

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd 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 Letter, Cultural Resources Compliance Form, and 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:

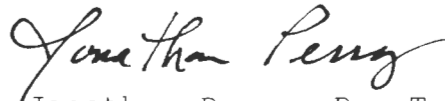
- I. the development of the large-scale fiber route along the Rights-of-Way,
 - II. the combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of Rights-of-Way,
 - III. the grant of the easement to the Rights-of-Way (for an initial term of twenty (20) years 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 23rd 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 26th day of December 2018.

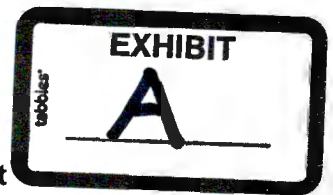


Jonathan Perry, Pro Tempore Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

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.

Attachment A Fiber Project

Red Lines: Fiber Project Route

Blue Lines: Existing NTUA Fiber Routes

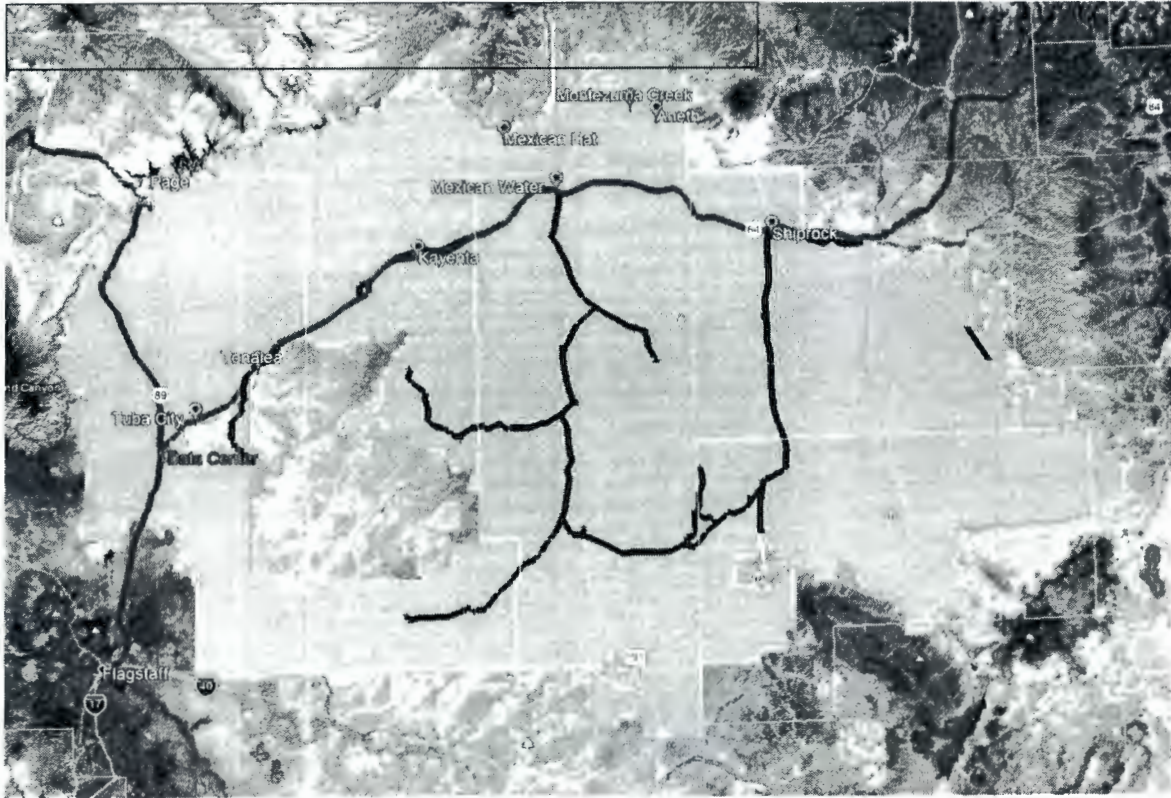




EXHIBIT [insert]
NAVAJO NATION (GRANTOR) RIGHTS-OF-WAY TERMS AND CONDITIONS

[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 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

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.



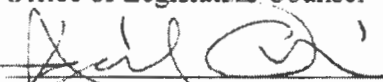
NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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

Amendment # 2:

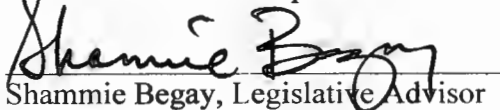
M: Benjamin Bennett S: Walter Phelps Vote: 4-0-1 (ProTemCNV)
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps
NAYS:
EXCUSED: Leonard Pete

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