

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
23<sup>rd</sup> Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RCF-19-00,  
EXHIBIT "B", UTILITIES AND SERVICE LINE AGREEMENT BETWEEN THE  
NAVAJO NATION AND NAVAJO TRIBAL UTILITY AUTHORITY

**Section One. Authority**

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A) (2015).
- B. The Resources and Development Committee of the Navajo Nation Council is empowered with oversight authority over land and the power to grant final approval for non-mineral leases and rights-of-way within the Navajo Nation. 2 N.N.C. § 500 (C), 501 (B) (2) (a).

**Section Two. Findings**

- A. The Resources Committee, on February 8, 2000, approved a delegation of authority to the Director of the Navajo Land Department to approve Utility Access and Service Line Agreements. See RCF-19-00.
- B. The Departmental Administrative Rules and Regulations, within RCF-19-00, provide a delegation from the Resources Committee to the Director of the Navajo Land Department to authorize and empower the Director..to approve Utility Access and Service Line Agreements for utility service extensions consistent with applicable Federal and Navajo Nation Law. See RCF-19-00, Exhibit A.
- C. The Departmental Administrative Rules and Regulations, within RCF-19-00, state, "Pursuant to 2 N.N.C. § 695(B) and (B) (13) and other authorities of the Committee, this Administrative Rule and Regulation may be amended and/or rescinded by the Resources Committee of the Navajo Nation Council.. See Departmental Administrative Rules and Regulations, Section V. Review and Amendment (b), Exhibit A in RCF-19-00.

- D. References in the Navajo Nation Code and other official documents to the Resources, Transportation and Community Development and Economic Development Committees shall mean the Resources and Development Committee, unless the amendments enacted herein for the context of previous law indicates otherwise. See CJA-03-13, overriding President's veto of CO-45-12, Section 5(B).
- E. The Departmental Administrative Rules and Regulations, within RCF-19-00, state in reference to the delegation of authority to the Director of the Navajo Land Department, the Director's power and authority "To approve on behalf of the Navajo Utility Access and Service Line Agreements for utility service extensions, consistent with these rules and regulations and upon forms approved by the Resources Committee with are attached hereto as Exhibits 'B' (NTUA Form) and 'C' (General Form). The Utility Access and Service Line Agreement forms may be revised to incorporate minor changes due to unforeseen circumstances after consultation with the Navajo Nation Department of Justice; provided the general terms and conditions of the agreement are essentially the same or similar to Exhibits 'B' and 'C'." See Departmental Administrative Rules and Regulations, Section III. Delegation, (b), Exhibit A in RCF-19-00.
- F. Commercial customers on the Nation promote economic growth via taxation revenue and employment. The Nation receives a Sales Tax (currently 5%) revenue on the utility consumption of customers and commercial customers consume more than the average customer, therefore, the Nation receives more taxation revenue from these commercial customers. In addition, the costs to construct utilities within these service line agreements are subject to the same tax, adding to the tax revenue.
- G. Commercial customers on the Nation are subject to non-typical additional costs such as business site lease costs, dual taxation from the Nation and State, as well as federal taxes. The additional costs imposed for a service line agreement will add to the additional non-typical costs and continue to deter any businesses considering locating and investing on the Nation.
- H. The consideration assessed for commercial customers' service line agreements is passed onto the business developer therefore, increasing their overall business development costs. This deters business development within the Nation

because these fees are not typical outside the Nation. In addition, the Navajo Tribal Utility Authority (NTUA) is a not-for-profit enterprise and if had to absorb these added costs it would have to pass them on to its customers therefore, the customers would subsidize these added costs.

- I. This consideration assessment/cost is in addition to the actual costs to extend such utility service(s) to the commercial customer.
- J. Obtaining the approval for each service line agreement used for commercial customers is time consuming and delays businesses from developing and operating. In addition, the costs assessed are not readily determinable to the business until the business has substantially made progress in its development, therefore, these unknown costs further act as a deterrent to develop on the Nation.
- K. Commercial customers provide employment that promotes the economic self-sufficiency of the Navajo people and residents. The further development of commercial customers on the Nation will promote a more diverse economy therefore, promoting economic competition, resulting in competitive pricing. In addition, these added goods and services are provided to the residents of the Nation, which result in additional choices, reduced travel time and dollars staying on the Nation.
- L. There has been no clear interpretation of what constitutes a "commercial customer". The term has had ambiguous interpretations to various departments desiring to assess consideration; therefore, it is more efficient to waive consideration until such time the Committee deems that it is not in the best interests of the Nation.
- M. The Resources and Development Committee finds that the proposed language is in the best interests of the Nation to promote much needed economic growth.

### **Section Three. Proposed Amendment**

NTUA proposes an amendment to Exhibit "B"—Utilities Access and Service Line Agreement Between the Navajo Nation and Navajo Tribal Utility Authority, RCF-19-00, Exhibit B, page 5, paragraph 6:

"This Service Line Agreement is being approved to provide utility services to Navajo resident(s). Therefore, consideration

~~is waived. Any use of this Service Line Agreement to provide utility service to commercial customers will require consideration to the Navajo Nation and the consent of the Navajo Nation. Consideration shall be assessed and waived for the portion of the line used for commercial customers until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration.~~ Attached is amended Utilities Access and Service Line Agreement Between the Navajo Nation and Navajo Tribal Utility Authority, **Exhibit 1**.

#### **Section Four. Approval**

The Resources and Development Committee hereby finds that the proposed language is in the best interest of the Nation and amends RCF-19-00, Exhibit "B", page 5, paragraph 6, as stated above and in **Exhibit 1**, and hereby requires NTUA to work together with the NN Land Department and Minerals Department and to report to the Resources and Development Committee quarterly as to the total amount of commercial use fees waived, new service areas opened and other relevant information demonstrating the effect of this legislation.

#### **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 Standing Rock Chapter, Standing Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained on this 20th day of September, 2017.



Benjamin Bennett, Vice-Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Leonard Pete  
Second: Honorable Alton Joe Shepherd



**UTILITIES ACCESS AND SERVICE LINE AGREEMENT  
BETWEEN  
THE NAVAJO NATION  
AND  
NAVAJO TRIBAL UTILITY AUTHORITY**

**THIS AGREEMENT is made and entered into by and between The Navajo Nation and Navajo Tribal Utility Authority (NTUA), and Enterprise of the Navajo Nation, whose address is Post Office Box 170, Fort Defiance, Navajo Nation, (Arizona) 86504 (“NTUA”), for a term of twenty (20) years beginning on the date approved by the Navajo Nation.**

**WHEREAS, certain members of the Navajo Nation identified on Exhibit “A”, attached hereto and by this reference made a part hereof (“home site lesse”), have home site leases lands owned by the Navajo Nation identified in Exhibit “A”, and more particularly described in the maps attached hereto as Exhibit “B” and by this reference made a part hereof (The “leased premises”); and**

**WHEREAS, said homesite lessees and the Navajo Nation desire that NTUA provide electric, gas, domestic water and/or wastewater utility services where available to the leased premises; and**

**WHEREAS, the Navajo Nation and NTUA desire to enter into a Utility Service Line Agreement authorizing NTUA to provide such utility services to the said home site lessees in accordance with provisions of 25 C.F.R. § 169.22.**

**NOW, THEREFORE, the parties hereto hereby mutually agree as follows:**

- 1. The Navajo Nation hereby grants to NTUA a non-exclusive right of access to the Navajo Nation-owned lands and the respective leased premises for construction, operation and maintenance of utility service lines over, across and upon the leased premises, as more particularly described in the maps attached hereto as Exhibit “B” showing with particularly the location, size and extent of such services.**
- 2. All power lines shall be constructed in accordance with “suggested Practices for Raptus Protection on Powerlines: the state of the art in 1996” (Avian Power Lines Interaction Committee, 1996).**
- 3. The Navajo Nation hereby agree to allow NTUA free access to and from the service lines during all reasonable hours as may be deemed necessary by NTUA.**
- 4. Consideration for the use of land covered by this Agreement is assessed at \$\_\_\_\_\_ which shall be the Navajo Nation’s contributions to the project since it will benefit Navajo residents(s) by providing them with electricity.**

**5. In consideration of the grant herein made, NTUA hereby agrees to:**

- a. Construct, and maintain the service lines in a workmanlike manner.**
- b. File an executed copy of this Agreement, including all attachment, with the Project Review Section, Navajo Land Department and with the Secretary of the Interior, Bureau of Indian Affairs, Navajo Area Office, Branch of Reality Services, within thirty (30) days of its execution.**
- c. NTUA shall be responsible for and promptly pay all filing and processing fees and surface clearance fees assessed by the Navajo Nation.**
- d. In all activities conducted by NTUA within the Navajo Nation, NTUA shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect, including but not limited to the following:**
  - i. Title 25, Code of Federal Regulations, Part 169;**
  - ii. 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 archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices.**
  - iii. The Navajo Preference in Employment Act, 15 N.N.C. §§601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§201 et seq.; and**
  - iv. The Navajo Nation Water Code, 22 N.N.C. §1101 et seq., NTUA shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.**
- e. NTUA shall ensure that the air quality of the Navajo Nation is not jeopardized due to the violation of applicable laws and regulations by its operations under this Agreement**
- f. NTUA shall clear and keep clear the lands within the service lines to the extent compatible with the purpose of the services lines, and shall dispose of all vegetation and other materials out, uprooted, or otherwise accumulated during disturbance activities.**

- g. NTUA shall reclaim all surface lands disturbed related to the service lines, as outlined in a restoration and revegetation plan, which shall be prepared with the assistance of Navajo Nation Environmental Protection Agency, or its successor (NNEPA), and shall be submitted to and must be approved by NNEPA, prior to any surface disturbances. NTUA shall comply with all the provisions of such restoration and revegetation plan and shall notify the Director of NNEPA immediately upon completion of the surface disturbances activities so that a site inspection can be made.**
- h. NTUA shall at all times during the term of this Agreement and at NTUA's sole cost and expense, maintain the land subject to the service lines and all improvements located thereon and make all necessary and reasonable repairs.**
- i. NTUA shall obtain prior written permission to cross-existing rights-of-way, if any, from the appropriate parties.**
- j. NTUA shall be responsible for and promptly pay for all damages when they are sustained.**
- k. NTUA shall indemnify and hold harmless the Navajo Nation and its respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of lands by NTUA.**
- l. NTUA shall not assign, convey or transfer, in any manner whatsoever, this Agreement or any interest therein, or to any of the improvement on the land, without the prior written consent of the Navajo Nation. 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.**
- m. The Navajo Nation may terminate this Agreement for violations of any of the terms and conditions states here. In addition, this Agreement shall be terminable in whole or in part by the Navajo nation for any of the following causes:**
  - i. Failure to comply with any terms or conditions of this Agreement or of applicable laws or regulations;**
  - ii. A non-use of the service lines for the purpose for which they are authorized for a consecutive two (2) year period;**
  - iii. An abandonment of the service lines; and**

- iv. The use of lands for any purpose inconsistent with the purpose for which the service lines are authorized.**
- n. At the termination of the Agreement, NTUA shall peaceably and without legal process deliver up the possession of the premises, in good condition, usually wear and tear accepted. Upon the written request of the Navajo Nation, NTUA shall provide the Navajo Nation, at NTUA's sole cost and expenses, with an environmental audit assessment of the premises at least six (60) days prior to delivery of said premises.**
- o. Holding over by NTUA after the termination of this Agreement shall not constitute a renewal or extension thereof or give NTUA any rights hereunder or in or to the land or to any improvements located thereon.**
- p. The Navajo Nation shall have the right, at any reasonable time during the term of this Agreement, to enter upon the premises, or any part thereof, to inspect the same and buildings and other improvement erected or place thereon.**
- q. By acceptance of this Agreement, NTUA consents to the full territorial legislative, executive, judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgment for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by NTUA with the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.**
- r. By acceptance of the Agreement, NTUA 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 service lines or to the Navajo Nation.**
- s. Any action or proceeding brought to NTUA against the Navajo Nation in connection with or arising out of the terms and conditions of the Agreement shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by NTUA against the Navajo Nation in any court of any state.**



- t. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.
  - u. Except as may be prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
  - v. 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 NTUA and the term "NTUA," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
6. This Service Line Agreement is being approved to provide utility services to Navajo resident(s). Therefore, consideration is waived. Consideration shall be assessed and waived for the portion of the line used for commercial customers until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**THE NAVAJO NATION**

By: \_\_\_\_\_  
President

**NAVAJO TRIBAL UTILITY AUTHORITY**  
**An Enterprise of the Navajo Nation**

By: \_\_\_\_\_

RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving the Delegation of Authority to the Director of the Navajo Land Department to Approve Utility Access and Service Line Agreements for Electricity, Water, Sewer, and Natural Gas

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee was established as a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. § 695 (B) (6), the Resources Committee is authorized to give final approval of rights-of-way, easements and other clearance related to power lines, water lines and sewer line extensions; and
3. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegations; and
4. There are many Navajo families that lack utility services and there is a backlog of requests for utility services pending; and
5. The current system of processing of Utility Access and Service Line Agreements is time consuming and has resulted in the loss of project funds as well as delay in providing Navajo residents with needed utility services; and
6. There is a need, therefore, to delegate the authority to approve Utility Access and Service Line Agreements to the Director of the Navajo Land Department to expedite the SAS review process so that Navajo residents can obtain needed utility services in a timely manner; and
7. The process of reviewing documents associated with Utility Access and Service Line Agreements is essentially an administrative task that can be performed by the Director of the Navajo Land Department under specific rules and regulations adopted by the Resources Committee and utilizing standard pre-approved Utility Access and Service Line Agreement forms; and
8. The Project Review Office was established within the Navajo Land Department under the Division of Natural Resources to monitor, review, analyze, and expedite all development documents

and activities conducted by private, Tribal, State, and Federal Agencies to comply with laws and regulations of the Navajo Nation and federal government. The Project Review Office is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearances, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned; and

9. The Navajo Land Department believes it will be in the best interest of the Navajo Nation to approve the delegation of authority.

NOW THEREFORE BE IT RESOLVED THAT:

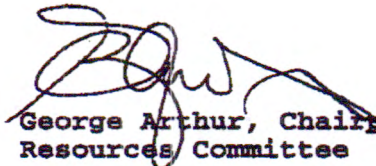
1. The Resources Committee of the Navajo Nation Council hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve Utility Access and Service Line Agreements for utility service extensions as set forth in the Administrative Rule and Regulations, attached hereto as Exhibit "A" and incorporated herein by this reference, in accordance with the following stipulations:

- A. Utility Access and Service Line Agreements shall be approved on forms attached hereto as Exhibits "A" (NTUA Form) and "C" (General Form). The Utility Access and Service Line Agreement forms may be revised to incorporate minor changes due to unforeseen circumstances after consultation with the Navajo Nation Department of Justice; provided the general terms and conditions of the Agreement are essentially the same or similar to Exhibits "B" and "C".
- B. Utility Access and Service Line Agreements shall comply with all applicable Federal and Navajo Nation laws and Regulations and Tribal Procedures.
- C. The Director of the Navajo Land Department shall ensure that applications for Utility Access and Service Line Agreements are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate Tribal Departments.

2. Nothing herein shall affect the President's authority to execute agreements pursuant to 2 N.M.C. § 222 (A).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 8th day of February, 2000.



George Arthur, Chairperson  
Resources Committee

Motion: Jack Colorado  
Second: Henry B. Hudson



## **Exhibit "A"**

### **DEPARTMENTAL ADMINISTRATIVE RULE AND REGULATIONS FOR THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE OF NAVAJO LAND DEPARTMENT TO APPROVE UTILITY ACCESS AND SERVICE LINE AGREEMENTS FOR ELECTRICITY, WATER, SEWER, AND NATURAL GAS EXTENSIONS**

#### **I. AUTHORITIES**

Pursuant to 2 N.N.C. §§ 691, 693 and 695(B)(14), the Resources Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization of all resources of the Navajo Nation and to protect such resources. The Resources Committee serves as the Legislative oversight authority for the Division of Natural Resources, District Grazing Officers, Eastern Navajo Land Board and Farm Boards policy of certain adjudication matters affecting the Navajo resources.

By Resolution RCJN-105-91, the Project Review Office is a section within the Navajo Land Department under the Division of Natural Resources. This office shall monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with the laws and regulations of the Navajo Nation, State, and Federal governments. The Project Review Office is further authorized to determine whether necessary field clearances are required; determine whether investigations or other appropriate actions as may be deemed necessary and proper are required; formulate administrative policies pertaining to Project Review; conduct periodic evaluation of the effectiveness and progress of the program; and conduct such special programs or projects as may be assigned.

#### **II. PURPOSE AND SCOPE**

The purpose of this Administrative Rule is to authorize and empower the Director of the Navajo Land Department of the Division of Natural Resources to approve Utility Access and Service Line Agreements for utility service extensions consistent with applicable Federal and Navajo Nation Laws.

#### **III. DELEGATION**

The Resources Committee hereby delegates to the Director of Navajo Land Department the following powers and authorities:

- a. To give final approval of Utility Access and Service Line

Agreements for utility service line extensions. Utilities access is defined as access which is reasonably necessary for the construction, operations and maintenance of utility service line extensions.

- b. To approve on behalf of the Navajo Nation Utility Access and Service Line Agreements for utility service extensions, consistent with these rules and regulations and upon forms approved by the Resources Committee which are attached hereto as Exhibits "B" (NTUA Form) and "C" (General Form). The Utility Access and Service Line Agreement forms may be revised to incorporate minor changes due to unforeseen circumstances after consultation with the Navajo Nation Department of Justice; provided the general terms and conditions of the agreement are essentially the same or similar to Exhibits "B" and "C".
- c. The Director of the Navajo Land Department shall ensure that applications for a Utility Access and Service Line Agreements are accompanied by proper surveys, easements, evaluations, clearances as may be required by Federal and Navajo Nation laws and regulations.
- d. The Director of the Navajo Land Department shall ensure that applications for Utility Access and Service Line Agreements are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal Departments.
- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources Committee of the Navajo Nation Council.

#### IV. AUTHORITY, DUTY AND RESPONSIBILITY

- a. The Director of the Navajo Land Department is authorized to implement and administer this delegation of authority to approve Utility Access and Service Line Agreements for utility service extensions in accordance with this Administrative Rule.
- b. Requirements to process Utility Access and Service Line Agreements
  - 1. Age - 18.
  - 2. Homesite lease or Rent.
  - 3. House or Trailer or Suitable Dwelling.
  - 4. Purpose shall be to provide lessees with utility service including but not limited to telephone, water, electric power, and gas.

5. Copy of Service Line Agreement (NTUA Form).
  6. Written consent of the landuser/grazing permittee is obtained.
  7. The power line will not exceed a maximum distance of five thousand two hundred and eighty (5,280') feet.
  8. The water line will not exceed a maximum distance of one thousand and five hundred (1,500') feet.
  9. The sewer line will not exceed a maximum distance of one thousand and five hundred (1,500') feet.
  10. The gas line will not exceed a maximum distance of one thousand and five hundred (1,500') feet.
- c. The Director of the Navajo Land Department shall provide the Resources Committee with an annual report on the status of approved Utility Access and Service Line Agreements.

#### V. REVIEW AND AMENDMENT

- a. The scope and administration of this delegation of authority to the Director of the Navajo Land Department may be amended from time-to-time by the Resources Committee of the Navajo Nation Council.
- b. Pursuant to 2 N.N.C. § 695(B) and (B)(13) and other authorities of the Committee, this Administrative Rule and Regulation may be amended and/or rescinded by the Resources Committee of the Navajo Nation Council.



**UTILITIES ACCESS AND SERVICE LINE AGREEMENT  
BETWEEN  
THE NAVAJO NATION  
AND  
NAVAJO TRIBAL UTILITY AUTHORITY**

**THIS AGREEMENT** is made and entered into by and between The Navajo Nation and Navajo Tribal Utility Authority (NTUA), an Enterprise of the Navajo Nation, whose address is Post Office Box 170, Fort Defiance, Navajo Nation, (Arizona) 86504 ("NTUA"), for a term of twenty (20) years beginning on the date approved by the Navajo Nation.

**WHEREAS**, certain members of the Navajo Nation identified on Exhibit "A", attached hereto and by this reference made a part hereof ("homesite lessee"), have homesite leases on lands owned by the Navajo Nation identified in said Exhibit "A", and more particularly described in the maps attached hereto as Exhibit "B" and by this reference made a part hereof (the "leased premises"); and

**WHEREAS**, said homesite lessees and the Navajo Nation desire that NTUA provide electric, gas, domestic water and/or wastewater utility services where available to the leased premises; and

**WHEREAS**, the Navajo Nation and NTUA desire to enter into a Utility Service Line Agreement authorizing NTUA to provide such utility services to the said homesite lessees in accordance with provisions of 25 C.F.R. § 169.22.

**NOW, THEREFORE**, the parties hereto hereby mutually agree as follows:

1. The Navajo Nation hereby grants to NTUA a non-exclusive right of access to the Navajo Nation-owned lands and the respective leased premises for construction, operation and maintenance of utility service lines over, across and upon the leased premises, as more particularly described in the maps attached hereto as Exhibit "B" showing with particularity the location, size and extent of such service lines.
2. All power lines shall be constructed in accordance with "suggested Practices for Raptus Protection on Powerlines: the state of the art in 1996" (Avian Power Line Interaction Committee, 1996).



3. The Navajo Nation hereby agrees to allow NTUA free access to and from the service lines during all reasonable hours as may be deemed necessary by NTUA.
4. Consideration for the use of land covered by this Agreement is assessed at \$\_\_\_\_\_ which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with electricity.
5. In consideration of the grant herein made, NTUA hereby agrees to:
  - a. Construct and maintain the service lines in a workmanlike manner.
  - b. File an executed copy of this Agreement, including all attachment, with the Project Review Section, Navajo Land Department and with the Secretary of the Interior, Bureau of Indian Affairs, Navajo Area Office, Branch of Realty Services, within thirty (30) days of its execution.
  - c. NTUA shall be responsible for and promptly pay all filing and processing fees and surface clearance fees assessed by the Navajo Nation.
  - d. In all activities conducted by NTUA within the Navajo Nation, NTUA 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:
    - i. Title 25, Code of Federal Regulations, Part 169;
    - ii. 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;
    - iii. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 201 et seq.; and

- iv. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq.. NTUA shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
- e. NTUA shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations under this Agreement.
- f. NTUA shall clear and keep clear the lands within the service lines to the extent compatible with the purpose of the service lines, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during disturbance activities.
- g. NTUA shall reclaim all surface lands disturbed related to the service lines, as outlined in a restoration and revegetation plan, which shall be prepared with the assistance of Navajo Nation Environmental Protection Agency, or its successor (NNEPA), and shall be submitted to and must be approved by NNEPA, prior to any surface disturbances. NTUA shall comply with all the 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.
- h. NTUA shall at all times during the term of this Agreement and at NTUA's sole cost and expense, maintain the land subject to the service lines and all improvements located thereon and make all necessary and reasonable repairs.
- i. NTUA shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
- j. NTUA shall be responsible for and promptly pay all damages when they are sustained.
- k. NTUA shall indemnify and hold harmless the Navajo Nation and its respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of lands by NTUA.
- l. NTUA shall not assign, convey or transfer, in any manner whatsoever, this Agreement or any interest therein, or to any of the improvements on the land, without the prior written consent of the Navajo Nation. 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.

- m. The Navajo Nation may terminate this Agreement for violation of any of the terms and conditions stated herein. In addition, this Agreement shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
  - i. Failure to comply with any terms or conditions of this Agreement or of applicable laws or regulations;
  - ii. A non-use of the service lines for the purpose for which they are authorized for a consecutive two (2) year period;
  - iii. An abandonment of the service lines; and
  - iv. The use of lands for any purpose inconsistent with the purpose for which the service lines are authorized.
- n. At the termination of this Agreement, NTUA 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, NTUA shall provide the Navajo Nation, at NTUA's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
- o. Holding over by NTUA after the termination of this Agreement shall not constitute a renewal or extension thereof or give NTUA any rights hereunder or in or to the land or to any improvements located thereon.
- p. The Navajo Nation shall have the right, at any reasonable time during the term of this Agreement, to enter upon the premises, or any part thereof, to inspect the same and buildings and other improvements erected or placed thereon.
- q. By acceptance of this Agreement, NTUA consents to the full territorial legislative, executive judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgements for compensatory and punitive damages and injunctive relief, in connection with all activities



conducted by NTUA with the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

- r. By acceptance of this Agreement, NTUA 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 service lines or to the Navajo Nation.
  - s. Any action or proceeding brought by NTUA against the Navajo Nation in connection with or arising out of the terms and conditions of this Agreement shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by NTUA against the Navajo Nation in any court of any state.
  - t. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.
  - u. Except as may be prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
  - v. 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 NTUA, and the term "NTUA," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
6. This Service Line Agreement is being approved to provide utility services to Navajo resident(s). Therefore, consideration is waived. Any use of this Service Line Agreement to provide utility service to commercial customers will require consideration to the Navajo Nation and the consent of the Navajo Nation.



IN WITNESS WHEREOF, the parties to ~~this presents~~ have  
executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**THE NAVAJO NATION**

By: \_\_\_\_\_  
President

**NAVAJO TRIBAL UTILITY AUTHORITY**  
**An Enterprise of the Navajo Nation**

By: \_\_\_\_\_

UTILITIES ACCESS AND SERVICE LINE AGREEMENT  
BETWEEN  
THE NAVAJO NATION  
AND

THIS AGREEMENT is made and entered into by and between The Navajo Nation and The Utility Service Provider whose address is for a term of twenty (20) years beginning on the date approved by the Navajo Nation.

WHEREAS, are members of the Navajo Nation ("homestead lessee"), have homestead leases on lands owned by the Navajo Nation, more particularly described in the maps attached hereto as Exhibit "B" and by this reference made a part hereof (the "leased premises"); and

WHEREAS, said homestead lessees and the Navajo Nation desire that the Utility Service Provider provide electric services to the leased premises; and

WHEREAS, the Navajo Nation and The Utility Service Provider desire to enter into a Utility Service Line Agreement authorizing the Utility Service Provider to provide electric services to the said homestead lessees in accordance with provisions of 25 C.F.R. § 169.22.

NOW, THEREFORE, the parties hereto hereby mutually agree as follows:

1. The Navajo Nation hereby grants to The Utility Service Provider a non-exclusive right of access to the Navajo Nation-owned lands and the respective leased premises for construction, operation and maintenance of an electric service line not to exceed kV over, across and upon the leased premises, as more particularly described in the maps attached hereto as Exhibit "B" showing with particularity the location, size and extent of such service lines.

2. The utility service provider shall construct power lines in accordance with "suggested practices for Raptus Protection on Powerlines: the state of the art in 1996" (Avian Power Line Interaction Committee, 1996).

3. The Navajo Nation hereby agrees to allow The Utility Service Provider free access to and from the service lines during all reasonable hours as may be deemed necessary by The Utility Service Provider.
4. Consideration for the use of land covered by this Agreement is assessed at \$\_\_\_\_\_ which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with electricity.
5. Ownership of the transmission and distribution lines, including all appurtenant facilities, shall remain the property of The Utility Service Provider. In the event the Navajo Nation determines that it is in its best interest to provide service to the area, the Navajo Nation may, upon consent of The Utility Service Provider, purchase the transmission and distribution lines and appurtenant facilities at fair market value and may provide its electric utility services to the electric customer.
6. In consideration of the grant herein made, The Utility Service Provider hereby agrees to:
  - a. Construct and maintain the service lines in a workmanlike manner.
  - b. File an executed copy of this Agreement, including all attachment, with the Project Review Section, Navajo Land Department and with the Secretary of the Interior, Bureau of Indian Affairs, Navajo Area Office, Branch of Realty Services, within thirty (30) days of its execution.
  - c. The Utility Service Provider shall be responsible for and promptly pay all filing and processing fees and surface clearance fees assessed by the Navajo Nation.
  - d. In all activities conducted by The Utility Service Provider within the Navajo Nation, The Utility Service Provider 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:
    - i. Title 25, Code of Federal Regulations, Part 169;
    - ii. 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;

- iii. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 201 et seq.; and
- iv. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq.. The Utility Service Provider shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
- e. The Utility Service Provider shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations under this Agreement.
- f. The Utility Service Provider shall clear and keep clear the lands within the service lines to the extent compatible with the purpose of the service lines, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during disturbance activities.
- g. The Utility Service Provider shall reclaim all surface lands disturbed related to the service lines, as outlined in a restoration and revegetation plan, which shall be prepared with the assistance of Navajo Nation Environmental Protection Agency, or its successor (NNEPA), and shall be submitted to and must be approved by NNEPA, prior to any surface disturbances. The Utility Service Provider shall comply with all the 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.
- h. The Utility Service Provider shall at all times during the term of this Agreement and at The Utility Service Provider's sole cost and expense, maintain the land subject to the service lines and all improvements located thereon and make all necessary and reasonable repairs.
- i. The Utility Service Provider shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.



- j. The Utility Service Provider shall be responsible for and promptly pay all damages when they are sustained.
- k. The Utility Service Provider shall indemnify and hold harmless the Navajo Nation and its respective authorized agents, employees, landusers and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of lands by The Utility Service Provider.
- l. The Utility Service Provider shall not assign, convey or transfer, in any manner whatsoever, this Agreement or any interest therein, or to any of the improvements on the land, without the prior written consent of the Navajo Nation. 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.
- m. The Navajo Nation may terminate this Agreement for violation of any of the terms and conditions stated herein. In addition, this Agreement shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
  - i. Failure to comply with any terms or conditions of this Agreement or of applicable laws or regulations;
  - ii. A non-use of the service lines for the purpose for which they are authorized for a consecutive two (2) year period;
  - iii. An abandonment of the service lines; and
  - iv. The use of lands for any purpose inconsistent with the purpose for which the service lines are authorized.
- n. At the termination of this Agreement, The Utility Service Provider 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 Utility Service Provider shall provide the Navajo Nation, at The Utility Service Provider's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.

- o. Holding over by The Utility Service Provider after the termination of this Agreement shall not constitute a renewal or extension thereof or give The Utility Service Provider any rights hereunder or in or to the land or to any improvements located thereon.
- p. The Navajo Nation shall have the right, at any reasonable time during the term of this Agreement, to enter upon the premises, or any part thereof, to inspect the same and buildings and other improvements erected or placed thereon.
- q. By acceptance of this Agreement, The Utility Service Provider consents to the full territorial legislative, executive judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgements for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by The Utility Service Provider with the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
- r. By acceptance of this Agreement, The Utility Service Provider 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 service lines or to the Navajo Nation.
- s. Any action or proceeding brought by The Utility Service Provider against the Navajo Nation in connection with or arising out of the terms and conditions of this Agreement shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by The Utility Service Provider against the Navajo Nation in any court of any state.
- t. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.

- u. Except as may be prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
  - v. 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 Utility Service Provider, and the term "The Utility Service Provider," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
7. This service line agreement is being approved to provide utility services to Navajo resident(s). Therefore, consideration is waived. Any use of this service line agreement to provide utility service to commercial customers will require consideration to the Navajo Nation and the consent of the Navajo Nation.

IN WITNESS WHEREOF, the parties have executed this Agreement  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
President, The Navajo Nation

By: \_\_\_\_\_  
The Utility Service Provider