

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCAU-65-18 BY
APPROVING A WAIVER OF CONSIDERATION OF \$623,321.05 AND APPROVING
A WAVIER OF BOND, INSURANCE, OR ALTERNATIVE FORM OF SECURITY TO
THE CITY OF GALLUP

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. The Resources and Development Committee approved RDCAU-65-18 and the resolution was certified on August 15, 2018. The resolution was entitled AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A RIGHTS-OF-WAY TO THE CITY OF GALLUP OF MCKINLEY COUNTY, NEW MEXICO TO CONSTRUCT, OPERATE AND MAINTAIN THE NAVAJO - GALLUP WATER SUPPLY PROJECT REACH 27.7B LOCATED ON TRUST LAND IN CHURCHROCK CHAPTER VICINITY (MCKINLEY COUNTY, NEW MEXICO). Exhibit G of Resolution RDCAU-65-18, is attached as **Exhibit 1**.
- B. The City of Gallup requests amendments to the RDCAU-65-18.
- C. The City of Gallup requests a waiver of valuation and waiver of compensation of \$623,321.05 for the right-of-way. See, 25 CFR § 169.110 (a) (1) (2).
- D. The City of Gallup requests a waiver of bond, insurance, or alternative form of security. See, 25 CFR § 169.103 (f) (2).

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby amends RDCAU-65-18 by waiving valuation and waiving compensation of \$623,321.05 for the right-of-way because it has determined that accepting the agreed-upon compensation and waiving valuation is in its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.
- B. The Resources and Development Committee of the Navajo Nation Council hereby amends RDCAU-65-18 by waiving the requirement for a bond, insurance or alternative form of security on the part of the Grantee, based on the determination that the project benefits the Navajo Nation and such a waiver is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.103 (f) (2).
- C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Navajo Division of Transportation Administrative Complex, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 3rd day of July 2019.



Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Thomas Walker, Jr.
Second: Honorable Mark Freeland

Chairperson Rickie Nez not voting.

EXHIBIT

1

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A RIGHTS-OF-WAY TO THE CITY OF GALLUP OF MCKINLEY COUNTY, NEW MEXICO TO CONSTRUCT, OPERATE AND MAINTAIN THE NAVAJO - GALLUP WATER SUPPLY PROJECT REACH 27.7B LOCATED ON TRIBAL TRUST LAND IN CHURCHROCK CHAPTER VICINITY (MCKINLEY COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. The City of Gallup, Post Office Box 1270, Gallup, New Mexico 87305, has submitted a rights-of-way application to construct, operate and maintain a 120 foot roadway and public utility corridor to include a water line, 115V transmission line, 13.8V distribution line, sewerline and communications line for access and utility maintenance purposes. This is identified as Reach 27.7B of Navajo Gallup Water Supply Project and is located on, over and across Navajo Nation Trust Lands in the Churchrock Chapter vicinity, McKinley County, New Mexico. See Rights-of-Way Application attached hereto and incorporated as **Exhibit A**.
- B. The proposed rights-of-way consists of Navajo Nation Trust Lands located in McKinley County, New Mexico, and the location is more particularly described on the Rights-of-Way Application (easement description) and Final Plat and Survey Maps attached hereto and incorporated herein as **Exhibits A and B**.

- C. The General Land Development Department, Field Investigation for City of Gallup Reach 27.7B ROW Consent dated January 31, 2018, attached as **Exhibit C**, has determined that land users have been identified and given consent.
- D. The environmental and archaeological studies have been completed and are attached hereto as **Exhibit D**.
- E. The Churchrock Chapter through Resolution CRC-110620-B attached as **Exhibit E**, supports the design, construction and implementation of the Navajo-Gallup Water Supply Project.
- F. The application for the Rights-of-Way as submitted by the City of Gallup has completed the Executive Official Review and has been reviewed by various Navajo Nation Departments, including but not limited to, Fish and Wildlife, Historic Preservation, Minerals, Navajo Nation Environmental Protection, Division of Natural Resources and the Department of Justice and "Approved" or found "Sufficient". See **Exhibit F**.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby grants approval of a Rights-of-Way to the City of Gallup to construct, operate and maintain Reach 27.7B of the Navajo Gallup Water Supply Project located on Navajo Nation Trust Lands in the Churchrock Chapter vicinity, McKinley County, New Mexico. The location is more particularly described on the map attached hereto as **Exhibits A and B**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the Rights-of-Way subject to, but not limited to, the terms and conditions incorporated herein as **Exhibit G**.
- C. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 15th day of August 2018.

A handwritten signature in black ink, appearing to be 'Alton Joe Shepherd', written over a horizontal line.

Alton Joe Shepherd, Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

Chairperson Alton Joe Shepherd not voting.

EXHIBIT "___"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS

CITY OF GALLUP (GRANTEE)

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.
2. Consideration for the right-of-way is assessed at \$ 623,321.05 and shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within 10 days of approval of and consent to the grant of the right-of-way by the Navajo Nation.

If consideration has been waived, the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of water and sewer pipelines, road, electric lines, and communications line. The Grantee may not develop, use or occupy the right-of-way for any other purpose, nor allow others to use or occupy the right-of-way for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169; subject to the terms of this right-of-way.
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.

6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their 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 right-of-way by the Grantee.
12. The Grantee shall not assign, convey, transfer or sublet, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any term or condition of the grant or of applicable laws or regulations;
 - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period; and
 - c. The use of the land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.
 - d. An abandonment of the right-of-way.
14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located thereon.

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

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council
Regular Meeting

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0161-19: An Action Relating to Resources and Development Committee; Amending RDCAU-65-18 by Approving a Waiver of Consideration of \$623,321.05, and Approving A Waiver of Bond, Insurance, or Alternative Form of Security to the City of Gallup.
Sponsor: Honorable Edmund Yazzie

Date: July 3, 2019

Meeting Location: NDOT Administrative Complex, Tse Bonito, NM

MAIN MOTION:

M: Thomas Walker, Jr. S: Mark A. Freeland Vote: 5-0-1 (CNV)
Yeas: Thomas Walker, Jr., Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay,
Jr., and Herman M. Daniels,
Nays: None
Excused: None



Honorable Rickie Nez, Presiding Chairman
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services