash equivalents and marketable securities of not less than \$70,000,000, which are legally available for repayment of the Term Loan ("Minimum Liquidity Covenant"). The Minimum Liquidity Covenant will be tested and certified to annually by the Borrower. The Borrower will be permitted to withdraw funds without restriction or limit for immediate expenditure in the intervals between the annual testing dates without violating the Minimum Liquidity Covenant.</p> <p>Incurrence of Additional Debt: The Borrower may incur additional indebtedness including, without limitation, General Obligation debt and indebtedness constituting a permitted lien, as long as the Nation remains, and will continue to remain (on a proforma basis) in compliance with the Maximum Leverage Ratio.</p>
Reporting Requirements:	<p>Including but not limited to:</p> <p>a) Annual consolidated and consolidating audited Financial Statements of the Navajo Nation due within 365 days of Fiscal</p>

	<p>year-end.</p> <p>b) Annual covenant compliance certificate, setting forth the calculation of the Maximum Leverage Ratio, the Minimum Liquidity Ratio, and the Minimum Debt Service Coverage Ratio signed by the Controller of the Borrower setting forth the Borrower's compliance with the financial covenants, due 60 days after each September 30th based on unaudited financial results for the Nation.</p> <p>c) Revenue Allocation Certification: Annual statement signed by the Controller of the Borrower confirming that the Borrower has identified one or more specific revenue sources that constitute Available Assets, which are designated for the payment of debt service on the Term Loan. The aforementioned revenue sources should be sufficient to cover the debt service payments on the Term Loan for the subject year. Due annually 30 days following the approval of the Nation's annual budget by the Navajo Nation Council.</p> <p>d) Annual Unrestricted Recurring Revenue: The Borrower is required to provide the Unrestricted Recurring Revenue calculation on an annual basis based on the audited financial statements of the Borrower. Due 30 days following the date which the audited financial statements are completed.</p> <p>e) Available Assets: The Borrower is required to provide the Available Assets calculation on an annual basis based on the audited financial statements of the Borrower. Due 30 days following the date which the audited financial statements are completed.</p> <p>f) Annual budget for the succeeding year.</p> <p>Other financial reports as the Lender may reasonably request.</p>
Conditions Precedent to Closing:	<p>a) Loan documentation satisfactory to Lender, including all Loan Documents.</p> <p>b) Certificate of Identification of Revenue Sources for debt service payments.</p> <p>c) Receipt of satisfactory validity and tax-exempt status opinion provided by Orrick or other bond counsel chosen by Borrower and acceptable to Lender.</p> <p>d) Closing certificate as to accuracy of representations and warranties, compliance with covenants, and absence of an event of default or potential event of default.</p> <p>e) Certified resolutions, incumbency certificate and other authorizing documents as required.</p> <p>f) Receipt of satisfactory legal opinions.</p> <p>g) Receipt and review of the 2014 audited financial statements of the Nation.</p> <p>h) Satisfactory internal review of the Navajo Nation's laws and legal code.</p> <p>i) Compliance with all applicable laws and regulations.</p> <p>j) Delivery of all definitive government organizational and financing</p>

	<p>documents.</p> <p>k) No material change in the condition (financial or otherwise), operations, business, assets or prospects of the Borrower.</p> <p>l) No material litigation.</p> <p>m) Evidence of required insurance, including but not limited to, property, liability and business interruption insurance.</p> <p>n) Payment of all fees and expenses to Lender.</p> <p>o) The Nation shall maintain its status as a federally recognized Indian Tribe.</p> <p>p) Receipt and delivery of all necessary approvals from governmental authorities having jurisdiction over the transaction, if required.</p> <p>q) Borrower to maintain the Deposit Relationship as defined in the Credit Agreement dated June 24, 2010.</p> <p>r) Other standard conditions precedent for a transaction of this nature.</p> <p>This term sheet and any resultant commitment is subject to Key's internal approval and (among other things) the absence of any material change in the financial or capital market conditions generally from those currently in effect.</p>
Representations & Warranties:	Usual and customary representations and warranties for transactions of this nature.
Events of Default:	<p>Customary for transactions of this size and nature, including but not limited to:</p> <ul style="list-style-type: none"> • Failure to pay any principal, fees or interest under the Term Loan. • Defaults in the payment of principal, interest and/or fees on any other debt instruments to the Borrower from the Lender and its affiliates, • Defaults in the payment of principal, interest and/or fees on other debt instruments, • Violation of covenants, • ERISA termination, • Cross default, and • Event of Taxability on Tax-exempt Term Loan <p>Adoption of any laws or regulations of the Nation which would impair the Lender's rights under the Term Loan.</p>
Remedies:	<p>Customary for transactions of this nature including but not limited to:</p> <ul style="list-style-type: none"> • Acceleration • Recovery of Amounts • Cost of Collection • No Advances
Overdue Rate:	After the occurrence and during the continuance of a default, the Term Loan and all other past due amounts owed under the Term Loan will bear interest at 2% above the rate otherwise applicable thereto.
Reserves/Yield Protection:	The legal documentation will contain customary provisions relating to increased costs, capital adequacy protection, withholding and other taxes

	and illegality.
Loan Documents:	<p>The Credit Facility shall be subject to the negotiation, execution and delivery of a loan agreement, note and other documents (collectively, the "Loan Documents"), which will contain but not be limited to conditions to borrowings, representations and warranties, covenants, events of default, indemnification, and other provisions that are customary for similar financings by the Lender including, without limitation, those indicated herein. Without limiting the foregoing, all Loan Documents shall also include such provisions as the Lender and its counsel deem necessary in connection with loans to tribes, tribal enterprises and other tribal entities including, without limitation, and as further provided herein and therein, arbitration of disputes, consent to jurisdiction and absence a sovereign immunity defense, choice and adoption of governing law, grants of access rights and subordination of other obligations.</p> <p>Borrower shall also provide an opinion of the Nation's Attorney General as to matters of state and Navajo Nation law including an opinion satisfactory to Lender and its counsel that no defense of sovereign immunity shall prevent the enforcement of the transaction documents under 1 N.N.C. §554(J) and (K), and addressing other matters customary and acceptable to the Lender as to the loan in substantially the form attached hereto as Exhibit B.</p>
Litigation:	Except as scheduled in the Loan Documents, Borrower cannot be a party to any litigation that could have a material adverse effect on the ability of the Borrower to make debt service payments on the Term Loan.
Sovereign Immunity & Dispute Resolution:	The Navajo Nation will consent to a enforcement rights that would permit an arbitration action to be commenced with enforcement in the courts of the Navajo Nation to enforce the obligations of the parties under the Loan Documents, including the right to proceed against Available Assets consistent with the definition thereof in the event of non-payment under the Loan Documents. Such consent to suit is only as to court action initiated consistent with the terms of the Loan Documents in the District Court of the Navajo Nation in Window Rock. Borrower will provide Lender with enforcement rights to uphold the terms of the credit agreement in accordance with the Nation's Sovereign Immunity Act and the Nation's Arbitration Act.
Legal Opinions:	<p>All documents relating to the Term Loan shall be attorney prepared and in a form and substance acceptable to the Lender and its legal counsel, including legal opinions customary for transactions of this nature.</p> <p>Borrower shall provide an unqualified opinion of validity and tax-exemption customary and acceptable to Lender as to the project and the loan from Orrick or other bond counsel chosen by Borrower and acceptable to Lender.</p> <p>Borrower shall also provide an opinion of Borrower's outside counsel chosen by Borrower and acceptable to Lender confirming that under Navajo and applicable federal law the documents to which the Borrower is a party have been duly authorized by all requisite action on the part of the Borrower, and have been duly executed and delivered by Borrower, constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, the absence of conflicts with other obligations of the Borrower, conformance with the Nation's Bond</p>

	<p>Finance Act and other matters customary in opinions for financing transactions with Indian nations. Lender shall also receive satisfactory opinions reasonably acceptable to it as to its enforcement rights, availability of jurisdiction and compliance with applicable federal laws and laws of the Nation.</p> <p>Borrower shall also provide an opinion of the Nation's Attorney General as to matters of state and Navajo Nation law including an opinion satisfactory to Lender and its counsel.</p>
Marketing Release:	<p>Borrower acknowledges and agrees that Key may share certain information relating to the transaction contemplated hereby with standard industry database companies (such as Loan Pricing Corporation, Standard & Poor's LCD and Portfolio Management Data) in accordance with customary industry practice.</p> <p>In connection with the transaction, Key may wish to create a tombstone advertisement, a brief press release as well as certain promotional materials describing the details of this transaction in written, electronic or other medium. Borrower will have the opportunity to review, edit and approve the tombstone, advertisement and/or press release before publication.</p>
Expenses and Indemnification:	<p>With respect to the Term Loan, all reasonable costs, expenses and charges incurred by the Lender, including but not limited to, reasonable fees and charges of external legal counsel for the Administrative Agent and the Lender will be reimbursed by the Nation.</p> <p>With respect to the Term Loan, the Nation will agree to indemnify the Lender and its directors, officers, employees and agents from, and hold each harmless against, any and all losses, liabilities, claims, damages or expenses incurred except by reason of the gross negligence or willful misconduct of the Lender.</p>
Counsel for Lender:	Dentons and Davis Wright Tremaine (tax exempt counsel).
Governing Law:	The Loan Documents will be governed by Navajo Nation substantive and procedural law. Where no applicable Navajo Nation law exists, Navajo custom, the law of the State of Arizona, or applicable federal law, will apply, as provided in the Navajo Nation Code. All actions which arise under the Loan Documents or in connection with the Credit Facility shall be brought in the courts of the Nation.

As noted above, this term sheet is for discussion purposes, is not a commitment to lend, and it is subject to credit approval by Key. If you wish to have Key proceed to obtain credit approval and a commitment, please acknowledge this by signing below and returning a copy of this term sheet to Key. The terms of this term sheet will expire August 1, 2015.

Acknowledged and Accepted,

THE NAVAJO NATION

By: _____

Title: _____

Date: _____

Acknowledged and Accepted,

KEYBANK NATIONAL ASSOCIATION

By: _____

Title: _____

Date: _____



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM:

TO : 2 NNC § 164 Reviewers
Delegates & 2 NNC '164 Reviewers
Navajo Nation Government

FROM : Robert Willie
Robert Willie, Acting Controller
Office of the Controller

DATE : June 25, 2015

SUBJECT : 164 Review-004256- Acquiring new Aircraft through General Obligation Tax-Exempt Term Loan.

The Office of the Controller has reviewed the above referenced document.

1. Seeking to authorize a senior unsecured general obligation tax-exempt loan to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation new Aircraft.
2. The amount of the loan the Nation is seeking is \$20,000,000. The funding source for payback would need to be identified.
3. The maturity will be up to 10 years from the closing date depending upon what option is considered and approved.

If you should have any questions you can contact me at tribal extension X6125.



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL

RECEIVED
JUN 26 2015
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ	
DATE / TIME	6/26/15 1:14pm
<input type="checkbox"/> 7 Day Deadline	
DOC #:	001254
SAS #:	
UNIT:	TRF4

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

CLIENT TO COMPLETE

DATE OF REQUEST: June 26, 15 ENTITY/DIVISION: NNOOC
 CONTACT NAME: Malorie Yazzie DEPARTMENT: Investments
 PHONE NUMBER: X 6023 E-MAIL: mcyazzie@nnooc.org
 TITLE OF DOCUMENT: SAS # 4256

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 6/26/15 1:59pm REVIEWING ATTORNEY/ADVOCATE: Kristen Lawell
7/8/15
 DATE/TIME OF UNIT:

DOJ ATTORNEY / ADVOCATE COMMENTS

Legally Sufficient
7/6/15 2:05PM 6/26/15 2:57PM 7/6/15
 REVIEWED BY: (PRINT) K. Lawell DATE / TIME 6/26/15 2:57PM SURNAMED BY: (PRINT) [Signature] DATE / TIME 7.6.2015

DOJ Secretary Called: _____ for Document Pick Up on _____ at _____ By: _____
 PICKED UP BY: (PRINT) _____ DATE / TIME: _____

NNDJ/DRRF-July 2013

Sponsor's Copy

OFFICE OF THE PRESIDENT & VICE PRESIDENT
REQUEST FOR SERVICES

RUSH

Date of request: July 6, 15

Name: Malorie Yazeie
Phone Number: 928/871-6023

Dept: NNOCC - Investments
EMAIL: myazeie@nnocc.org

Please Check:

164 Review No. ☒ 4256 Support letter ☐

Description of Service: Aircraft Loan

Deadline: ASAP Reason: President's signature **Received**

RECOMMENDATIONS: (Authorized Personnel Only)*

JUL - 6 2015

OK OK 7-8-2015

Office of the President & Vice President
Legal Counsel

Called: _____ For document pickup Date: _____ Time: _____
Called: _____ For document pickup Date: _____ Time: _____

Picked up by: _____ Date/Time: _____

Document No. 004256

Date Issued: 06/25/2015

EXECUTIVE OFFICIAL REVIEW

Title of Document: Aircraft Loan Contact Name: CURLEY, JUSTIN E

Program/Division: OFFICE OF THE CONTROLLER

Email: jucurley@nnooc.org Phone Number: Extension 6149

<input type="checkbox"/>	Business Site Lease			Sufficient	Insufficient
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)				
	3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications				
	1. Office of Management and Budget:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Navajo Housing Authority Request for Release of Funds				
	1. NNEPA:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Lease Purchase Agreements				
	1. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	(recommendation only)				
	2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Grant Applications				
	1. Office of Management and Budget:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval				
	1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
 	Relinquishment of Navajo Membership				
	1. Land Department:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	2. Elections:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

		Sufficient		Insufficient	
<input type="checkbox"/>	Land Withdrawal or Relinquishment for Commercial Purposes				
1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases				
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	Rights of Way				
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
6. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
7. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease				
1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
3. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	Assignment of Mineral Lease				
1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
3. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)				
1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
8. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	OTHER:				
1. <u>Sponsor</u>	<u>Michael Morgan</u>	Date: <u>6/25/15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. <u>OOC</u>	<u>Robert Wilson</u>	Date: <u>6/25/15</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3. <u>DOJ/OAG</u>	<u>7/6/15</u>	Date: <u>7-6-2015</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4. <u>OPVP</u>	<u>[Signature]</u>	Date: <u>7-8-2015</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
5. _____	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	




THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

MEMORANDUM

TO: Robert Willie, Controller
Office of the Controller

FROM: 
Robert Joe, Acting Chief of Staff
Office of the President & Vice President

DATE: July 9, 2015

SUBJECT: Acquiring New Aircraft through General Obligation Tax-Exempt Term Loan

There are a number of concerns the Office of the President and Vice-President has regarding the term sheet. The first concern is the lack of justification for a \$20 million dollar loan for Aircraft and equipment. This package is missing information on the aircraft and equipment that is being sought for acquisition. Generally, there would be some comparable valuation or proposals that would justify the amount of the loan. We were informed that process would be completed after the loan is secured. Without the information, it seems we are not at a point of approving an amount for a loan. In moving forward on this acquisition, this Office will be very cautious in any acquisition of property to ensure the best value for the price.

The second concern is the indemnification clause. The indemnification clause as drafted in the term sheet is an infringement on the sovereign immunity of the Navajo Nation. The Navajo Nation is agreeing to be held liable for an outside party (Lender) actions and defend the claims including covering attorney's costs and fees. The term sheet is not clear whether the injured party could sue the Nation in state or federal court, which is beyond the Sovereign Immunity Act.

The third concern is the non-impairment clause in the Resolution. The non-impairment clause states the following:

The Navajo Nation Council shall not pass or adopt any laws or take or allow any action of the Navajo Nation (including any of its officers, employees, agents, subdivisions, agencies or instrumentalities) of any nature that shall impair the obligations of the Navajo Nation under the Loan Documents.

While we understand the concern of Key Bank on this matter, and ensuring the loan will not be impacted, this is overreaching into the authority of the Navajo Nation Council. This Office suggests the language be revisited to allow the Council to carry out its legislative authority without interference with this loan. For example, allowing for the laws, policies, and regulations as they exist today shall apply to this loan and any future change to law shall not be imposed on this loan unless at the consent of the Bank. The current language is too onerous and will tie the hand of Council for 10 years and indirectly this Office.

The final comment is the funding source for the payback of the loan is not identified. We understand there are several options being explored by the Controller's Office. We note that this will need to be resolved prior to the final execution of the loan documents.

If you have any further questions you may contact me at (928) 810-8505.