

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



May 9, 2022

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CAP-17-22, An Action Relating to the Resources and Development, Budget and Finance, and Naabik'iyáti' Committees and the Navajo Nation Council; Approving a Limited Waiver of Sovereign Immunity of the Navajo Nation to Authorize the Navajo Nation to Register and Sell Offset Credits for Carbon Sequestration Under the California Cap-and-Trade Program Administered by the California Air Resources Board, and to Provide the Courts of the State of California Subject Matter and Equitable Jurisdiction Over the Navajo Nation for the Sole Purpose of Enforcing the Navajo Nation's Obligation with Respect to its Participation in the California Cap-and-Trade Program; Approving the Carbon Development and Marketing Agreement and Authorizing the Navajo Nation President to the Sign the Same

Dear Speaker Damon,

Approving a limited waiver of sovereign immunity should not be taken lightly and requires thoughtful deliberation. We appreciate the work of the Navajo Nation Council, the Committees and the Navajo Forestry Department in addressing this matter. The Nation's participation in this program is innovative and supports our Forestry Department's forest management plan with the benefit of creating revenue for the Nation. Waiving the Nation's sovereign immunity is also an expression of the Nation's authority.

Pursuant to the authority vested in the Navajo Nation President, I am signing CAP-17-22 into law.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Nez".

Jonathan Nez, President
THE NAVAJO NATION

A handwritten signature in black ink, appearing to read "Myron Lizer".

Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE NAVAJO NATION TO AUTHORIZE THE NAVAJO NATION TO REGISTER AND SELL OFFSET CREDITS FOR CARBON SEQUESTRATION UNDER THE CALIFORNIA CAP-AND-TRADE PROGRAM ADMINISTERED BY THE CALIFORNIA AIR RESOURCES BOARD, AND TO PROVIDE THE COURTS OF THE STATE OF CALIFORNIA SUBJECT MATTER AND EQUITABLE JURISDICTION OVER THE NAVAJO NATION FOR THE SOLE PURPOSE OF ENFORCING THE NAVAJO NATION'S OBLIGATIONS WITH RESPECT TO ITS PARTICIPATION IN THE CALIFORNIA CAP-AND-TRADE PROGRAM; APPROVING THE CARBON DEVELOPMENT AND MARKETING AGREEMENT AND AUTHORIZING THE NAVAJO NATION PRESIDENT TO SIGN THE SAME

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Navajo Nation Council is authorized to approve a limited waiver of the Navajo Nation's sovereign immunity. 1 N.N.C. § 554.
- C. The Resources and Development Committee of the Navajo Nation Council is a standing committee of the Navajo Nation Council and is authorized to make recommendations to the Navajo Nation Council for approval of legislation within the Committee's purpose. 2 N.N.C. § 500(A) and 501(B)(4).
- D. The Resources and Development Committee of the Navajo Nation Council has oversight authority over the Division of Natural Resources, Forestry Department, the Navajo Nation's forest natural resources, and has oversight authority on the Navajo Nation regarding alterations of the natural state of the Nation's forestry resource. 2 N.N.C. § 500(C)(2).
- E. The Budget and Finance Committee of the Navajo Nation Council is a standing committee of the Navajo Nation Council and is established for the purpose of recommending to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo

Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation. 2 N.N.C. § 300(A) and (C)(3).

- F. The Naabik'íyáti' Committee of the Navajo Nation Council is a standing committee of the Navajo Nation Council and recommends legislation to Navajo Nation Council on matters within the Committee's jurisdiction. 2 N.N.C. § 700(A) and 701(A)(3).

SECTION TWO. FINDINGS

- A. The Navajo Nation is a sovereign nation which is immune from suit. 1 N.N.C. § 553 (A).
- B. The jurisdiction and powers of the courts of the Navajo Nation, particularly with regard to suits against the Navajo Nation, are derived from and limited by the Navajo Nation Council as the governing body of the Navajo Nation. 1 N.N.C. § 553(C).
- C. The Navajo Nation sovereign immunity can be waived for lawsuits filed in the Navajo Nation courts for matters authorized by explicit resolutions of the Navajo Nation Council. 1 N.N.C. §§ 554(B), (C), and (K).
- D. The Navajo Nation desires to participate in California's Cap-and-Trade Program for U.S. Forests authorized by the California Global Warming Solutions Act of 2006.
- E. The Navajo Nation desires to utilize its commercial forest natural resource to create a carbon sequestration project from which the Nation will be able to register and sell carbon offset credits.
- F. The Navajo Nation Forestry Department, Division of Natural Resources, has procured the Nation's carbon sequestration credits sales manager and agent, Bluesource, L.L.C, through the competitive procurement process required by Navajo Nation law. The Navajo Nation has negotiated an acceptable Carbon Development and Marketing Agreement with Bluesource, L.L.C to bring this project to reality as soon as possible. A copy of the Carbon Development Marketing Agreement (CDMA) is attached hereto and incorporated herein as **Exhibit 1**. The Navajo Nation's participation in the Cap-and-Trade Program will not interfere in the current uses of the Navajo Nation Commercial Forest that the Navajo Nation has authorized. Moreover, this proposed use of the Navajo Nation Commercial Forest is authorized by the Navajo Nation's 10-year Forest Management

Plan in that sales of timber will occur over the life of the Navajo Nation's participation in the Cap-and-Trade Program.

- G. To authorize the Navajo Nation to be subject to the civil subject matter and equitable jurisdiction of the State of California, California Air Resources Board, for purposes of participation in the California Cap-and-Trade Program administered by the California Air Resources Board (CARB), the Navajo Nation Council must authorize a limited waiver of the Navajo Nation's sovereign immunity. (California Code of Regulations, Title 17, Section 95975(1).)
- H. The applicable California regulation regarding a tribe's limited waiver of sovereign immunity specifically requires in relevant part:
 - 1. The governing body of the Tribe must enter into a limited waiver of sovereign immunity with [C]ARB related to its participation in the requirements of the Cap-and-Trade Program for the duration required by the applicable Compliance Offset Protocol(s). This waiver must include a consent to suit by the State of California, Air Resources Board, in the courts of the State of California, with respect to any action in law or equity commenced by the State of California, Air Resources Board to enforce the obligations of the Tribe with respect to its participation in the Cap-and-Trade Program, irrespective of the form of relief sought, whether monetary or otherwise, except for purposes of relief under this limited waiver, Tribes shall be treated in the same manner as a California public entity under California Government Code sections 818 and 818.8.
 - 2. The Tribe must provide (C)ARB with documentation demonstrating that the limited waiver of sovereign immunity entered into pursuant to section 95975(1) (1) has been properly adopted in accordance with the Tribe's Constitution or other organic law, by-laws and ordinances, and applicable federal laws. (California Code of Regulations, Title 17, Section 95975 (1) (1) and (2)).
(edits supplied)
- I. Under the California Cap and Trade Program, which is authorized by the California Global Warming Solutions Act of 2006, CARB issues "CARB Offset Credits" to qualifying projects that reduce or sequester greenhouse gases. California, through CARB, allows forests located throughout the United States to be utilized to generate carbon sequestration credits for sale on the CARB regulated market. In order to participate in the Cap-

and-Trade Program, the Navajo Nation is required to qualify and certify its commercial forest through forest inventory, harvesting practices, and management so as to ensure that the carbon sequestered from the air is not re-released over the lives of each of the carbon credits. The purpose of the limited waiver of sovereign immunity is to ensure these conditions are enforceable by CARB.

- J. The Navajo Division of Natural Resources Navajo Forestry Department's Forest Manager Memorandum dated May 5, 2021, attached as Exhibit 2, provides a summary of the Forest Carbon Offset Project.

SECTION THREE. APPROVAL OF LIMITED WAIVER OF SOVEREIGN IMMUNITY

- A. The Navajo Nation Council hereby authorizes a limited waiver of sovereign immunity of the Navajo Nation for the limited purpose of satisfying the requirements of the CARB program as follows:

The Navajo Nation hereby expressly waives any and all defenses based on tribal sovereign immunity from suit with respect to any action in law or equity commenced by the State of California, Air Resources Board, to enforce the obligations of the Navajo Nation with respect to its participation in the Cap and Trade Program, for the duration required in the Compliance Offset Protocol for the U.S. Forest Projects (adopted June 25, 2015), and irrespective of the form of relief sought, whether monetary or otherwise, including the submission or replacement, as applicable of valid CARB offset credits or other approved compliance instruments as required by the Cap and Trade Program, including in Sections 95983(c) and 95985. The Navajo Nation, for purposes of this limited waiver, shall be treated in the same manner as a California public entity under California Government Code sections 818 and 818.8. The Navajo Nation consents to the jurisdiction and venue in the courts of the State of California for the limited purpose expressed herein and does not waive any aspect of its sovereign immunity with respect to actions commenced by third parties other than the State of California, Air Resources Board.

- B. Nothing about the Navajo Nation's Forest Project, including without limitation any attestations to the CARB, shall confer upon any other agency of the State of California or any other state government, or any state, county, or other subdivision, any general civil regulatory authority over the Navajo Nation or the Navajo Nation's reservation or commercial forest,

including without limitation those acres that the Navajo Nation has placed into the Project.

SECTION FOUR. AUTHORIZING PRESIDENT AND DIVISION OF NATURAL RESOURCES EXECUTIVE DIRECTOR TO INITIATE AND COMPLETE REQUIREMENTS FOR THE NAVAJO NATION'S PARTICIPATION IN THE CALIFORNIA CAP-AND-TRADE PROGRAM

The Navajo Nation Council authorizes the President of the Navajo Nation and the Division of Natural Resources Executive Director to initiate and complete the requirements for the Navajo Nation's participation in the California Cap-and-Trade Program.

SECTION FIVE. APPROVING THE CARBON DEVELOPMENT AND MARKETING AGREEMENT AND AUTHORIZING THE PRESIDENT TO SIGN THE SAME

The Navajo Nation Council hereby approves the Carbon Development and Marketing Agreement in the form of or substantially similar to the form of Exhibit 1 as attached, and authorizes the President of the Navajo Nation to execute the same.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 17 in Favor, and 06 Opposed, on this 19th day of April 2022.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

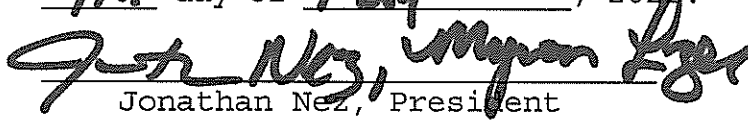
April 29, 2022
DATE

Motion: Honorable Edmund Yazzie
Second: Honorable Wilson C. Stewart, Jr.

Speaker Seth Damon not voting

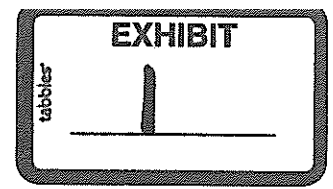
ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 9th day of May, 2022.


Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation



CARBON DEVELOPMENT AND MARKETING AGREEMENT

This Carbon Development and Marketing Agreement (“**CDMA**”) is effective this ____ day of _____, 2021 (the “**Effective Date**”), by and between Blue Source LLC, a Utah limited liability company (“**Bluesource**”) and the Navajo Nation, a federally recognized Indian tribe (the “**Nation**”).

RECITALS

- A. The Nation owns or manages property located in Arizona, New Mexico, and Utah and is interested in developing forestry-related projects on such lands that will result in the creation of certain Greenhouse Gas Emission Reduction Benefits (ERBs); and
- B. Bluesource is in the business of identifying, creating, acquiring, aggregating, and marketing ERBs and Air Resources Board Offset Credits (ARBOCs); and
- C. The Nation wishes to sell to third parties, through Bluesource as its exclusive marketer, and Bluesource wishes to market the ARBOCs generated by the Nation in accordance with the terms of this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, and the mutual obligations and undertakings set forth herein, the Parties covenant and agree as follows:

ARTICLE 1

PURPOSE OF AGREEMENT

The Parties anticipate that the Nation has and will engage in the Project(s) identified individually on Exhibit C (which may be amended from time to time by mutual written agreement of the Parties) during the Term and in accordance with all Applicable Requirements, providing the basis for ARBOCs. The Nation agrees to sell, transfer, and otherwise convey to Bluesource (or, at the direction of Bluesource, to a third party purchaser) all such ARBOCs, pursuant to the terms of this Agreement.

ARTICLE 2

DEFINITIONS; TERMS AND CONDITIONS

Section 2.1 Capitalized terms not otherwise defined in this Agreement have the respective meanings assigned to them as set forth in Exhibit A, which is attached hereto and is expressly incorporated herein by reference.

Section 2.2 All of the General Terms and Conditions set forth in Exhibit B are hereby incorporated herein and expressly made a part of this Agreement.

ARTICLE 3

SERVICES PROVIDED BY BLUESOURCE

Bluesource will conduct the following activities with respect to any and all Project(s), any of which may occur at various times throughout the Term:

Section 3.1 Project Screening: Bluesource will assess the potential for development of ERBs relating to the Project(s) as ARBOCs pursuant to the Compliance Offset Protocol for U.S. Forest Projects under the ARB Program. In the event Bluesource is unable to qualify the Project(s) for ARBOCs, Bluesource and the Nation shall consult on the possibility of alternative market options.

Section 3.2 Project Development: Using commercially reasonable standards, Bluesource will prepare or engage third parties to prepare such Documentation as it, in its discretion and in consultation with the Nation, deems necessary to document the creation of marketable ARBOCs from the Project(s).

Section 3.3 Validation and Verification: Bluesource will engage a Verifier to Validate the Project(s) and Verify the creation of marketable ARBOCs.

Section 3.4 Registration. Bluesource will make commercially reasonable efforts to Register the ERBs with the ARB Program as ARBOCs.

Section 3.5 Marketing and Monetization. Bluesource will make commercially reasonable efforts to market and monetize ARBOCs arising out of all Projects.

Section 3.6 Expenses. Bluesource shall pay for Expenses at the time they are incurred but shall be reimbursed for such Expenses in accordance with the terms and conditions of this Agreement.

ARTICLE 4

THE NATION' S DUTIES AND OBLIGATIONS

Section 4.1 Upon addition of a Project to Exhibit C of this Agreement, the Nation shall promptly take all actions reasonably requested by Bluesource to enable Bluesource to Register each Project and associated ERBs under the ARB Program with an ARB-approved registry mutually agreed upon by the Parties.

Section 4.2 The Nation shall take all reasonable actions to list Bluesource as authorized project designee under the ARB Program for each Project, as an alternate account representative under CITSS, and as the Nation's agent for each Project under the applicable registry.

Section 4.3 The Nation shall provide access to the Subject Properties and documents related to the Project(s), the Subject Properties, and related ERBs to the extent necessary for Bluesource to provide its Services.

Section 4.4 The Nation shall notify Bluesource within seven (7) Days of the discovery of an occurrence or condition that would adversely affect either the Nation's (in its capacity as Offset Project Operator) or Bluesource's (in its capacity as Authorized Project Designee) ability to truthfully and accurately make the required attestations set forth in the Request for Issuance of ARB Offset Credits, a

copy of which is attached hereto as Exhibit D, or any substantially similar representations required by the ARB as a condition of issuance of ARBOCs.

Section 4.5 Pursuant to Bluesource's request, the Nation shall execute documents required under the ARB Program or Registry to list or Register the Project(s) or in order for ARB Offset Credits to be issued for the Project(s).

ARTICLE 5

TITLE; EXCLUSIVE MARKETING RIGHTS

Section 5.1 The Nation hereby grants, conveys, and transfers to Bluesource title to and the exclusive right to market, throughout the Term, all ARBOCs created from the Project as a result of actions taken during the Development Period, including but not limited to ARBOCs created after the Development Period as a result of actions taken during the Development Period. To the extent necessary to accomplish the intent of the foregoing sentence, the Nation shall take all necessary steps to grant, convey, and transfer all such ARBOCs to Bluesource on the date the ARBOCs are Registered, on the Delivery Date, or on any other date specified by Bluesource, in its sole discretion. Provided, however, the Nation reserves the power to revoke any and all future transfers of title to any and all ARBOCs created from the Project which are not yet the subject of a Third Party Sale Agreement, as well as the exclusive right to market such ARBOCs, in the event that Bluesource fails to comply with the obligations set forth in Article 6. At the termination of this Agreement, the title to all ARBOCs vested in Bluesource and the exclusive right to market all ARBOCs shall revert to the Nation.

Section 5.2 Bluesource shall have discretion to determine which ERBs (including vintage and reporting periods) will produce sufficient magnitude and quality to be pursued for Verification and sale or transfer as ARBOCs pursuant to this Agreement. Such discretion shall conform to reasonable business practices and standards for this industry.

Section 5.3 Bluesource may aggregate and market the Nation's ARBOCs with ERBs created by other suppliers of either similar or unrelated credits, as Bluesource deems appropriate as a function of Bluesource's portfolio management.

Section 5.4 Third Party Sale Agreements. Prior to entering into a Third-Party Sale Agreement for a price of less than ten dollars (\$10.00) per ARBOC, Bluesource shall request the Nation's authorization for such sale in writing (an "ARBOC Sale Notice"). The ARBOC Sale Notice shall include the quantity of ARBOCs to be sold to the third party and the price for which such ARBOCs are to be sold. The Nation's failure to respond to any ARBOC Sale Notice within three (3) business days of the Nation's receipt thereof shall constitute approval of the proposed ARBOC sale. For clarity, Bluesource is not obligated to request the Nation's authorization for any Third-Party Sale Agreement for a price above ten dollars (\$10.00) per ARBOC.

ARTICLE 6

PRICE AND PAYMENT TERMS

Section 6.1 With respect to ARBOCs issued and Sold pursuant to a Third Party Sale Agreement, Bluesource shall pay the Nation a percentage of Net Proceeds, and shall retain a percentage of Net Proceeds as outlined in Table 1. Bluesource shall make good faith, commercially reasonable efforts to

market and sell no less than two million three hundred thousand (2,300,000) ARBOCs from the first issuance of ARBOCs.

Table 1.

Aggregate ARBOC Sales	Nation % of Net Proceeds	Bluesource % of Net Proceeds
0 – 2,000,000	94%	6%
2,000,001 – 4,000,000	95%	5%
4,000,001 – 6,000,000	96%	4%
6,000,001 – 8,000,000	97%	3%
8,000,001 +	98%	2%

For clarity, each numeric threshold in Table 1 of this Section 6.1 shall apply until the following threshold is reached. For example, if Bluesource were to generate and monetize two million five hundred thousand (2,500,000) ARBOCs under a Project during the Term, Bluesource would distribute ninety-four percent (94%) of Net Proceeds from the first two million (2,000,000) ARBOCs and ninety-five percent (95%) of Net Proceeds from the next five hundred thousand (500,000) ARBOCs to the Nation, and Bluesource would retain six percent (6%) of Net Proceeds from the first two million (2,000,000) ARBOCs and five percent (5%) of Net Proceeds from the next five hundred thousand (500,000) ARBOCs.

Section 6.2 Prior to any distribution of Net Proceeds, Bluesource shall provide the Nation an accounting of Expenses incurred by Bluesource relating to the Project(s). The Nation shall have five (5) business days to request any further information relating to such Expenses. In the absence of any request for further information, Bluesource shall deduct from applicable Proceeds an amount sufficient to reimburse such Expenses;

Section 6.3 Bluesource shall pay the Nation's Share of Net Proceeds within thirty (30) Days of Bluesource's receipt of Proceeds from Bluesource's sale of each ARBOC; and

Section 6.4 For clarification, Bluesource shall have the right, throughout the Term, to market and sell all ARBOCs created from the Project(s) as a result of actions taken during the Development Period.

ARTICLE 7

THE NATION'S WARRANTIES, REPRESENTATIONS AND COVENANTS

As of the Effective Date and through the end of the Term, the Nation represents, warrants and covenants that:

Section 7.1 It is a federally recognized Indian tribe with full power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby;

Section 7.2 The execution, delivery, and performance of this Agreement have been duly authorized by all necessary actions on the part of the Nation and this Agreement constitutes a valid obligation of the Nation enforceable against it in accordance with its terms;

Section 7.3 It has the right to exclusive use and occupation to the Subject Property(ies) as documented with the United States Department of the Interior, Bureau of Indian Affairs, Navajo Region Office;

Section 7.4 It has, or will have at the time of Delivery, good and marketable title to all ARBOCs arising out of all Projects, and such ARBOCs are, or will be at the time of Delivery, free and clear of all encumbrances of any kind, subject to the provisions of Section 7.10;

Section 7.5 All ARBOCs transferred to Bluesource are and shall be based on voluntary activities;

Section 7.6 Data provided to Bluesource or its authorized representatives in support of attestations or representations which either the Nation (in its capacity as Offset Project Operator) or Bluesource (in its capacity as Authorized Project Designee) is obligated to make to ARB as a condition of issuance of ARBOCs is and shall be true, accurate, and complete. Examples of such required attestations and representations are included in the Request for Issuance of ARB Offset Credits, a copy of which is attached hereto as Exhibit D.

Section 7.7 The Nation shall not conduct any activities that will result in a Material Reduction of ARBOCs;

Section 7.8 ARBOCs sold by or available for sale to Bluesource pursuant to this Agreement shall not be used by the Nation for any purpose, and the Nation shall not sell, transfer, or make available such ARBOCs to any other person or entity for any purpose.

Section 7.9 The Nation will provide in a timely manner all available and relevant information within the Nation's control necessary to allow Bluesource to perform its services. Unless otherwise agreed to by the Parties, such data will be provided within five (5) business days of a Bluesource request;

Section 7.10 The Nation is in compliance with and shall comply with any easement that encumbers the Subject Properties;

Section 7.11 Throughout the Development Period, the Subject Properties and the Project(s) have been, are, and shall continue to be in compliance with all applicable local, regional, and national environmental and health and safety regulations that apply based on the offset project location, and with all Applicable Requirements;

Section 7.12 If the Nation transfers ownership of any or all of the Subject Properties, the Nation shall ensure that in conjunction with any such transfer: (i) the Nation's transferee shall assume all of the Nation's obligations under the Applicable Requirements; (ii) the Nation's transferee shall assume all of the Nation's obligations toward Bluesource or otherwise, which are created pursuant to this Agreement; and (iii) Bluesource shall retain all rights afforded to Bluesource pursuant to this Agreement including, but not limited to, all rights to collect and market all ARBOCs through the end of the Term that are generated by the Project throughout the Development Period subject to the provisions of Section 5.1; and

Section 7.13 When necessary to comply with a Third Party Sale Agreement, the Nation will use its best efforts, at Bluesource's request and in compliance with this Agreement, to transfer the applicable ARBOCs as required by this Agreement and any Third Party Sale Agreement and shall execute any additional documents reasonably required to sell or transfer the ARBOCs pursuant to such Third Party Sale Agreement.

ARTICLE 8

BLUESOURCE'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Bluesource represents, warrants and covenants that:

Section 8.1 It is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Utah, with full power and authority to make, execute, deliver and perform this Agreement and the transactions contemplated hereby.

Section 8.2 The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions on the part of Bluesource and this Agreement constitutes a valid obligation of Bluesource enforceable against it in accordance with its terms.

Section 8.3 Bluesource will use diligent, good-faith, commercially reasonable efforts to market and sell the ARBOCs subject to this Agreement through the end of the Term which may include the pre-selling of certain ARBOCs.

Section 8.4 Bluesource will work with the Nation to design a project development and maintenance plan that maximizes, to the extent reasonably possible, training and employment of the Nation's staff.

Section 8.5 Bluesource will provide training materials to enable the Nation to effectively and efficiently maintain the carbon project for the duration of the 100-year monitoring and reporting period.

ARTICLE 9

FURTHER ASSURANCES

Upon Bluesource's reasonable request, the Nation shall execute such documents and take such further actions from time to time as may be necessary to Validate, Verify, Register, or sell ARBOCs. The Nation shall also provide such assurances in connection with related ARBOCs that may be requested or required by governmental or regulatory action during the Term of this Agreement.

ARTICLE 10

ACCESS TO INFORMATION; MAINTENANCE OF RECORDS; FURTHER ACTION

Section 10.1 Due Diligence. Upon reasonable notice, the Nation shall provide Bluesource, its representatives, and third parties reasonably identified and authorized by Bluesource (such as Verifiers or potential purchasers of ARBOCs created pursuant to this Agreement) with access to the Project, to the Subject Properties, and to all Emission Reduction Benefit-related documents, records, reports, and data reasonably necessary to Document, Verify, or sell, as the case may be, the quantity, quality, validity, or acceptability of the ARBOCs or the Project, subject to the Navajo Nation Privacy Act and the applicable provisions of the Freedom of Information Act.

Section 10.2 The Nation's Records Regarding Project Performance. The Nation shall maintain records reasonably necessary to establish the validity of the ARBOCs sold pursuant to this Agreement, including but not limited to records regarding thinning and harvesting on the Subject Properties, title to the Subject Properties that are not protected public records, and any deeds applicable to the Subject Properties. Disclosure of the aforementioned records are subject to regulation and protection from disclosure by the Navajo Nation Privacy Act or the Freedom of Information Act or both, as applicable to the specific requests

for records. The Nation shall make such records available for inspection, as authorized by applicable Navajo Nation and federal laws, upon reasonable (not less than five business days) advance notice from Bluesource, its authorized agents, and Bluesource's authorized transferees at reasonable and mutually agreed-upon times and places. The Nation shall also make such records available to ARB or any other governmental or regulatory body with competent jurisdiction over the ARBOCs being sold as authorized by applicable law. Such records shall be maintained for (i) eight (8) years after the date of issuance of the ARBOCs or (ii) such other period as may be required by the ARB Program or other governmental or regulatory body or a third party sale agreement (provided Bluesource gives written notice to the Nation of such requirement), whichever is longer, but no later than eight (8) years after the date of issuance of the ARBOCs.

Section 10.3 Bluesource's Records Regarding Transactions. Bluesource shall keep and maintain records of all sales terms, deal valuations, and documentation necessary for Bluesource to complete the sale and transfer of ARBOCs transferred to Bluesource by the Nation and by Bluesource to any third party. These records shall be kept for (i) eight (8) years after the date of issuance of the ARBOCs or such other period as may be required by the ARB Program or other governmental or regulatory body or (ii) a third party sale agreement, whichever is longer, and shall be made available to the Nation for inspection and copying during regular business hours upon reasonable advance notice.

ARTICLE 11

LIMITATION OF LIABILITY

Neither Party shall be liable to the other for any special, indirect, punitive, or consequential damages. The limitation of liability in this Article 11 shall survive cancellation, termination, or expiration of this Agreement.

ARTICLE 12

INDEMNITY

Reserved.

ARTICLE 13

RESERVATIONS REGARDING PROJECT DEVELOPMENT

Section 13.1 The Nation makes no representation or warranty as to the number of ARBOCS which may be generated as a result of any project; and

Section 13.2 Bluesource makes no representation or warranty as to the creation of ARBOCS at the project or the marketability or value to be realized as a result of Bluesource's sale of such ARBOCS.

ARTICLE 14

TERM, MODIFICATIONS, AND TERMINATION

Section 14.1 Term. This Agreement shall remain effective through the end of the Term, subject to earlier termination pursuant to this Article 14.

Section 14.2 Modifications. Any modifications to this Agreement shall be made only by written amendment, signed and executed by all parties to this Agreement.

Section 14.3 Discretionary Termination Prior to Inventory Commencement Date. The Nation acknowledges that Bluesource may proceed with listing any Project with the ARB Program once such Project is identified on Exhibit C. However, either Party may terminate this Agreement with respect to any particular Project at any time prior to receipt by Bluesource of the Nation's written consent to commence the forest carbon inventory for such Project; provided that the termination right set forth in this Section 14.3 expires upon the six (6) month anniversary of the Effective Date. If either Party terminates this Agreement pursuant to this Section 14.3, the Nation shall have no liability for any Expenses related to the Project; the obligations of both Parties under this Agreement with respect to the Project will be deemed fully satisfied; and neither Party shall have any further obligation to the other pursuant to this Agreement. If neither Party terminates this Agreement prior to the six-month anniversary of the Effective Date, this Agreement shall remain in full force and effect throughout the Term, unless otherwise terminated in accordance with the remaining provisions of this Article 14.

Section 14.4 Discretionary Termination for Insufficient ARBOCs. If upon completion of ARB review of the initial Reporting Period, less than the Minimum ARBOC Threshold is approved for initial ARBOC issuance (net of any required buffer pool), the Nation shall have the right to terminate this Agreement in its entirety with respect to the Project by providing written notice of such termination to Bluesource. The Nation's termination right as set forth in this Section 14.4 shall expire upon the earlier of (i) thirty (30) Days following issuance of the Verification report or (ii) the initial issuance of ARBOCs for the Project at issue. In any event, the Nation's termination right as set forth in this Section 14.4 is subject to the following:

(a) The Nation shall: (1) upon termination, immediately delist the Project from the Registry within ten (10) business days following termination; (2) not list the Project with any carbon credit registry or carbon reduction program (including, but not limited to, the ARB Program, Climate Action Reserve, and the Voluntary Carbon Standard) for a period of three (3) years from the date of such termination; (3) not use any of the information developed or created by Bluesource in its provision of its services under this Agreement, even if such information has been submitted to the ARB Program, unless the Parties agree on reasonable compensation to be paid to Bluesource for such information; and (4) if applicable, shall ensure that no third party uses such information to create ARB Offset Credits, unless the Parties agree on reasonable compensation to be paid to Bluesource for such information.

(b) Subject to Section 14.4(a), the Nation shall not be liable for any Expenses related to such Project incurred prior to termination.

(c) Except as set forth in Section 14.4(a) and those provisions identified in Article 18 hereof as surviving termination, all further obligations of either Party under this Agreement will terminate and be deemed to have been discharged.

Section 14.5 Termination Upon Breach. If either Party fails to perform any material obligation in this Agreement or breaches any material representation or warranty during the Term of this Agreement, the non-breaching Party shall notify the other Party in writing of the breach and provide the breaching Party with a thirty (30) Day period to cure such breach. If, following such cure period, the breach remains uncured, the non-breaching Party shall have the right, without waiving any other remedies, to terminate this Agreement pursuant to this Article 14.

Section 14.6 Termination Due to Economic Unfeasibility. If Bluesource, in its sole discretion, determines that incurring additional Expenses or engaging in further development of ARBOCs is economically unfeasible in light of current and reasonably anticipated future market conditions, Bluesource may terminate this Agreement upon ninety (90) Days written notice to the Nation. If Bluesource exercises the termination right set forth in this Section 14.6, the Nation shall have no liability for, and Bluesource shall be responsible for, all Expenses incurred by Bluesource pursuant to this Agreement prior to such termination; neither Party shall have any further obligation to proceed under this Agreement; and Bluesource shall transfer to the Nation all ARBOCs arising from the Project that have not otherwise been Sold or transferred to another third party.

Section 14.7 Termination Due to Insolvency. This Agreement may be terminated immediately upon notice by one Party to the other Party if:

(a) a receiver or trustee in bankruptcy has been appointed to take charge of all or any substantial part of the other Party's business or property, unless the receivership order or the appointment of the trustee in bankruptcy is vacated within thirty (30) days;

(b) the other Party has become an insolvent person or committed an act of bankruptcy as defined under the bankruptcy laws of the United States;

(c) a petition has been filed or any other action has been taken with respect to the other Party under any provision of the bankruptcy laws of the United States; or

(d) any application or petition or certificate or order has been made or granted for the winding up or dissolution of the other Party, voluntarily or otherwise.

ARTICLE 15

DISPUTE RESOLUTION AND NAVAJO NATION SOVEREIGN IMMUNITY

Section 15.1 No Waiver of Navajo Nation Sovereign Immunity. Nothing in this Agreement shall be considered as a waiver, express or implied, of the sovereign immunity of the Navajo Nation, except to the limited extent provided for in the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551 *et. seq.* and the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101 *et seq.*

Section 15.2 Pursuant to 2 N. N. C. § 223, nothing in this Agreement shall be construed as obligating the Nation in the expenditure of funds or for future payment of funds in excess of appropriations made under the laws or fiscal appropriations of the Navajo Nation.

Section 15.3 Dispute Resolution. Any claim, dispute, or other matter in question arising out of or relating to this Agreement shall be resolved by the negotiation, mediation, and/or arbitration procedures set forth as follows:

(a) **Negotiation:** The Parties shall first endeavor to resolve claims, disputes, and other matters in question between them by good faith negotiation by representatives of each Party having the authority, through appropriate corporate or tribal resolution, if necessary, to bind the Party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If either Party fails or refuses to participate in such negotiations or such negotiations do not result in the Parties resolving the dispute within twenty (20) business days after one Party has requested that negotiation begin

(and the period is not extended with the consent of the Parties), then either Party may cause the dispute to be referred to mediation.

(b) **Mediation:** The Parties shall endeavor to resolve claims, disputes and other matters in question between them by good faith negotiation and mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association, as modified by the following:

(i) Unless otherwise agreed to in writing by the Parties, all mediation procedures shall be held in Window Rock, Arizona;

(ii) A single mediator may be chosen by mutual agreement of the Parties;

(iii) The Party desiring mediation shall submit to the other Party a written notice of intent to mediate, and such notice shall include name(s) of proposed mediator(s);

(iv) The Parties shall equally share the mediator(s)' fee and any other costs related to the mediation, except the Parties' individual attorney fees and costs; and

(v) The mediation shall be completed within ninety (90) Days of selection of the mediator(s), unless otherwise agreed to in writing by the Parties.

(c) **Arbitration:** If the mediation provided for in Section 15.3(b) herein does not result in resolution of the Parties' dispute within ninety (90) Days of selection of the mediator(s), then, unless the Parties agree in writing to extend the time for mediation, either Party may invoke arbitration by sending Notice of Intent to Commence Arbitration. Any arbitration invoked shall be according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

(i) Unless otherwise agreed to in writing by the Parties, all arbitration procedures shall be held in Window Rock, Arizona;

(ii) The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the Parties, unless one of the Parties' claims exceeds one million dollars (\$1,000,000.00), exclusive of interest, costs, and fees, or in the event of a disagreement with respect to the single arbitrator selection; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, one of which shall be chosen by each Party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law;

(iii) Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;

(iv) Whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Nation shall be in strict conformance with the provisions of 1 N.N.C. § 554(K)(1)-(6);

(v) Whether in the context of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, the laws of the Navajo Nation shall exclusively govern the interpretation of this Agreement, the arbitration provisions set forth herein and the

arbitration procedures conducted pursuant thereto, and the application of all provisions herein to Bluesource and its subcontractors, agents, representatives, employees or consultants; and

(vi) Pursuant to 1 N.N.C. § 554(K) and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; neither Party may recover from the other any attorney fees or costs.

Section 15.4 Waiver of Suit. The negotiation, mediation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising out of this Agreement. Commencement of negotiations, mediation or arbitration shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is negotiated, mediated or arbitrated as set forth herein.

Section 15.5 Post-termination and Post-expiration. The dispute resolution provisions of this Agreement shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Contract.

Section 15.6 Challenges Limited. By entering into this Agreement, Bluesource expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, 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 Tribal 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 public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in a similar challenge to the jurisdiction of a state government.

Section 15.7 The Parties shall continue, without delay, all of the responsibilities under this Agreement that are not affected by the dispute.

ARTICLE 16

CONFIDENTIAL INFORMATION

Section 16.1 Any and all information and knowledge relating to the Project or ARBOCs subject to this Agreement and any and all information emanating from the other Party's business in any form that a Party may acquire pursuant to this Agreement (collectively, "Confidential Information"), shall be considered confidential and, except as permitted in this Agreement, shall not be used, revealed or divulged to any other person, or published in any manner whatsoever, through the end of the Term and for two years after the end of the Term, without first obtaining the written consent of the other Party.

Section 16.2 Notwithstanding the provisions above, a Party may reveal or divulge Confidential Information:

(a) that is already in the public domain when disclosed to a Party or becomes, after having been disclosed to a Party, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by a Party in breach of this Agreement;

(b) to its Affiliates and to its and their officers, directors, employees, agents or other representatives on a need to know basis provided such persons have agreed to maintain such Confidential Information in confidence;

(c) as required by applicable Laws, the orders or directions of tribunals having jurisdiction or stock exchange or clearing house requirements, provided that where circumstances permit, and where such disclosure is not made in the ordinary course to such persons, prior to any disclosure, the other Party shall be notified of any such proposed divulgence and the divulging Party shall at the other Party's request and expense, take reasonable steps to allow the other Party to contest the requirement for disclosure or to obtain an order or ruling to preserve the confidentiality of such Confidential Information;

(d) to the extent reasonably necessary to sell, resell, use, retire or otherwise obtain the value or benefit from the ARBOCs subject to this Agreement; or

(e) as necessary in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement.

ARTICLE 17

NOTICE

Section 17.1 Any notice or other communication which any Party is required or wishes to make to any other Party pursuant to this Agreement will be effective and valid only if in writing and delivered personally, by facsimile transmission or by email to the other Party at the address, fax number or email address set out below or at such other address, fax number or email address as such Party may from time to time designate by notice delivered in accordance with this Section 17.1.

To the Nation: C/O Navajo Forestry Department, P.O. Box 230, Fort Defiance, AZ 86504.
Phone (928) 729-4007. E-mail acbecenti_nfd@frontiernet.net

With copies to:

Veronica Blackhat, Assistant Attorney General, P.O. Box 2010, Window Rock, AZ 86515.
Phone (928) 871-6347. E-mail: veblackhat@nndoj.org

William Sloan, Venable LLP, 101 California Street, Suite 3500, San Francisco, CA 94101.
Phone (415) 343-4490. E-mail: wmsloan@venable.com

Blue Source, LLC, Attn: Contract Administrator, 2825 Cottonwood Parkway, Ste. 400,
Cottonwood Heights, UT 84121, USA. Phone (801) 322-4750. E-mail info@bluesource.com

Section 17.2 Any notice delivered in accordance with the foregoing will be deemed to have been received by the addressee on the date it is sent if delivered personally, by facsimile transmission or by email within normal business hours or at the beginning of the next business day if it is sent outside normal business hours (and provided that in the case of a notice sent by facsimile transmission the Party sending the notice has received a confirmation of transmission indicating that the entire facsimile transmission has been sent).

ARTICLE 18

PROVISIONS SURVIVING EXPIRATION AND TERMINATION

Notwithstanding the termination or expiration of this Agreement, the General Terms and Conditions set forth in Exhibit B and the provisions of Article 10 (Access to Information; Maintenance of Records; Further Action), Article 11 (Limitation of Liability), Article 12 (Indemnity), Article 13 (Reservations Regarding Project Development), Article 14 (Term, Modifications, and Termination), Article 15 (Dispute Resolution and Navajo Nation Sovereign Immunity) and any provisions necessary to enforce such provisions shall survive for a period of eight years following the last issuance of any ARBOCS arising from the Project during the Development Period.

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement on the date first written above.

BLUE SOURCE, LLC

NAVAJO NATION

By:
Its:

By: Jonathan Nez
Its: President

Exhibit A

DEFINITIONS

- a. **“Affiliate”** means a person or entity that controls, is controlled by, or is under common control with a Party.
- b. **“Applicable Laws”** means, collectively, all statutes, ordinances, judicial decisions, executive orders, or regulations or regulatory orders or protocols having the force and effect of law, including Navajo Nation laws, that are applicable to the Subject Properties and/or the Project.
- c. **“Applicable Requirements”** means, collectively, the requirements of Validation, Verification, Registration, and issuance under the applicable the ARB Program and applicable registry; requirements applicable to the Nation under the Terms of Use Agreement and/or the Forest Project Protocols or Plans issued by the ARB Program or applicable registry; and all securities laws, if any, and blue sky laws, if any, and other legal requirements applicable to the offering of ARBOCs, if any.
- d. **“ARB”** means the California Air Resources Board.
- e. **“ARB Offset Credit”** or **“ARBOC”** means all ERBs that represent a GHG Reduction or GHG Removal Enhancement equivalent to one metric ton of CO₂ (CO₂e) and that can be utilized by the holder of such instrument on a ton for ton basis pursuant to the ARB Program.
- f. **“ARB Program”** means the California Greenhouse Gas Cap and Trade Program set forth at 17 CCR §§ 95800-96023 and any implementing guidance and protocols, including any amendments thereto.
- g. **“Authorized Project Designee”** or **“APD”** is defined in §95802 of the GHG Regulation.
- h. **“Bluesource’s Share of Net Proceeds”** means the applicable percentage of Net Proceeds for Bluesource set forth in Article 6.
- i. **“CITSS”** means Compliance Instrument Tracking System Service.
- j. **“Contract Price”** means the price per ARBOC set out in a Third Party Sale Agreement.
- k. **“Day”** means calendar day.
- l. **“Delivery Date”** means the date upon which ARBOCs must be transferred to a third party purchaser from Bluesource, as communicated from Bluesource to the Nation.
- m. **“Development Period”** means the period of time mutually agreed upon by the Parties during which GHG Reduction, GHG Removal, or GHG Removal Enhancement activities take place, in accordance with the Applicable Requirements, and for which period the Parties will attempt to Validate, Verify, and Register ARBOCs from a Project. The Development Period begins on the Project Listing Date and ends on the tenth anniversary of the last day of the first Reporting Period for a Project.
- n. **“Document,” “Documenting,”** and **“Documentation”** means, as appropriate in the context in which such terms are used, either (i) the preparation of all documents pertaining to reductions or avoidance of GHG emissions associated with the Project as are required in order to obtain Validation,

Verification, or Registration of such emission reductions and Registration of the ARBOCs pertaining thereto, or (ii) all documents prepared for such purposes.

o. **“Emission Reduction Benefit” or “ERB”** means all benefits and all associated rights, title, and interest, without limitation, in or arising out of the environmental and financial benefits associated with the avoidance of Greenhouse Gas emissions, whether such right, benefit, title, or interest is in existence as of the date of this Agreement or arises thereafter, including, without limitation, any emission reduction credits, verified emission reductions, voluntary emission reductions, offsets, allowances, voluntary carbon units, avoided compliance costs, emission rights and authorizations, including any Reporting Rights.

p. **“Expenses”** means all costs payable to any third party as a consequence of Bluesource’s pursuit of, entering into, or performance of its obligations related to this Agreement and shall include, but not be limited to, the following: (1) forest management regime analysis by Campbell Global; (2) costs related to Documenting, Validating, Verifying, or Registering ARBOCs (including any related engineering expenses); (3) transaction or transfer fees; and (4) any other third party costs or expenses that are reasonably incurred by Bluesource in performing its obligations under this Agreement.

q. **“Force Majeure”** means a flood, drought, earthquake, unusually severe weather, fire, lightning, other act of God, epidemic or pandemic, war, riot, civil disturbance, sabotage, restraint by a Governmental Authority, or any similar occurrence beyond the reasonable control of either Party.

r. **“GHG Reduction”** means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

s. **“GHG Removal”** means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.

t. **“GHG Removal Enhancement”** means a calculated increase in GHG Removals relative to a project baseline.

u. **“Greenhouse Gas” or “GHG”** means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as GHGs under (i) any federal, state or local law or regulation, or (ii) any ARB Program, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

v. **“Greenhouse Gas Regulation” or “GHG Regulation”** means the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, as codified at 17 California Code of Regulations §95800 et seq.

w. **“Inventory Commencement Date”** means the first day following expiration of the termination right set forth in Section 14.3.

x. **“The Nation’s Share of Net Proceeds”** means the applicable percentage of Net Proceeds for the Nation set forth in Article 6.

y. **“Material Reduction”** means any reduction in ARBOCs, as determined by Bluesource, arising from the Nation’s voluntary or intentional activities that result in harvest levels (quantified in cords, MBF, etc.) exceeding Projected Harvests by 10% or more. For purposes of this definition, the term “Projected Harvests” means projected harvests in the Project area, provided to Bluesource by the Nation prior to the initial Project Verification. Bluesource will confirm Projected Harvests levels with the Nation

in writing prior to commencement of initial Project Verification, and the Parties may mutually agree to revise or amend Projected Harvests at any time thereafter, provided that any such revision or amendment will occur no less frequently than once every two years and must be in writing and signed by both Parties.

z. **“Minimum ARBOC Threshold”** means 2,300,000 ARBOCs. As set forth in Section 14.4 of this Agreement, if, upon completion of ARB review of the initial Reporting Period, less than the Minimum ARBOC Threshold is approved for initial ARBOC issuance, the Nation shall have the right to terminate this Agreement, subject to the terms and conditions of Section 14.4.

aa. **“Net Proceeds”** means the Proceeds less Expenses.

bb. **“Offset Project Operator”** or **“OPO”** is defined in §95802 of the GHG Regulation.

cc. **“Parties”** means Bluesource and the Nation collectively and their respective successors and assigns, and **“Party”** means either of them and its successors and assigns.

dd. **“Proceeds”** shall be the total cash amount received by Bluesource from a third party pursuant to a Third Party Sale Agreement as payment for Bluesource’s sale of ARBOCs obtained from the Nation pursuant to this Agreement.

ee. **“Project”** means individually each Project identified on *Exhibit C* (which the Parties may amend from time to time by mutual agreement in writing) and all of the Nation’s efforts, without limitation, to create ARBOCs from improved forestry management or avoided conversion activities on the associated Subject Property.

ff. **“Project Listing Date”** means the date that a Project is listed with an applicable registry.

gg. **“Registration,” “Register,”** or **“Registering”** means the obtaining of any and all necessary recognition, registration, credit, approval, and/or (to the extent obtainable) certification of a Project’s ERBs as ARBOCs under the ARB Program, and includes any required payment of fees for the delisting, retirement, or transfer of ARBOCs.

hh. **“Reporting Period”** means a specific period of time within the Development Period. The first Reporting Period shall begin on the Effective Date and shall continue for a time period to be agreed upon by the Parties, provided that the first Reporting Period shall be for no less than six (6) and no more than twenty-four (24) months. All subsequent Reporting Periods shall begin on the day immediately following the last day of the immediately preceding Reporting Period and shall continue for one year; provided that the final Reporting Period shall be adjusted, if necessary, so that the final Reporting Period shall end on the last day of the Development Period.

ii. **“Reporting Rights”** means the exclusive right to claim and/or report the benefits of any ARBOC to any governmental entity, ARB or private entity, including the exclusive rights to claim and/or report the benefits of any form of acknowledgement or certification related to the ARBOCs arising from a

Project by any government agency or other entity, whether arising under local, state, national, or international laws or regulations relating to climate change or otherwise.

jj. **“Sold”** means transferred to a third party by Bluesource pursuant to a Third Party Sale Agreement and from which Proceeds are actually received by Bluesource from such third party.

kk. **“Subject Property(ies)”** means the property identified on *Exhibit C* for each Project, attached hereto and incorporated herein which the Parties may amend from time to time by mutual agreement in writing.

ll. **“Term”** commences on the Effective Date and continues through the earlier of (i) the date all ARBOCs subject to the Agreement are Sold and Net Proceeds distributed in accordance with this Agreement or (ii) the eighteenth month anniversary of the end of the latest Development Period applicable to a Project subject to this Agreement.

mm. **“Third Party Sale Agreement”** means an agreement of sale between Bluesource and a third party (i.e., not a Party or an affiliate of Bluesource) that provides for the transfer sale of ARBOCs subject to this Agreement to such third party in return for a cash payment by such Third Party to Bluesource.

nn. **“Validation”, “Validate,” or “Validating”** means the confirmation by a Verifier that the Project and Greenhouse Gas emission reductions associated with a Project will qualify as ARBOCs.

oo. **“Verification,” “Verify,” or “Verifying”** means the confirmation by a Verifier of the quantity of Greenhouse Gas emission reductions resulting from a Project during a stipulated time period.

pp. **“Verifier”** means an independent person or entity that meets professional qualification, independence, and other requirements prescribed by the ARB Program to Validate or Verify GHG emission reductions or projects under the ARB Program.

Exhibit B

GENERAL TERMS AND CONDITIONS

1. Rules of Interpretation. Section headings are for convenience only, and shall not affect the interpretation of this Agreement. References to “herein”, “hereto”, “hereby”, “hereunder”, “hereof”, and similar expressions are references to this Agreement as a whole, and not to any particular provision of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. Words importing the singular shall include the plural and vice versa; words importing gender shall include the masculine, feminine, and neutral genders, all as may be applicable by the context. The word “person” shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”. If any conflict exists between the text of this Agreement and the contents of an Exhibit attached hereto, the text of this Agreement shall govern.

2. Publicity. Neither Party shall issue nor allow any press release nor make other public nor web based communication outlining the existence and general benefits of this Agreement without the prior written consent of the other Party.

3. Entire Agreement. This Agreement, together with and including any Exhibit referenced herein or attached hereto, constitutes the full understanding of the Parties and supersedes all prior understandings of the Parties, both written and oral, and no terms, conditions, understandings or agreements purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed the Parties.

4. Force Majeure. In an event of Force Majeure directly affecting either Party, the affected Party shall be temporarily excused from performance for such period of time as is reasonably necessary to resume normal operations, but only if: (i) the impact of the Force Majeure event could not have been prevented by the affected Party’s reasonable precautions or commercially accepted practices, and (ii) the affected Party has used its commercially reasonable efforts to mitigate the impact of the Force Majeure event. Each Party is under an obligation to promptly provide notice to the other Party of any claimed Force Majeure event and keep the other Party reasonably informed regarding the status of the claiming Party’s efforts to resume normal operations. The existence of a condition or event of Force Majeure will not relieve the impacted Party from: (i) other obligations under this Agreement to the extent that performance is not precluded by the condition or event of Force Majeure and (ii) obligations to make payments under this Agreement. Regardless of the excuse of Force Majeure, if the affected Party is not able to perform its obligations within one hundred eighty (180) Days after notifying the non-affected Party of the Force Majeure event, the non-affected Party may terminate the Agreement at any time thereafter.

5. Law Governing Interpretation of Agreement. The laws of the Navajo Nation shall govern the construction and interpretation of this Agreement.

6. Assignment. This Agreement shall be binding upon and inure to the benefit of the Nation and Bluesource and their respective successors and permitted assigns. Bluesource shall have the right to assign its rights (but not its obligations) hereunder as security for indebtedness without the Nation’s consent. Except as set forth in the immediately preceding sentence, neither Party may assign its rights or delegate its duties or obligations hereunder to any third party without the express written consent of the other Party,

which consent shall not be unreasonably withheld. Any purported or attempted assignment in violation of this Section 6 of these General Terms and Conditions shall be null, void, and of no effect.

7. No Agency or Employment Relationship. Bluesource shall be an independent entity from the Nation. Nothing in this Agreement shall be construed to create any agency or employment relationship between Bluesource or any of its employees and the Nation. Bluesource is not eligible to participate in, nor eligible for coverage under, any of the Nation's employee benefit plan or offering. Except as otherwise provided, neither Party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, whether express or implied, on behalf of the other Party.

8. Debarment and Suspension. If Bluesource in its present form or any other identifiable capacity as an individual, business corporation, partnership or other entity is deemed ineligible, debarred, or suspended pursuant to the Navajo Nation Business and Procurement Act, 12 N.N.C. §§ 1501 et seq., or the Navajo Nation Procurement Act, 12 N.N.C. §§ 301 et seq., Bluesource is not legally able to enter into this Agreement and this Agreement shall be null and void unless the factors that warranted the ineligibility, debarment or suspension have been sufficiently addressed as provided by applicable Navajo Nation laws.

9. Headings. The headings set forth in this Agreement are for reference purposes only and will not be considered in the interpretation or enforcement of the provisions of this Agreement.

10. Costs. Each Party shall be responsible for and pay its own legal and other costs associated with the negotiation and execution of this Agreement.

11. Future Appropriations. Nothing in this Agreement shall be construed as obligating the Nation in the expenditure of funds or for future payment of funds in excess of appropriations made under the laws of the Navajo Nation.

12. Severability. If any provision of this Agreement is held invalid by the Courts of the Nation, all remaining provisions which can be implemented shall remain in force and be given full force and effect.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

EXHIBIT C

PROJECT AND SUBJECT PROPERTY

All acres associated with the GIS shapefiles provided to Bluesource by Sadie Johnson, on behalf of The Navajo Nation, on October 2, 2018.

EXHIBIT D

FORM - REQUEST FOR ISSUANCE OF ARB OFFSET CREDITS

THE NAVAJO NATION

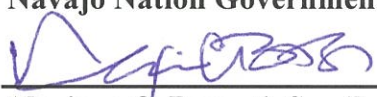
JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



May 5, 2021

MEMORANDUM

TO : ALL 164 Reviewers
Navajo Nation Government

FROM : 
Alexious C. Becenti, Sr., *Forest Manager*
Navajo Forestry Department
Division of Natural Resources

SUBJECT : Document No. 16364 – Carbon Development and Marketing Agreement

The Navajo Forestry Department [DEPARTMENT] requests your assistance. Attached herewith for review and consideration is a Carbon Development and Marketing Agreement [CDMA] between the Navajo Nation and consultant, Bluesource, LLC. This agreement is for the development of a forest carbon project, utilizing the Navajo Nation's forest resource, as briefly described below.

Forest Carbon Offset Project:

Since 2014, the Navajo Nation, through its Navajo Forestry Department, has been pursuing a carbon offset project in an effort to create revenue, optimize the use and management of the Nation's forests, and participate in efforts to reduce carbon footprints. A carbon footprint is the creation of carbon. Carbon emissions contribute to air pollution, including greenhouse gases that are responsible for global warming. The State of California prioritized offsetting carbon footprints through its clean air agency, the California Air Resources Board [CARB]. The CARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. The CARB recognizes four [4] programs to reduce the carbon footprint: renewable portfolio standard, advanced clean cars, low carbon fuel standard, and cap and trade reduction.

The cap and trade reduction program is designed to reduce emissions from California's largest industrial sources. By setting a cap on the level of greenhouse gasses, greenhouse gas emission are reduced. Emissions that exceed the cap level require a permit, known as an allowance. The cap and trade reduction program allows the industry to set the price on carbon through the buying and selling of these allowances. The CARB's cap and trade reduction program is highly regulated and includes participants from around the world, because the benefit of reduced emissions on the

atmosphere is important regardless of the distance between the Nation's forest and the State of California.

The Navajo Nation plans to participate as a seller in the CARB's cap and trade reduction program. This project will provide resources to the Navajo Nation from the sale of emission credits. The attached Carbon Development and Marketing Agreement [CDMA] with Bluesource, LLC enables the Nation to participate in the California market. The Consultant, Bluesource, LLC, was selected through a competitive closed-bid RFQ/RFP process.

As mentioned, the Nation's participation in this carbon offset project will not only generate revenue, but also ensure better management and protection of its forest.

Your assistance in reviewing 164 Document No. 16364 for sufficiency is greatly appreciated. Should you have any additional questions and/or comments, do not hesitate to contact our office at tribal ext. 4007.

Thank you.

Attachment — 164 Document No. 16364

cc: Navajo Forestry Department Files

NAVAJO FORESTRY DEPARTMENT
P.O. BOX 230 · FORT DEFIANCE, AZ 86504
PHONE: (928) 729-4007 · FAX: (928) 729-4225

Document No. 016364Date Issued: 05/04/2021**SECTION 164 REVIEW FORM**Title of Document: Carbon Development Agreement Contact Name: BECENTI SR, ALEXIOUS CHARLESProgram/Division: DIVISION OF NATURAL RESOURCESEmail: acbecenti@navajo-nsn.gov Phone Number: 928-729-4007Division Director Approval for 164A: Dr.RShebala, Natural Resources

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

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

☐	Statement of Policy or Positive Law:			Sufficient	Insufficient
	1. OAG:	_____	Date: _____	☐	☐
☐	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)				
	1. OMB:	_____	Date: _____	☐	☐
	2. OOC:	_____	Date: _____	☐	☐
	3. OAG:	_____	Date: _____	☐	☐

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

☐	Grant/Funding Agreement or amendment:				
	1. Division:	_____	Date: _____	☐	☐
	2. OMB:	_____	Date: _____	☐	☐
	3. OOC:	_____	Date: _____	☐	☐
	4. OAG:	_____	Date: _____	☐	☐
☒	Subcontract/Contract expending or receiving funds or amendment:				
	1. Division:	<u>R Shebala</u>	Date: <u>5.6.21</u>	☒	☐
	2. BRD:	<u>[Signature]</u>	Date: <u>05/10/21</u>	☒	☐
	3. OMB:	<u>[Signature]</u>	Date: <u>5-16-21</u>	☒	☐
	4. OOC:	<u>[Signature]</u>	Date: <u>6-15-2021</u>	☒	☐
	5. OAG:	<u>[Signature]</u>	Date: <u>6/23/21</u>	☒	☐
☐	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:				
	1. Division:	_____	Date: _____	☐	☐
	2. OAG:	_____	Date: _____	☐	☐
☐	M.O.A. or Letter of Assurance expending or receiving funds or amendment:				
	1. Division:	_____	Date: _____	☐	☐
	2. OMB:	_____	Date: _____	☐	☐
	3. OOC:	_____	Date: _____	☐	☐
	4. OAG:	_____	Date: _____	☐	☐



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
6/16/21 @ 2:27p
DATE / TIME
☒ 7 Day Deadline
DOC #: 016364
SAS #:
UNIT: NM

☐ RESUBMITTAL

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

CLIENT TO COMPLETE

DATE OF REQUEST: 6/16/21	ENTITY/DIVISION: Forestry / Natural Resour
CONTACT NAME: Alexius C. Becenti, Sr.	DEPARTMENT: Navajo Forestry
PHONE NUMBER: (928) 429-4007	E-MAIL: acbecenti@navajo-nsn.gov
TITLE OF DOCUMENT: 1164 Document # 016364 - Carbon Development Agreement	

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 6.16.21 3pm	REVIEWING ATTORNEY/ADVOCATE: Erika Pirothe
DATE/TIME OUT OF UNIT: 6.24.21 8:07am	6.25.21

DOJ ATTORNEY / ADVOCATE COMMENTS

legally sufficient. Note that effective date will be upon approval of limited waiver of sovereign immunity.

REVIEWED BY: (PRINT)	DATE / TIME	SURNAMED BY: (PRINT)	DATE / TIME
E. Pirothe	6/17/21 11:21	Blackhat	6/23/21 4:47pm

EMAIL: DOJ Secretary Called: Alexious for Document Pick Up on 6.24.21 at 8:07am By: CJ

PICKED UP BY: (PRINT) DATE / TIME:

NNDOJ/DRRF-July 2013

NNDOJ/DNR outside counsel drafted agreement w/ consultant. Actual project implementation needs limited waiver for CRB. Per OOC question and recommendations, Forestry will develop FUP 10 percentage of revenue generated can cover operational costs. -EP

- Forestry -

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



Memorandum:

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

From: 
Robert Willie, Accounting Manager
Office of the Controller

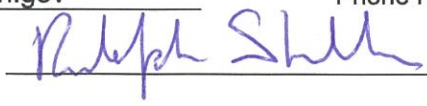
Date: June 15, 2021

Subject: 0164-016364- Carbon Development Agreement.

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

1. Document indicates that there is the possibility of revenue. Will there be revenue generated to be returned to the Navajo Nation? If so the funds should be deposited into the General Fund.
2. If the program is seeking to utilize the revenue for it's own program the revenues would need to be able to support the programs expenses. A fund management plan would need to be developed and passed through the committees in order to utilize.

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

Document No. 016778Date Issued: 07/12/2021**SECTION 164 REVIEW FORM**Title of Document: DNR/Forestry Dept Contact Name: ALLAN, ROBERT OLAVProgram/Division: DIVISION OF NATURAL RESOURCESEmail: roallan@navajo-nsn.gov Phone Number: (928)871-7699Division Director Approval for 164A: 

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

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

☒	Statement of Policy or Positive Law:		Sufficient	Insufficient
	1. OAG: _____	Date: _____	☐	☐
☐	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)			
	1. OMB: _____	Date: _____	☐	☐
	2. OOC: _____	Date: _____	☐	☐
	3. OAG: _____	Date: _____	☐	☐

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

☐	Grant/Funding Agreement or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐
☐	Subcontract/Contract expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. BRD: _____	Date: _____	☐	☐
	3. OMB: _____	Date: _____	☐	☐
	4. OOC: _____	Date: _____	☐	☐
	5. OAG: _____	Date: _____	☐	☐
☐	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OAG: _____	Date: _____	☐	☐
☐	M.O.A. or Letter of Assurance expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐

Document No. 016778Date Issued: 07/12/2021**SECTION 164 REVIEW FORM**Title of Document: DNR/Forestry Dept Contact Name: ALLAN, ROBERT OLAVProgram/Division: DIVISION OF NATURAL RESOURCESEmail: roallan@navajo-nsn.gov Phone Number: (928)871-7699Division Director Approval for 164A: 

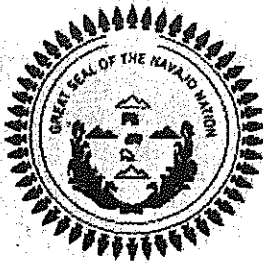
Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency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

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

☒	Statement of Policy or Positive Law:		Sufficient	Insufficient
	1. OAG: <u></u>	Date: <u>7/13/21</u>	☒	☐
☐	IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)			
	1. OMB: _____	Date: _____	☐	☐
	2. OOC: _____	Date: _____	☐	☐
	3. OAG: _____	Date: _____	☐	☐

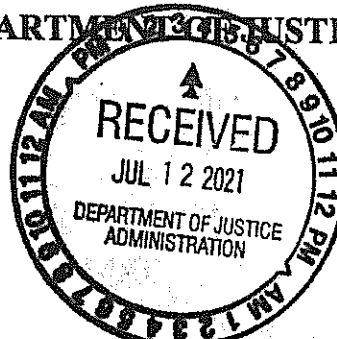
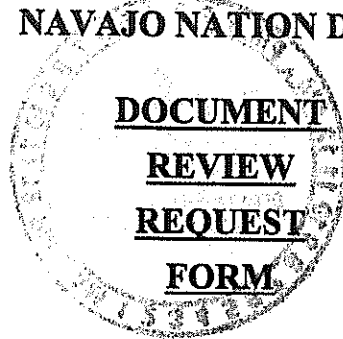
Section 164(B) Final approval rests with the President of the Navajo Nation

☐	Grant/Funding Agreement or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐
☐	Subcontract/Contract expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. BRD: _____	Date: _____	☐	☐
	3. OMB: _____	Date: _____	☐	☐
	4. OOC: _____	Date: _____	☐	☐
	5. OAG: _____	Date: _____	☐	☐
☐	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OAG: _____	Date: _____	☐	☐
☐	M.O.A. or Letter of Assurance expending or receiving funds or amendment:			
	1. Division: _____	Date: _____	☐	☐
	2. OMB: _____	Date: _____	☐	☐
	3. OOC: _____	Date: _____	☐	☐
	4. OAG: _____	Date: _____	☐	☐



☐ RESUBMITTAL

NAVAJO NATION DEPARTMENT OF JUSTICE



DOJ	
7/12/21 @ 3:31pm	
DATE / TIME	
☐ 7 Day Deadline	
DOC #:	016778
SAS #:	
UNIT:	NM

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CLIENT TO COMPLETE			
DATE OF REQUEST: 7/12/21		ENTITY/DIVISION: DNR	
CONTACT NAME: Robert Allan		DEPARTMENT: Admin	
PHONE NUMBER: ext. 6592		E-MAIL: roallan@navajonm.gov	
TITLE OF DOCUMENT: Limited Waiver of Gov. Immunity, Carbon Sequestration Credits			
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT: 7-12-21 3:51 PM		REVIEWING ATTORNEY/ADVOCATE: E. Pirotte → Emailed. B. V. Blackhat 7-21-21	
DATE/TIME OUT OF UNIT: 7-15-21 @ 1:10 PM			
DOJ ATTORNEY / ADVOCATE COMMENTS			
Legally sufficient.			
Note that Exhibit C "Project Listing" is not included with CDMA.			
REVIEWED BY: (PRINT) E. Pirotte		DATE / TIME 07/13/21 1203	
SURNAMED BY: (PRINT) V. Blackhat		DATE / TIME 7/13/21 12:57pm	
DOJ Secretary Called: Robert Allan for Document Pick Up on 7-15-21 at 1pm By: B			
PICKED UP BY: (PRINT)		DATE / TIME:	

NNDOJ/DRRF-July 2013

COMPLETED

NAVAJO NATION

1026

4/19/2022

Navajo Nation Council 2022 Spring Session

05:14:48 PM

Amd# to Amd#	Legislation 0208-21: Approving	PASSED
MOT Yazzie	a Limited Waiver of Sovereign	
SEC Stewart, W	Immunity of the Navajo Nation to	
	Authorize the Navajo Nation to..	

Yeas : 17

Nays : 6

Excused : 0

Not Voting : 0

Yea : 17

Begay, E	Freeland, M	Stewart, W	Walker, T
Begay, K	Henio, J	Tso	Wauneka, E
Begay, P	Nez, R	Tso, C	Yazzie
Brown	Smith	Tso, E	Yellowhair
Daniels			

Nay : 6

Charles-Newton	Halona, P	Slater, C	Tso, D
Crotty	James, V		

Excused : 0

Not Voting : 0

Presiding Speaker: Damon