

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0367-19

**DATE:** November 25, 2019

**TITLE OF RESOLUTION:** AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'ÍYÁTI' COMMITTEES; REQUESTING THAT THE GOVERNOR OF THE STATE OF NEW MEXICO AND NEW MEXICO HUMAN SERVICES DEPARTMENT COLLABORATE WITH THE NAAT'AANII DEVELOPMENT CORPORATION TO SECURE ALL NECESSARY APPROVALS FOR EXPEDITIOUSLY LAUNCHING THE NAAT'AANII DEVELOPMENT CORPORATION – MOLINA HEALTHCARE, INC. INDIAN MANAGED CARE ENTITY; SUPPORTING PASSIVE ENROLLMENT FOR THE NAAT'AANII DEVELOPMENT CORPORATION – MOLINA HEALTHCARE, INC MANAGED CARE PROGRAM

**PURPOSE:** This resolution, if approved, will request the State of New Mexico to issue all necessary approvals to the Naat'Aanii Development Corporation – Molina Healthcare, Inc. to launch an Indian Managed Care Entity utilizing a passive enrollment system.

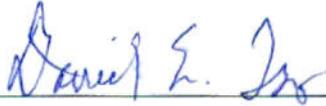
**This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: High  
Website Posting Time/Date: 2:11pm 11-27-19  
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Eligible for Action: 12-03-19

Health Education & Human Services Committee  
Thence  
Resources & Development Committee  
Thence  
Naabik'iyáti' Committee

1 PROPOSED STANDING COMMITTEE RESOLUTION  
2 24<sup>th</sup> NAVAJO NATION COUNCIL—First Year, 2019

3 INTRODUCED BY

4   
5 \_\_\_\_\_

6 Primary Sponsor 

7  
8 TRACKING NO. 0367-19

9  
10 AN ACTION

11 RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND  
12 NAABIK'ÍYÁTI' COMMITTEES; REQUESTING THAT THE GOVERNOR  
13 OF THE STATE OF NEW MEXICO AND NEW MEXICO HUMAN  
14 SERVICES DEPARTMENT COLLABORATE WITH THE NAAT'AANII  
15 DEVELOPMENT CORPORATION TO SECURE ALL NECESSARY  
16 APPROVALS FOR EXPEDITIOUSLY LAUNCHING THE NAAT'AANII  
17 DEVELOPMENT CORPORATION – MOLINA HEALTHCARE, INC.  
18 INDIAN MANAGED CARE ENTITY; SUPPORTING PASSIVE  
19 ENROLLMENT FOR THE NAAT'AANII DEVELOPMENT CORPORATION  
20 – MOLINA HEALTHCARE, INC MANAGED CARE PROGRAM

21  
22 WHEREAS:

- 23 A. The Navajo Nation established the Health, Education, and Human Services Committee  
24 as a Navajo Nation Council standing committee and as such empowered the Health,  
25 Education, and Human Services Committee to establish Navajo Nation policy  
26 governing health and social services of the Navajo Nation and its tribal organizations,  
27 entities, and enterprises. 2 N.N.C. §§ 400, 401 (B)(1).  
28 B. The Navajo Nation established the Naabik'iyáti' Committee as a Navajo Nation  
29 Council standing committee and as such empowered the Naabik'iyáti' Committee to  
30 monitor the programs and activities of federal and state departments and to assist

1 development of programs designed to serve the Navajo people through  
2 intergovernmental relationships between the Navajo Nation and such departments. 2  
3 N.N.C. § 700 (A), *see* 2 N.N.C. § 701 (A)(7).

4 C. The Navajo Nation has government-to-government relationships with the State of New  
5 Mexico and the United States and the sovereign right to establish managed health care  
6 services for its members.

7 D. Medicaid is a health insurance program that serves low-income children and adults,  
8 individuals with disabilities, and seniors, including Native Americans and Alaska  
9 Natives in all categories. Medicaid is jointly funded by the states and federal  
10 government, but administered by the states and within a framework established by  
11 federal statutes, regulations and guidance, states can choose how to design aspects of  
12 their Medicaid program. Under Section 1115 of the Social Security Act, states may  
13 apply for federal permission to implement and test new approaches to administering  
14 Medicaid programs.

15 E. There are approximately 81,000 Medicaid eligible Navajos living in New Mexico who  
16 experience a heavier disease burden, including a thirty-one (31%) percent higher  
17 mortality rate, than the overall United States rate. This heavier disease burden is  
18 buoyed by the socio-economic hurdles Navajos face in accessing the healthcare system,  
19 especially physical and behavioral specialty providers, and further exacerbated by the  
20 reality that current Medicaid benefit packages do not integrate key components of  
21 Navajo culture. As a result, Navajos access care at lower rates and experience worse  
22 outcomes when compared to the average Medicaid population.

23 F. In 2012, pursuant to the reauthorization of the Affordable Care Act and amendment of  
24 the Indian Health Care Improvement Act Reauthorization and Extension Act, the  
25 United States' Congress tasked the Centers for Medicare and Medicaid Services  
26 ("CMS") with assessing the feasibility of establishing a Navajo Medicaid Agency  
27 within the borders of the Navajo Nation for the express purpose of improving the  
28 provision of Medicaid benefits to American Indians and Alaska Natives and their  
29 families residing within the Navajo Nation. CMS's findings determined that such an  
30

1 approach would be feasible and could provide exponential benefits to underserved  
2 Navajos and their families.

3 G. Recognizing the dire state of the Medicaid eligible Native American and Alaska Native  
4 population's access to healthcare in New Mexico, in 2017, the State's Medicaid  
5 program (Centennial Care 2.0) received a 42 CFR § 1115 Waiver approved by CMS  
6 authorizing Centennial Care to (1) collaborate with Indian Managed Care Entities  
7 ("IMCE"), including a pilot project with the Navajo Nation or a Navajo Nation entity;  
8 and (2) require American Indian and Alaska Native populations within specific zip  
9 codes or zones to enroll in a managed care delivery system. 42 CFR § 1115, *see also*  
10 CMS' Indian Provisions in the Final Medicaid and Children's Health Insurance  
11 Program Managed Care Regulations attached as **Exhibit A**.

12 H. A managed care organization ("MCO") is a health care organization that offers managed  
13 care health plans to eligible enrollees using a specific provider network and offering  
14 specific services and products. An IMCE (Indian Managed Care Entity) is an MCO that  
15 is controlled by a Tribe or Tribal Organization and offers health services and products  
16 specifically tailored to American Indians and Alaska Natives, as well as specific tribal  
17 populations. *See Exhibit A, see also* Naat'aanii Development Corporation, Passive  
18 Enrollment Preserves Diné Choice Navajo Indian Managed Care Entity attached as  
19 **Exhibit B**.

20 I. The Naat'aanii Development Corporation ("NDC") is a federally-chartered for-profit  
21 corporation formed by the Navajo Nation under Section 17 of the Indian  
22 Reorganization Act; its Charter was approved by the Secretary of the Interior and  
23 ratified by the Navajo Nation Council under Resolution No. CO-69-17 to advance  
24 economic development programs and initiatives in markets on and off Navajo Nation  
25 lands. Resolution No. CO-69-17 attached as **Exhibit C**.

26 J. NDC was the only respondent to the January, 2018 Request for Information  
27 commissioned by the state of New Mexico's Human Services Department ("HSD")  
28 soliciting proposals for how an IMCE could be established to address the healthcare  
29 needs of American Indians and Alaskan Natives residing within New Mexico's  
30 borders.

- 1 K. NDC has subcontracted with Molina Healthcare Inc. to develop an ICME and ensure  
2 that the Navajo people are offered a Medicaid managed care program that (a) is  
3 dedicated to American Indians and Alaska Natives and their families residing within  
4 the Navajo Nation; (b) provides access to quality care; and (c) is tailored to American  
5 Indian, specifically Navajo, and Alaska Native health, cultural, and geographical  
6 needs.
- 7 L. NDC will contract exclusively and directly with HSD as a Medicaid managed care  
8 provider, and in partnership with its subcontractor, Molina Healthcare Inc., will offer  
9 a culturally competent Medicaid program, compliant with all federal and state  
10 statutes, regulations and rules, to eligible Navajos and their families that is sensitive  
11 to Navajo, American Indian and Alaska Native healthcare needs.
- 12 M. The managed care solution that the NDC-Molina IMCE will bring to eligible  
13 American Indians and Alaska Natives residing within the Navajo Nation will (1)  
14 better align healthcare value and quality through programs that improve outcomes,  
15 like care coordination and utilization management; (2) improve access to care for  
16 American Indians and Alaska Natives by emphasizing the role of primary care  
17 providers who identify and treat conditions and connect patients with specialists for  
18 more complex needs; (3) provide services in a culturally competent manner that are  
19 uniquely tailored to the Navajo Nation population and their family members.
- 20 N. The NDC-Molina IMCE will first be geographically focused around the Northwest  
21 quadrant of New Mexico but will cover members wherever they travel throughout the  
22 Navajo Nation including the States of New Mexico, Arizona and Utah and will  
23 include all Centennial Care covered benefits including key tribal services currently  
24 provided under Centennial Care (traditional healing, tribal care coordinators within  
25 IHS facilities, tribal peer specialists, etc.), and will look to develop programs that  
26 address key social determinants of health (housing, employment, food insecurity and  
27 enhanced transportation) and support health improvement for American Indians and  
28 Alaska Natives residing within the Navajo Nation.
- 29 O. The NDC-Molina IMCE will also give members access to a comprehensive statewide  
30 provider network first in New Mexico and then in Arizona and Utah including

1 primary care providers, specialists, hospitals, core service agencies, and also enable  
2 American Indians and Alaska Natives to continue to have direct access to Indian  
3 Health Services facilities and providers for their healthcare needs.

- 4 P. The access of American Indians and Alaska Natives residing within the Navajo  
5 Nation to all of the benefits of the NDC-Molina managed care program will be  
6 maximized if HSD implements passive enrollments mechanisms to ensure that the  
7 majority of the 81,000 American Indians and Alaska Natives residing within the New  
8 Mexico portion of the Navajo Nation are automatically enrolled in the NDC-Molina  
9 managed care program until they choose to opt out. *See Naat'aanii Development*  
10 *Corporation and Molina Healthcare, New Mexico Indian Managed Care Entity:*  
11 *Potential Opportunities* attached as **Exhibit D**.

12  
13 **THEREFORE, BE IT RESOLVED:**

- 14 A. The Navajo Nation hereby urges the Governor of the State of New Mexico and the New  
15 Mexico Human Services Department to collaborate with the Naat'aanii Development  
16 Corporation to expeditiously secure all necessary regulatory approvals, contracts and  
17 infrastructure for launching the Naat'aanii Development Corporation – Molina  
18 Healthcare, Inc. Indian Managed Care Entity and have it fully operational in New  
19 Mexico in the first quarter of 2020 and in Arizona and Utah thereafter.
- 20 B. The Navajo Nation hereby also urges the Governor of the State of New Mexico and the  
21 New Mexico Human Services Department to implement passive enrollment  
22 mechanisms that will ensure enrollment of the majority of the 81,000 American Indians  
23 and Alaska Natives residing within the Navajo Nation into the Naat'aanii Development  
24 Corporation – Molina Healthcare, Inc. managed care program.
- 25 C. The Navajo Nation hereby further urges the Governor of the State of New Mexico and  
26 the New Mexico Human Services Department to take those steps necessary to ensure  
27 that healthcare decisions can be made collectively by a family unit and that non-  
28 American Indian and non-Alaska Natives family members of an eligible individual be  
29 allowed to enroll in the Naat'aanii Development Corporation – Molina Healthcare, Inc.  
30 managed care program.

## ***CMCS Informational Bulletin***



**DATE:** December 14, 2016

**FROM:** Vikki Wachino  
Director  
Center for Medicaid & CHIP Services

### **SUBJECT: Indian Provisions in the Final Medicaid and Children’s Health Insurance Program Managed Care Regulations**

The Center for Medicaid and CHIP Services (CMCS) is issuing this Informational Bulletin to summarize the relevant Indian provisions of the final Medicaid and the Children’s Health Insurance Program (CHIP) managed care regulation into one document, clarify current statute and regulation regarding mandatory enrollment of Indians into managed care, and provide sample language for an Indian Addendum that can be offered to managed care plans on a voluntary basis when executing network provider agreements with Indian health care providers (IHCPs).

#### Introduction

On April 25, 2016, CMS published a final rule on managed care in Medicaid and CHIP. The final rule is available at <https://www.federalregister.gov/articles/2016/05/06/2016-09581/medicaid-and-childrens-health-insurance-program-chip-programs-medicicaid-managed-care-chip-delivered>.

The final rule codifies a range of Indian managed care protections, including those in section 1932(h) of the Social Security Act (Act), as added by section 5006 of American Recovery and Reinvestment Act of 2009 (ARRA). These provisions allow Indians enrolled in Medicaid and CHIP managed care plans to continue to receive services from an IHCP and ensures IHCPs are reimbursed appropriately for services provided.

The final rule addresses other Tribal issues, such as sufficient network and payment requirements for managed care plans that serve Indians, network provider agreements with IHCPs, state-Tribal consultation requirements, and referrals and prior authorization requirements. The Indian-specific provisions are located in the Medicaid rules at §438.14, and made applicable in CHIP by a cross reference in the CHIP rules at §457.1209. They are titled: “Standards for Contracts Involving Indians, Indian Health Care Providers and Indian Managed Care Entities.” These provisions must be implemented for Medicaid managed care plans by the start of the rating period for contracts starting on or after July 1, 2017, noting that the Indian managed care protections in 1932(h) were effective July 1, 2009. (The rating period is the 12 month contract period during which a particular rate is certified.) States with separate CHIP programs<sup>1</sup> that have plans that contract separately from their Medicaid managed care plans must

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<sup>1</sup> If you have further questions concerning a CHIP program in a particular state, contact the state CHIP program.

come into compliance with these provisions no later than the state fiscal year beginning on or after July 1, 2018.

CMS engaged with Tribes throughout the rulemaking process and received several comments from Tribes and Tribal organizations which were incorporated into the final rule to the extent possible. CMS also engaged with Tribes in the development of this Informational Bulletin.

**Specific Provisions in the Final Rule Applicable to Medicaid and CHIP that Impact American Indians and Alaska Natives and Indian Health Care Providers.**

The final rule implements section 1932(h) of the Social Security Act (the Act) which added additional protections for the treatment of Indians, Indian health care providers and Indian managed care entities in Medicaid and CHIP managed care programs. Section 1932(h) was added to the Act by section 5006(d) of the American Reinvestment and Recovery Act of 2009 (ARRA). The rule applies the Indian protections in section 1932(a)(2)(C) and 1932(h) of the Act, to all types of managed care programs, including Managed Care Organizations (MCO), Prepaid Inpatient Health Plans (PIHPs), Prepaid Ambulatory Health Plans (PAHPs), Primary Care Case Management programs (PCCM), and Primary Care Case Management Entities (PCCM Entities), as applicable. In this bulletin, we collectively refer to these entities as, “managed care plans.”

*Definitions*

The final rule defines the following terms consistent with statutory and existing regulatory definitions.

“Indian” means any individual defined at 25 USC 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR 136.12. This means the individual is a member of a federally recognized Indian Tribe or resides in an urban center and meets one or more of the following criteria:

- Is a member of a Tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendant, in the first or second degree, of any such member;
- Is an Eskimo or Aleut or other Alaska Native;
- Is considered by the Secretary of the Interior to be an Indian for any purpose;
- Is determined to be an Indian under regulations issued by the Secretary;
- Is considered by the Secretary of the Interior to be an Indian for any purpose; or
- Is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

“Indian Health Care Provider (IHCP)” means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

“Indian Managed Care Entity (IMCE),” means a MCO, PIHP, PAHP, PCCM, or PCCM entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C) of the Act) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of one or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

*Network Sufficiency Standards and Provider Choice*

The final rule at §§438.14(b)(1) and 457.1209 requires every MCO, PIHP, PAHP, or PCCM entity, to the extent the PCCM entity has a provider network, to demonstrate that there are sufficient IHCPs participating in the network to ensure timely access to services available under the contract from IHCPs for Indian enrollees who are eligible to receive services. In the event that timely access to IHCPs in network cannot be guaranteed due to few or no network participating IHCPs, §§438.14(b)(5) and 457.1209 provides that the sufficiency standard in §§438.14(b)(1) and 457.1209 is satisfied if (1) Indian enrollees are permitted by the MCO, PIHP, PAHP, or PCCM entity (if applicable) to access out-of-state IHCPs or (2) this circumstance is deemed a good cause reason under the managed care plan contract for Indian enrollees to disenroll from the state's managed care program into fee-for-service in accordance with §§438.56(c) and 457.1212.

The final rule at §§438.14(b)(3) and 457.1209 permits any Indian who is enrolled in a non-Indian managed care plan and eligible to receive services from a network IHCP to choose that IHCP as his or her primary care provider, as long as that provider has the capacity to provide the services.

*Payment and Contracting*

When an IHCP is enrolled in Medicaid or CHIP as a federally qualified health center (FQHC) but is not a participating provider with a MCO, PIHP, PAHP, or PCCM entity, §§438.14(c)(1) and 457.1209 requires that the IHCP be paid the FQHC payment rate under the state plan, including any supplemental payment due from the state.

When an IHCP is not enrolled in Medicaid or CHIP as a FQHC, and regardless of whether the IHCP participates in the network of an MCO, PIHP, PAHP and PCCM entity, §438.14(c)(2) and §457.1209 requires that the IHCP receive the applicable encounter rate published annually in the Federal Register by IHS, or in the absence of a published encounter rate, the amount it would receive if the services were provided under the state plan's FFS payment methodology.

Per §§438.14(c)(3) and 457.1209, when the amount an IHCP receives from a MCO, PIHP, PAHP, or PCCM entity is less than the applicable encounter or fee-for-service rate, whichever is applicable, the state must make a supplemental payment to the IHCP to make up the difference between the amount the MCO, PIHP, PAHP, or PCCM entity pays and the amount the IHCP would have received under FFS or the applicable encounter rate.

*Indian Managed Care Entity (IMCE)*

The rule at §§438.14(d) and 457.1209 codifies provisions of section 1932(h) that define IMCEs and set out a special rule for enrollment in an IMCE. The special enrollment rule permits an IMCE to restrict its enrollment to Indians in the same manner as IHCPs may restrict the delivery of services to Indians.

*Avoiding Duplicate Visits for Referrals*

The final rule at §§438.14(b)(6) and 457.1209 adds a new requirement to specify that MCOs, PIHPs, PAHPs, and PCCM entities (if applicable)s must permit an out-of-network IHCP to refer an Indian to a network provider for covered services. This provision is intended to avoid duplicate visits to a network provider to obtain a referral and any delay in treatment when referrals are made under these circumstances.

*Auto-assignment*

When auto-assigning Indians to primary care physicians (PCP), managed care plans should review their auto-assignment algorithm to ensure that an appropriate logic is used to accomplish the most appropriate PCP assignment. Such criteria could include an enrollee's historical relationship with a PCP. Additionally, managed care plans should ensure that information on the process for changing PCPs is easily accessible and, at a minimum, described in the enrollee handbook and on the managed care plan's website as required in §§438.10(f)(2)(x), §438.10(f)(3), and 457.1207.

**Mandatory Enrollment of Indians into Medicaid Managed Care**

To require Medicaid or CHIP beneficiaries to enroll in managed care to receive coverage, a state must obtain approval from CMS either through a Medicaid state plan amendment, a 1915(b) waiver, or through the section 1115 demonstration authority. States also have the option to exempt Indians from mandatory managed care. Consistent with the CMS Tribal Consultation Policy, and the requirements of section 1902(a)(73) of the Act, added by ARRA §5006(e), states are required to engage in a meaningful consultation process with federally recognized Tribes and/or IHCPs located in their state prior to the submission of a SPA, waiver, or demonstration having Tribal implications.

The final rule reiterates previous CMS guidance and transparency requirements for Medicaid demonstrations and Medicaid waivers that impact Indians and Tribes. States must consult with Tribes in accordance with the state's Tribal consultation policy if the state is proposing to mandate Indians into managed care (MCOs, PIHP, or PIHP) to receive coverage. Because states have authority to exclude Indians from mandatory enrollment into managed care, states should, through Tribal consultation, consider such factors as access to specialty providers, contracting and payment difficulties with MCEs, and ensuring continued access to culturally appropriate providers before a decision is made to mandatorily enroll Indians into managed care.

*Medicaid State Plan*

Through a state plan amendment that meets standards set forth in section 1932 of the Act, states can implement a mandatory managed care delivery system for certain populations. However, section 1932(h) of the Act prohibits states from mandatory enrollment of an individual who is an Indian unless the MCO, PIHP, PAHP, PCCM or PCCM entity contracted with the state is an IMCE.

*1915(b) Waiver*

CMS may grant a waiver under section 1915(b) of the Act that permits a state to require all Medicaid beneficiaries to enroll in a managed care delivery system, including Indians. However, states have the option to exempt Indians from a 1915(b) mandatory managed care waiver request in light of the special statutory treatment of Indians in federal statutes and other considerations listed above. In reviewing such waiver requests, CMS will consider any input the state received through its state-Tribal consultation process. Frequently, through Tribal consultation, a state and the Tribes could reach mutual consensus to exempt Indians from 1915(b) managed care waivers.

*1115(a) Demonstration*

Section 1115(a) of the Act authorizes the Secretary to waive provisions of section 1902 of the Act and grant expenditure authority to treat demonstration costs as federally matchable expenditures under section 1903 of the Act. As part of a section 1115(a) demonstration project, CMS may authorize mandatory enrollment in managed care programs for Medicaid beneficiaries, including for dually eligible

beneficiaries, Indians, and children with special health care needs. Demonstration approval is discretionary, and must be based on a finding that the demonstration is likely to promote objectives of the Medicaid program. Similar to the 1915(b) authority, CMS will consider any input the state received in the Tribal consultation process. In addition, there are opportunities for Tribal consultation through the CMS consultation process and the public comment process at the federal level under the Medicaid procedural rules at §431.416. States have the option to exempt Indian populations from mandatory enrollment in a managed care delivery system (permitting Indian populations to obtain access to health care through a fee for service delivery system) in light of the special statutory treatment of Indians in federal statutes concerning Medicaid managed care.

Historically, as a result of state-Tribal consultation and CMS-Tribal consultation with participation from the state, CMS has not approved section 1115(a) demonstrations that have mandated Indians into managed care; instead managed care enrollment has been voluntary. We strongly encourage states and Tribes to engage in meaningful consultation when considering mandating Indians into managed care. States are required to consult consistent with the process outlined in its approved ARRA Tribal consultation state plan amendment.

### **CHIP State Plan**

Section 1932(h) of the Act (made applicable to CHIP through section 2107(e)(1)(M) of the Act) prohibits states from mandatory enrollment of an individual who is an Indian unless the MCO, PIHP, PAHP, PCCM or PCCM entity contracted with the state is an IMCE. CMS expects that states will continue to submit any planned managed care program changes through the state plan amendment process and comply with their Tribal consultation process.

### **Indian Managed Care Addendum**

Consistent with the rule, this guidance provides sample language for a Medicaid and CHIP Indian Managed Care Addendum (“ITU Addendum”). Indian Tribes are entitled to special protections and provisions under federal law, which are described further in Section II of the ITU Addendum. The ITU Addendum outlines all the federal laws, regulations, and protections that are binding on MCOs, PIHPs, PAHPs, and PCCM entities (if applicable) and identifies several specific provisions that have been established in federal law that apply when contracting with IHCP. The use of this ITU Addendum benefits both MCOs, PIHPs, PAHPs, PCCM entities and IHCPs by lowering the perceived barriers to contracting, assuring that key federal laws are applied when contracting with IHCPs, and minimizing potential disputes. For example, MCOs, PIHPs, and PAHPs typically require participating providers to have private malpractice insurance. However, the ITU Addendum explains that IHCPs, when operating under a contract or compact with IHS to carry out programs, services, functions, and activities, (or programs thereof) of the IHS, are covered by federal tort immunity and private malpractice insurance is not required.

We anticipate that offering contracts that include an ITU Addendum will provide managed care plans with an efficient way to establish network provider agreements with IHCPs, and that such agreements include the federal protections for IHCPs. Furthermore, the ITU Addendum helps to integrate IHCPs into managed care networks and ensures that Indian beneficiaries have access to a comprehensive and integrated benefits package and ensure that Indians can continue to be served by their IHCP of choice. Indians enrolled in managed care plans will be better served when IHCPs can coordinate their care through the managed care provider network.

**ATTACHMENTS:**

Model Medicaid and CHIP Managed Care Addendum for Indian Health Care Providers

# Passive Enrollment Preserves Dine Choice Navajo Indian Managed Care Entity



## Background

Members of the Navajo Nation experience a disease burden and a mortality rate that are higher than the national average. They face many hurdles in accessing the healthcare system, especially physical and behavioral specialty providers, due to socio-economic factors. Naat’aanii Development Corporation (NDC) and Molina Healthcare Inc.’s partnership seeks to address these challenges by providing a tailored Navajo Medicaid managed care program called an Indian Managed Care Entity (IMCE).

### *The IMCE would offer:*

- All Medicaid Centennial Care benefits;
- Tribal services (traditional healing and Navajo translators);
- Member incentives;
- Key social determinants of health benefits (housing, food security, enhanced transportation);
- Robust, comprehensive statewide provider network (PCPs and specialists);
- Virtual care;
- Tribal providers (Indian Health Services, Tribal 638s and Navajo owned providers);
- Provider incentives and potential reimbursement for additional services, like care coordination;
- Inclusion of Navajo culture into care management and care coordination;
- Disease management programs for Navajo priority conditions like diabetes and heart disease;
- Preventative care for members such as the “War on Diabetes”; and
- Employment opportunities for qualified Navajos in leadership and operational roles.

Ultimately, the IMCE will enable the Navajo Nation to assume a larger and more active role in the provision and delivery of healthcare services to its residents. It’s time the Navajo Nation seizes its right to self-determination and be able to care for its people.

## Why is Passive Enrollment Important?

**Passive enrollment sets the program up for long term success.** For the IMCE to meet its promises of improving health, and delivering high quality, culturally sensitive care for members of the Navajo Nation, participation will be key. Passive enrollment ensures there is enough demand for the IMCE, and the financial investment needed to ensure the program is stable and viable. Consequently, passive enrollment provides a more sustainable economic opportunity for the Navajo Nation, tribal providers and even supports a greater healthcare infrastructure for the Nation.

**Passive enrollment also preserves Diné choice.** Passive enrollment gives eligible Navajo Nation members an opportunity to try out the program and see if it works for them. Enrollees maintain freedom of choice in who they select as their healthcare provider – the IMCE, another Centennial Care Managed Care Organization (MCO), or Medicaid Fee-For-Service (FFS).

Passive enrollment in the Navajo IMCE will work as follows:

1. Eligible Navajos and their immediate family members living in designated zip codes and in FFS would be enrolled in the IMCE program.
2. Those enrolled in the IMCE still have freedom of choice; they may select another Centennial Care MCO or return to FFS within the first 3 months of their enrollment in the IMCE.
3. Eligible Navajo Nation members may freely choose the IMCE program, MCO, or FFS during any open enrollment period. Open enrollment for the IMCE will occur at the start of the program and every year following.

Passive enrollment is not new to the IMCE. New Mexico currently uses passive enrollment in Medicaid for:

- **Centennial Care** – serves 670,000 beneficiaries in managed care, including 57,000 Native Americans; and

- **Long-Term Services and Supports (LTSS)** – required for all New Mexico Medicaid enrollees who need long term care. About 1,200 chronically ill Native Americans with LTSS are passively enrolled into Centennial Care, without the option to be in FFS. Going forward they will now have a choice – to be in a Centennial Care MCO or a managed care program (the IMCE) designed and administered by the Navajo Nation,

Passive enrollment also reinforces self-determination for the Navajo Nation and its treaty obligations with the state of New Mexico, and the Federal government, and preserves individual choice for Navajos in the New Mexico Medicaid program.

### Enrollment Examples

The following annualized enrollment example provides more information on the potential impacts of using passive enrollment vs. the basic enrollment option, for the Navajo IMCE program.

*All figures used in the enrollment example are for illustrative purposes only\**

#### Basic Enrollment Scenario

	Totals	As % of revenue
Total enrollment	14,000	
Per member per month capitation	\$500	
Total revenue	\$84,000,000	
Total medical costs	\$80,640,000	96%
Care management costs	\$2,520,000	3%
Community outreach expenses	\$16,800	0.02%
All other administrative expenses	\$4,200,000	5%
Total administrative expenses	\$6,736,800	8%
Operating income/(loss)	\$(3,376,800)	(4%)

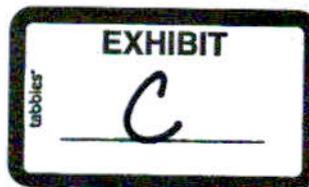
- 1 Basic enrollment results in low enrollment levels.
- 2 Reduces funding for IHS and tribal 638 providers leading to inefficient use of federal funds.
- 3 Small enrollment means mostly very sick folks sign up for coverage; small risk pool and sicker enrollees result in higher than expected medical costs.
- 4 Requires proportionally higher spending on marketing and outreach to drive enrollment but does not produce commensurate coverage gains.
- 5 High medical costs and fixed admin requirements lead to fiscal instability for program, fewer jobs and no resources for community investment.

#### Passive Enrollment Scenario

	Totals	As % of revenue
Total enrollment	70,000	
Per member per month capitation	\$500	
Total revenue	\$420,000,000	
Total medical costs	\$378,000,000	90%
Care management costs	\$18,900,000	4.5%
Community outreach expenses	\$60,000	0.01%
All other administrative expenses	\$14,700,000	3.5%
Total administrative expenses	\$33,660,000	8%
Operating income/(loss)	\$8,340,800	2%

- 1 Passive enrollment will maximize the enrollment and lead to economies of scale.
- 2 Higher enrollment will increase IHS and tribal 638 federal funding.
- 3 Larger membership pool has lower overall acuity and generates adequate premiums to cover medical costs.
- 4 Higher revenue supports increased commitment to care management and culturally tailored services, like traditional healing and Navajo language services, and efficient use of marketing & outreach resources.
- 5 Positions the program for fiscal sustainability, increased employment, and generates resources for community investment.

\*Internal Molina estimates based on HSD average capitation revenue and experience data for the New Mexico Medicaid program.



CO-69-17

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23<sup>RD</sup> NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACTION

RELATING TO THE NAVAJO NATION COUNCIL; RATIFYING THE FEDERAL  
CHARTER FOR THE NAAT'ÁANII DEVELOPMENT CORPORATION

WHEREAS:

- A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C §102 (A); and,
- B. By Resolution CJY-38-17 (July 10, 2017) the Navajo Nation Council petitioned the Secretary of the Interior to issue a Federal Charter of Incorporation for the Naat'áanii Development Corporation under 25 U.S.C. § 5124, CJY-38-17 attached hereto as **Exhibit A**; and,
- C. Pursuant to the Federal Charter of Incorporation for the Naat'áanii Development Corporation, Article XX, "The authority to petition for amendments to this Charter is vested in the Navajo Nation Council, but no amendment shall have legal effect until approved by the Secretary of the Interior and ratified by the Navajo Nation Council in accordance with the Act and applicable Navajo Nation law;" and,
- D. The Navajo Regional Director, pursuant to delegated authority, issued a letter dated September 15, 2017, approving the Federal Charter of Incorporation for the Naat'áanii Development Corporation with a change in the Charter language, September 15, 2017 letter attached as **Exhibit B**; and,
- E. The Navajo Nation Council has reviewed the Navajo Regional Director's September 15, 2017 letter and incorporates the Navajo Regional Director's language into the Federal Charter of Incorporation. The changes are noted in an underlined and overstricken copy of the Federal Charter of Incorporation which is attached hereto as **Exhibit C**; and,
- F. The Navajo Nation Council finds that it is in the best interest of the Navajo Nation to ratify the Naat'áanii Development Corporation's Federal Charter of Incorporation.

**NOW THEREFORE BE IT RESOLVED THAT:**

The Navajo Nation Council hereby ratifies the Federal Charter of Incorporation for the Naat'áanii Development Corporation, with the Navajo Regional Director's approval issued pursuant to 25 U.S.C. § 5124, and attached hereto in final form as **Exhibit D**.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 11 in favor and 02 opposed, this 17<sup>TH</sup> day of October 2017.



LoRenzo C. Bates, Speaker  
Navajo Nation Council

10-27-17

Date

Motion: Honorable Kee Allen Begay, Jr.  
Second: Honorable Otto Tso

Speaker Bates not voting

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23<sup>rd</sup> NAVAJO NATION COUNCIL -- THIRD YEAR, 2017

AN ACTION

RELATING TO BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT, NAABIK'İYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; PETITIONING THE SECRETARY OF THE INTERIOR TO ISSUE A FEDERAL CHARTER OF INCORPORATION TO THE NAVAJO NATION FOR THE NAAT'ÁANI DEVELOPMENT CORPORATION AS A FOR-PROFIT COMPANY UNDER THE INDIAN REORGANIZATION ACT, 25 U.S.C. §5124, AS AMENDED

Section One. Findings

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C §102 (A).
- B. The Budget and Finance Committee of the Navajo Nation Council is empowered with the authority to exercise oversight in the areas including, but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes, loans, Chapter budget and finance for the purpose of coordinating, overseeing, and regulating the fiscal, financial, investment, contracting and audit policies of the Navajo Nation. 2 N.N.C. §300(C)(1).
- C. The Resources and Development Committee of the Navajo Nation Council exercises oversight authority over economic and community development and to establish policies and to streamline procedures for approval, management and enforcement to enhance the development of the economy and increase development of the Navajo Nation and shall review and make recommendations to the Navajo Nation Council for final approval of the creation, reorganization, termination or "privatization" of any enterprise. 2 N.N.C. §500(C), (C)(7), 501(B)(4)(e).
- D. Pursuant to 2 N.N.C. §164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee before it is heard by the Navajo Nation Council.

Section Two. Findings

- A. The Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act, was enacted by the U.S. Congress on June 18, 1934, to conserve and develop Indian lands and resources; to extend to Indians the right to form businesses and other organization; to establish a credit system for Indians, to grant certain rights of home rule to Indians, to provide for vocational education for Indians, and for other purposes.



B. After passage of the IRA in 1934, the Navajo People voted against reorganizing the Navajo government under its provisions; however, Congress authorized non-IRA Indian nations to benefit by forming business entities without affecting the Indian nation's status as a non-IRA tribe. 25 U.S.C. §5126.

C. The Indian Reorganization Act, 25 U.S.C. §5124, as amended, authorizes the Secretary of the Interior to issue a federal charter and create Indian tribal for-profit corporations, also known as a Section 17 Corporation. §5124 provides:

*Incorporation of Indian tribes; charter; ratification by election. The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress. 25 U.S.C. §5124.*

D. The Internal Revenue Service of the United States Department of Treasury issued Revenue Ruling 94-16 that recognizes a business corporation chartered under the IRA retains the non-taxable status of the Indian tribe that owns the corporation and that both on-reservation and off-reservation income of such a corporation is not subject to the federal corporate income tax. IRS Revenue Ruling 94-16 (March 21, 1994).

E. The Navajo Nation is primarily dependent on natural mineral resources of coal, oil and gas of which 77% of the Nation's General Fund come from coal, oil & gas royalties, taxes, and leases. In FY-2016 the revenue from these resources dropped to 67% of the Nation's General Fund, which was a \$65 million decline in revenue. Although Navajo Nation has 14 enterprises and corporations with revenues of \$950 million in 2015, few of these companies gave even a minor portion of their profits back to the Nation in the form of a dividend.

- F. The proposed Naat'áanii Development Corporation is based on successful tribal business corporation structure where the company is incentivized to grow the business by growing revenues, create jobs, increase net (profit) margins so the corporation would pay an annual dividend up to 40% of its net margin to the Navajo Nation. See Naat'áanii Development Corporation documents attached as **Exhibit A**.
- G. The Navajo Nation finds it in the best interest of the Navajo Nation to petition the United States' Secretary of the Interior to issue a federal charter of incorporation for the proposed Naat'áani Development Corporation as a for-profit corporation under the IRA, 25 U.S.C. §5124.
- H. This resolution is not intended, nor shall it be construed to be inconsistent in any way with the prior decision of the Navajo People not to reorganize the Navajo Nation government under the IRA, but is intended to utilize the authority granted by Congress in 25 U.S.C. §5126.

**Section Two. Approval**

- A. The Navajo Nation approves the petition to the U.S. Secretary of the Interior to issue a federal charter of incorporation to the Navajo Nation in the form attached as **Exhibit A** for the proposed Naat'áanii Development Corporation, as a for-profit company under the Indian Reorganization Act, 25 U.S.C. §5126.
- B. The Navajo Nation hereby requests the charter be issued at the earliest feasible date.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 17 in favor and 01 oppose, this 10th day of July, 2017.



Honorable LoRenzo C. Bates, Speaker  
Navajo Nation Council

Motion: Honorable Lee Jack, Sr.  
Second: Honorable Jonathan L. Hale

23rd Navajo Nation Council  
 Special Session  
 Monday, July 10, 2017

# 8

Legislation 0120-17 (Main Motion)

Motion: Lee Jack, Sr.

Second: Jonathan L. Hale

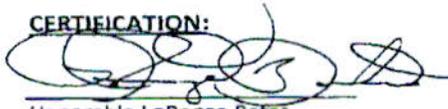
ALL DELEGATES:

	Yea	Nay
BATES, LoRenzo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BEGAY, Kee Allen Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BEGAY, Norman M.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BEGAY, Steven	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
BEGAYE, Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BENNETT, Benjamin L.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BROWN, Nathaniel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEE, Tom T.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CROTTY, Amber K.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DAMON, Seth	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DANIELS, Herman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FILFRED, Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HALE, Jonathan L.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JACK, Lee Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PERRY, Jonathan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PETE, Leonard H.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PHELPS, Walter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SHEPHERD, Alton Joe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SLIM, Tuchoney Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SMITH, Raymond Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TSO, Otto	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TSOSIE, Leonard	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WITHERSPOON, Dwight	<input checked="" type="checkbox"/>	<input type="checkbox"/>
YAZZIE, Edmund	<input checked="" type="checkbox"/>	<input type="checkbox"/>

GRAND TOTAL



CERTIFICATION:



Honorable LoRenzo Bates  
 Speaker



23<sup>RD</sup> NAVAJO NATION COUNCIL  
OFFICE OF THE SPEAKER

*8/8/17* / *N 20*  
*Plan proposed*  
*transmitted to*  
*Speaker for*  
*Review*

HONORABLE LORENZO C. BATES  
SPEAKER, 23<sup>RD</sup> NAVAJO NATION COUNCIL

August 8, 2017

Sharon A. Pinto, Regional Director  
Navajo Regional Office  
Bureau of Indian Affairs  
Post Office Box 1060  
Gallup, New Mexico 87305

RECEIVED  
REGIONAL OFFICE  
2017 AUG 18 PM 3 20

RE: Naat'áanii Development Corporation  
Proposed Federal Charter of Incorporation

Dear Ms. Pinto,

On July 10, 2017 the Navajo Nation Council passed, and I certified, Resolution CJY-38-17, the proposed Federal Charter of Incorporation for the Naat'áanii Development Corporation. As required by 25 U.S.C. § 5124 I am requesting review of the Naat'áanii Development Corporation proposed charter, which is attached.

The Naat'áanii Development Corporation purpose, in part, is to own, invest in and manage joint ventures, associations, partnerships, limited liability companies, or any lawful business as determined by its Board. With diminishing natural mineral resources as the primary source of revenue the Navajo Nation is looking to other structures to provide a new revenue stream. The proposed Naat'áanii Development Corporation is designed to introduce a new form of revenue for the Navajo Nation.

Should you require additional information please contact my Chief of Staff, Pete Atcitty, at 928-871-7160. Thank you and I look forward to working with you on completing the review for the proposed Naat'áanii Development Corporation.

Sincerely,

LoRenzo C. Bates, Speaker  
23<sup>rd</sup> Navajo Nation Council

Attachment

LEGISLATIVE BRANCH

Office of the Speaker • Post Office Box 3390 • Window Rock, Arizona 86515 • Ph: (928) 871-7160 • Fax: (928) 871-7255



FEDERAL CHARTER OF INCORPORATION  
ISSUED BY THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS  
TO THE NAVAJO NATION FOR THE NAAT'ÁANII DEVELOPMENT CORPORATION  
A Federally Chartered Corporation

WHEREAS, Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477, as amended (the "Act"), authorizes the Secretary of the Interior to issue a Federal Charter of Incorporation to an Indian Tribe; and

WHEREAS, the Navajo Nation is a federally recognized Indian Tribe; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation approved a plan for creation of a business corporation that is intended to invest capital in a broad array of business opportunities for the purpose of generating income and wealth for the Navajo Nation and for its members; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation petitioned the Secretary of the Interior to issue a Federal Charter of Incorporation to the Navajo Nation to establish this for-profit business corporation (the "Corporation"), as authorized by the Act; and

WHEREAS, all of the legal prerequisites to the issuance of this CHARTER OF INCORPORATION (this "Charter") have been fulfilled;

NOW THEREFORE, I, \_\_\_\_\_, Deputy Commissioner of Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the Act and delegated to me, do hereby issue this Charter to the Navajo Nation, to be operative when ratified by the governing body of the Navajo Nation ("Ratification").

ARTICLE I – Name

The name of the Corporation is Naat'áanii Development Corporation.

ARTICLE II – Principal Office and Registered Office

- A. Principal Office. The principal office of the Corporation shall be located within the Navajo Nation. The Corporation may have such other offices, either within or outside of the Navajo Nation as the Board of Directors of the Corporation (the "Board") may designate or as the business of the Corporation may require from time to time.
- B. Registered Offices. The Corporation shall register as a foreign corporation with the appropriate state offices with respect to those states where the Corporation shall undertake to transact business outside of the exterior boundaries of the Navajo Nation. Any offices so registered need not be identical to the principal place of business of the Corporation at the Corporation or within that state and any registered office may be changed from time to time by the Board.

### ARTICLE III – Authority for Charter

The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under the Act and shall have the powers, privileges and immunities granted by the Act embodied in this Charter. This Charter shall not be changed or modified through the bylaws of the Corporation (the “Bylaws”), nor will the Bylaws supersede the authority of this Charter.

### ARTICLE IV – Status of Corporation

- A. The Corporation is a legal entity, wholly-owned by the Navajo Nation, a federally recognized Indian tribe, but distinct and separate from the Navajo Nation. As an instrumentality of the Navajo Nation, the Corporation is entitled to the privileges and immunities of the Navajo Nation. However, the activities, transactions, obligations, liabilities and property of the Corporation are not those of the Navajo Nation.
- B. The Corporation shall have the same immunities under the federal law of the United States as the Navajo Nation. The Corporation shall retain the Navajo Nation’s tax exempt status and shall enjoy any tax advantages available to a corporation of its type.

### ARTICLE V – Ownership of the Corporation

#### A. Shares

- 1. The aggregate number of shares which the Corporation shall have authority to issue is 1,000,000 shares of common stock (hereinafter the “Common Shares”), having no par value, and 1,000,000 shares of preferred stock (hereinafter the “Preferred Shares” and, together with the Common Shares, the “Shares”), having no par value.
  - 2. All Common Shares shall be owned by the Navajo Nation (the “Shareholder”) and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. The holder of each share of Common Stock shall have the right to one (1) vote per such share. Any voting rights with respect to the Common Shares shall be the responsibility of the representatives selected to act on behalf of the Navajo Nation (the “Shareholder Representatives”) in accordance with the other provisions of this Charter, including Paragraph C of this Article V and Paragraph C of Article X.
  - 3. All Preferred Shares shall be owned by the Shareholder and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. Preferred Shares shall have no voting rights, shall not be convertible into Common Shares and shall have the profit, dividend and redemption rights as set forth in Article XIV.
- B. All Shares in the Corporation shall be owned by the Navajo Nation for the benefit of the Navajo Nation and its enrolled members. No individual or legal entity other than the Navajo Nation may acquire any Shares, the Shares shall not be sold, transferred, pledged or hypothecated, voluntarily or involuntarily, and any purported sale, transfer, pledge or hypothecation of the Shares shall be void and of no effect.

C. Shareholder Representatives.

1. Duties. All rights of the Shareholder with respect to the voting of the Shares shall be exercised by the Shareholder Representatives, who shall act in such capacity in the best interest of the Navajo Nation and its enrolled members in accordance with the other provisions of this Charter, including Paragraph C of Article X. In addition, each Appointed Shareholder Representative (as defined below) shall act in a capacity similar to a professional trustee and shall faithfully execute the responsibilities of a Shareholder Representative as a prudent person of business.
2. Composition. There shall be five (5) Shareholder Representatives, composed of: the President of the Navajo Nation or his/her designee, the Speaker of the Navajo Nation Council (the "NNC") or his/her designee, and three (3) additional members (the "Appointed Shareholder Representatives") appointed as follows.
  - i. Appointment. One of the Appointed Shareholder Representatives shall be appointed by the President of the Navajo Nation (the "President Appointee"), one of the Appointed Shareholder Representatives shall be appointed by the Speaker of the NNC (the "Speaker Appointee") and one of the Appointed Shareholder Representatives shall be appointed by mutual agreement of the President of the Navajo Nation and the Speaker of the NNC (the "Joint Appointee"), in each case in accordance with this Charter and applicable Navajo Nation law. Each Appointed Shareholder Representative shall be confirmed by the Resources and Development Committee ("RDC") and the Naa'bik'iyati' Committee, or the successor committees thereof. Except as provided in Paragraph C.2.iii of this Article V, the Appointed Shareholder Representatives shall serve staggered, five-year terms.
  - ii. Qualifications. The Appointed Shareholder Representatives shall be individuals who satisfy the following qualifications: (1) a minimum of one shall be a Certified Public Accountant ("CPA") or Chartered Financial Analyst ("CFA"), or shall have a Masters in Business Administration, who possess educational and/or practical experience in business, accounting, finance and/or investing, (2) any non-CPA or CFA Appointed Shareholder representative shall be a professional with minimum of bachelor's degree and substantial experience in engineering, business administration, finance, accounting and/or investing, (3) each shall be tribally enrolled members of the Navajo Nation, and (4) each shall have good moral and ethical character as representative by background clearance without a felony or other crimes of dishonesty.
  - iii. Initial Appointed Shareholder Representatives. The length of the terms served by the initial Appointed Shareholder Representatives shall be as follows, with each of the initial Appointed Shareholder Representatives to serve until his or her respective successor is appointed as provided in Paragraph C.2.i of this Article V:
    1. Shareholder Representative 1 (the Speaker Appointee): three (3) year term

2. Shareholder Representative 2 (the President Appointee): four (4) year term
3. Shareholder Representative 3 (the Joint Appointee): five (5) year term
3. Compensation. Shareholder Representatives shall be entitled to be compensated and reimbursed to effectuate the actions set forth and in accordance with Article X of this Charter. Shareholder Representative compensation shall be proposed by the Shareholder Representatives and approved by the RDC or its successor committee.
4. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) years has elapsed from the date of vacating the exempt or political appointed position.

#### ARTICLE VI – Period of Duration

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by an act of Congress, pursuant to the Act.

#### ARTICLE VII – Corporate Purposes

The purposes for which the Corporation is organized are:

- A. To own, invest in and manage, directly or through subsidiary corporations, joint ventures, associations, partnerships, limited liability companies or otherwise, any lawful business as determined by the Board.
- B. To form, in any state within the United States, subsidiary corporations and to enter into and form partnerships, limited liability companies, joint ventures, associations and other business arrangements as determined from time to time by the Board.
- C. To provide stable diversified investments to optimize returns where risk is minimized either within or outside the Navajo Nation for the benefit of enrolled members of the Navajo Nation.
- D. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.
- E. To pursue the above purposes for the benefit of the Navajo Nation and its enrolled members, and to distribute dividends when, as and if declared by the Corporation in the manner generally herein described.

#### ARTICLE VIII – Corporate Powers

The Corporation is authorized:

- A. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.

- B. To buy, sell, lease and otherwise acquire and maintain property, including but not limited to, personal and real property such as buildings, offices and other appurtenances proper and necessary for the carrying on of its business, and to dispose of assets in the ordinary course of its business.
- C. To carry on its business either within or outside of the Navajo Nation, as permitted by law.
- D. To guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership thereof.
- E. To enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- F. Subject to the limitations imposed by Article IX, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issuance and sale or other disposal of stocks and other evidences of ownership, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- G. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters, patent, and to use, exercise, develop, grant and give licenses in respect thereto.
- H. To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and, subject to the limitations imposed by Article IX, to pay for and to appropriate any of the Corporation's assets to defray the necessary costs, charges and expenses thereof.
- I. To sue and be sued in its corporate name to the extent provided in Article XVI, and to that extent only.
- J. To employ or appoint employees, attorneys, professional consultants and agents of the Corporation and define their duties and fix their compensation.
- K. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payments of funds so loaned and invested.
- L. To form subsidiary corporations, partnerships and/or limited liability companies pursuant to the laws of any state.
- M. To adopt and approve the Bylaws, which may contain any provision, but not those inconsistent with the federal law of the United States or the Navajo Nation or this Charter, relating to the business of the Corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The Bylaws may not contain any provision that would

impose liability on a Shareholder Representatives for the attorneys' fees or expenses of the Corporation or any other party in connection with an internal corporate claim.

- N. To pay pensions and establish pension plans, profit-sharing plans, pension and profit-sharing trusts and other incentive plans for any or all of its directors, officers and employees. Such plans shall be based on key performance indicators or measurements that evaluate both financial and non-financial items.
- O. To obtain a certificate of authority to transact business in any state or foreign country as a foreign corporation and to comply with applicable state law governing foreign corporations.
- P. To have a corporate seal, which may be altered at the discretion of the Board.

#### ARTICLE IX – Limitations on Corporate Powers

The Corporation shall have no power:

- A. To expressly or by implication enter into any agreement of any kind on behalf of the Navajo Nation.
- B. To pledge the credit of the Navajo Nation.
- C. To dispose of, pledge or otherwise encumber real or personal property of the Navajo Nation.
- D. To waive any right, privilege or immunity of, or release any obligation owed to, the Navajo Nation.
- E. To enter into any sublease or other encumbrance or instrument respecting lands leased to the Corporation by the Navajo Nation without the express written approval of the Navajo Nation, unless otherwise provided in the lease.
- F. To sell, exchange or otherwise dispose of all or substantially all of the assets of the Corporation without prior written approval of each of (a) the Board, (b) a majority of the Shareholder Representatives, and (c) the NNC. The Corporation shall give notice to the Board, the Shareholder Representatives and the NNC not fewer than fifteen (15) days prior to seeking such approval for any such transaction.

#### ARTICLE X – Shareholder Action

- A. Annual Meeting. The annual meeting of the Shareholder Representatives (the "Annual Meeting") shall be held on the date and hour specified in the Bylaws, after the end of the Corporation's fiscal year and after the Corporation's annual audit is completed. The Chairperson of the Board or, in his or her absence, the Vice Chairperson of the Board or, in his or her absence, the Chief Executive Officer, shall preside over the Annual Meeting. If the day fixed for the Annual Meeting is a legal holiday within the Navajo Nation, the Annual Meeting shall be held on the following business day. The President of the Navajo Nation, all members of the NNC and the Shareholder Representatives shall be invited to the Annual Meeting for the purpose of (1) meeting with and reviewing a presentation by the officers of the Corporation and the Board regarding the Corporation's business plan, (2) reviewing the audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, (3) reviewing a formal performance evaluation report prepared by a CFA or a Certified Valuation

Analyst (the "Annual Performance Assessment"), (4) reviewing the disclosure of any material information, (5) reviewing evaluations of the Board and its committees, and (6) any other business that comes before the Annual Meeting. The members of the Board shall be elected at the Annual Meeting as provided in Article XI. Written notice of the Annual Meeting must be delivered to each of the Shareholder Representatives, each member of the Board, the President of the Navajo Nation and each member of the NNC. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the Annual Meeting, either personally or by mail.

- B. **Special Meetings.** Special meetings of the Shareholder Representatives, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the Chief Executive Officer or by a majority of the Board, and shall be called by the Chief Executive Officer at the request of a majority of the Shareholder Representatives. Written notice of a special meeting must be delivered to each of the Shareholder Representatives and to each member of the Board. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the special meeting, either personally or by mail.
- C. **Quorum.** A majority of the Shareholder Representatives shall constitute a quorum for any meeting of the Shareholder Representatives.
- D. **Voting.** At all meetings of the Shareholder Representatives, whether the Annual Meeting or a special meeting, the Shareholder Representatives shall sit in their capacity as independent, individual representatives of the Shareholder and not in any other capacity. Matters within the scope and legal authority of the Shareholder under this Charter shall only be discussed and decided by the Shareholder Representatives present at a Shareholder Representatives' meeting duly called as provided in this Charter. On any item presented to the Shareholder, a vote shall be taken of those Shareholder Representatives present, providing that a quorum is present. All of the Common Shares shall be voted in the manner decided by a majority of those Shareholder Representatives present.

#### ARTICLE XI – Board of Directors

- A. **Management Authority.** The business affairs of the Corporation shall be managed exclusively by the Board. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as Shareholder (acting through the Shareholder Representatives) and as provided in this Charter.
- B. **Number, Composition and Observers.** The Board shall be established and shall serve in accordance with the following provisions:
  - 1. The Board shall be initially composed of seven (7) directors, elected by the Shareholder or by the Shareholder Representatives acting on its behalf and shall be subject to the election procedures and eligibility requirements provided in this Article XI. By a duly adopted resolution of the Shareholder Representatives at an Annual Meeting or a special meeting, the number of directors composing the Board may be increased or decreased, but shall not exceed nine (9) nor be less than five (5).

2. A majority of the directors shall be enrolled members of the Navajo Nation.
3. Each director shall be of good moral and ethical character, as evidenced by a satisfactory credit check and background check.
4. Each director shall possess at least ten (10) years' experience, by virtue of formal education or practical experience, in engineering, business administration, finance, accounting and/or investing, or in another specialized area that, in the opinion of the Board, corresponds to the activities or anticipated activities of the Corporation. Experience gained by serving on committees or other boards of directors shall not be considered. Minimum eligibility requirements and qualifications for directors may be further defined by the Corporation or the Board.
5. At least: one (1) director shall be a licensed CPA or CFA; one (1) director shall have experience in federal government contracts; one (1) director shall have experience in agribusiness operations; one (1) director shall have either real estate, energy-related, or hospitality experience; one (1) director shall have managed healthcare experience; and one (1) director shall be a grassroots representative with traditional cultural background.
6. No employee of the Bureau of Indian Affairs shall be eligible to serve as a director during the time of such employment.
7. At any given time, a minimum of three (3) directors must qualify as "independent directors" under the standards of the New York Stock Exchange, as such standards would apply if the Common Shares were listed on that securities exchange (the "Independent Directors").
8. No director shall be an employee or an elected official of the Navajo Nation or any government at the time of their service on the Board, nor shall any director have been an employee of the Corporation at any time during the four (4) years preceding his or her service on the Board.
9. The Board shall elect a Chairperson and Vice Chairperson from among its members. The Chairperson shall preside at Board meetings. The Vice-Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. The Secretary/Treasurer of the Board need not be a Board member.
10. In addition to the Board members, the Director of the Navajo Nation Division of Economic Development (the "NNDED") and the Chairperson of the RDC or its successor committee shall each be designated observers to the Board (the "Observers") for the purpose of discussing with the Board the Corporation's business operations, strategic initiatives and any other matters to come before the Board. The Observers shall not have voting rights (except as set forth in Paragraph O of this Article XI), they shall not be compensated by the Corporation for their service, and they shall not count toward the presence or absence of a quorum. However, the Observers shall be invited to attend each regularly scheduled, special and other meeting (including telephonic meetings) of the Board, including each committee of the Board, and shall be included on communications requesting action by written consent of the Board, including each committee of the Board. In addition, each Observer shall have the right to receive any and all materials provided to the Board (including each committee of the Board) at the same time such materials are distributed to the other members of the Board (or such committee). In respect of their participation at meetings of the Board, their receipt of the foregoing information, their

participation on Board committees and any other actions relating to the Corporation, the Observers shall act in a manner consistent with the duties applicable to directors pursuant to Paragraph H of this Article XI.

11. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) years has elapsed from the date of vacating the exempt or political appointed position.
- C. Elections. Except as provided in Paragraphs C.4 and C.5 of this Article XI, and other than the Director of the NNED and the Chairperson of the RDC, directors shall be elected by the Shareholder Representatives at the Annual Meeting from among the candidates proposed by the Nominating Committee.
1. The Nomination Committee shall nominate candidates to the Board as provided in Paragraph O of this Article XI and shall nominate up to three (3) candidates per Board seat.
  2. No candidate may be nominated to more than one (1) Board seat at each Annual Meeting.
  3. With respect to each Board Seat, each Shareholder Representative may vote once, which vote shall be either (a) a "for" vote in favor of one (1) candidate nominated to the Board seat, (b) a "withheld" vote with respect to all of the candidates nominated to the Board seat, or (c) a "non-vote." A candidate must receive an Electoral Majority (as defined herein) with respect to the Board seat for which he or she has been nominated in order to be elected to such Board seat. To receive an "Electoral Majority," a candidate must receive that number of "for" votes equal to more than half of (a) the number of "for" votes received by all candidates for the Board seat plus (b) the number of "withheld" votes cast with respect to the Board seat. If no candidate for a given Board seat receives an Electoral Majority, the candidate that received the fewest "for" votes shall be withdrawn from consideration, and the Shareholder Representatives shall cast their votes among the two (2) remaining candidates. The remaining candidate that receives an Electoral Majority shall be elected to the Board seat.
  4. If, after giving effect to the procedures set forth in Paragraph C.3 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall nominate up to three (3) candidates to that Board seat, and elect a director from among such candidates in accordance with the procedures set forth in Paragraph C.3 of this Article XI.
  5. If, after giving effect to the procedures set forth in Paragraphs C.3 and C.4 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall so notify the Chairperson of the Board and the Chief Executive Officer, whereupon alternative candidates may be nominated within forty-five (45) days in accordance with the provisions hereof and submitted to the Shareholder Representatives for consideration.
  6. Any currently serving director who is nominated for re-election to his or her Board seat at an Annual Meeting and who does not receive an Electoral Majority after giving effect to the procedures set forth in Paragraph C.3 of this Article XI shall thereupon immediately tender his or her resignation by giving written notice to the Shareholder Representatives.

- D. **Term of Office.** Directors shall serve in a pattern of staggered terms. Each director's term shall begin on the date of the Annual Meeting at which such director was elected and end on the date of the Annual Meeting occurring within the second calendar year thereafter. A director may serve no more than four (4) consecutive terms on the Board, after which such director may not serve on the Board until the third Annual Meeting following the end of his most recent term, whereupon he may again serve up to four (4) consecutive terms on the Board.
- E. **Initial Directors.** The initial members of the Board shall be elected as soon as practicable following the Ratification of this Charter by written consent of the Shareholder Representatives. Notwithstanding the provisions of Paragraph D of this Article XI, the terms of the initial members of the board shall be as follows:
1. Directors 1-4: one (1) year term;
  2. Directors 5-7: two (2) year term.
- F. **Vacancies.** Vacancies and newly created Board seats resulting from an increase in the authorized number of directors, or by the death, removal or resignation of any director, may be filled by a candidate appointed by a majority of the directors then in office, and such candidate may continue to hold office until his or her successor is duly elected at the next Annual Meeting.
- G. **Resignation and Removal.** Any director may resign at any time by giving written notice to the Chairperson of the Board, or, in the case of the Chairperson, to the Secretary/Treasurer, at any time, and such resignation shall be effective on the date specified in the notice. Any director may be removed from the Board with or without cause by the Shareholder Representatives at a special meeting of the Shareholder Representatives called for that purpose, or at the Annual Meeting.
- H. **Duties.** A director shall perform the duties of a director in good faith, in a fiduciary manner the director believes to be in the best interests of the Corporation and with such care as a reasonably prudent person would use under similar circumstances. Unless the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted, in performing his or her duties a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
1. One or more officers or employees of the Corporation whom the director reasonably believes to be reliable, knowledgeable and competent in the matters presented;
  2. Legal counsel, public accountants, professional consultants or other persons as to matters which the director reasonably believes to be within such person's professional expertise; or
  3. A committee of the Board upon which the director does not serve, duly designated in accordance with a provision of the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to be reliable, knowledgeable and competent in the matters presented.
- I. **Directors' Meetings.** A meeting of the Board shall be held following each Annual Meeting. Regular meetings of the Board may be held monthly at times and on dates that are set by the Board at each preceding regular meeting. Special meetings may be called by the Chief Executive Officer after consultation with the Chairperson of the Board or in his or her absence, the Vice-Chairperson, and shall be called by the Chief Executive Officer or the Secretary/Treasurer upon the request of a

majority of the Board. The Board may adopt such rules and regulations for the conduct of its meetings as it may deem proper and that are not inconsistent with this Charter, the Bylaws or applicable Navajo Nation or United States federal law.

- J. Notice of Meetings. Written notice of a meeting of the Board must be delivered to each of the directors. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the meeting, either personally or by mail. No business other than that specified in such written notice shall be transacted at any meeting, excepting that if a majority of the directors present at a meeting consent to the transaction of other business in order to facilitate a time-sensitive matter, then such other business may be transacted. The foregoing notice requirements may be waived at any time by an individual director.
- K. Quorum. At a meeting of the Board, a majority of the directors shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting without further notice.
- L. Voting. At a meeting of the Board, each director shall have one (1) vote. The Board shall in all cases act by a majority vote of the directors present at a meeting.
- M. Presumption of Assent. A director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary/Treasurer immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.
- N. Meeting Options. Except as otherwise restricted by the Bylaws, members of the Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting. Except as otherwise restricted by the Bylaws, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by the unanimous written consent of the directors, and such consent shall have the same effect as a vote at a meeting.
- O. Committees. The Board may from time to time establish committees of directors having such responsibilities as the Board may assign, provided that the Board may not relinquish its powers or duties with respect to the business and affairs of the Corporation to any committee, director, officer, employee or agent of the Corporation. The following committees are hereby established:
  - 1. The Audit & Compensation Committee, or its designee, shall oversee the Company's financial audit, disclosures, monitoring and compliance. The Audit & Compensation Committee shall comprise three (3) directors, at least two (2) of which are Independent Directors. All members of the Audit & Compensation Committee shall be financially literate and at least (1) one member shall be a CPA or CFA in good standing.
  - 2. The Nomination Committee, or its designee, shall, recruit, interview, evaluate and screen all candidates for the Board and senior management of the Corporation. The Nomination Committee

shall comprise three (3) directors, including each Board Observer, each of whom shall have the right to vote and and who shall count toward quorum for the purposes of service on the Nomination Committee.

P. Compensation.

1. The Board shall determine policies regarding director compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.
2. Directors shall initially have a base annual salary of twenty-five thousand dollars (\$25,000). Compensation for directors may include an incentive bonus based on revenue growth, earnings, dividend schedule and job production as approved by the Shareholder Representatives. Compensation of directors may be changed by the Board, provided that any such change is approved by the Shareholder or the Shareholder Representatives acting on its behalf.

Q. Liability of Directors. No director or Observer shall not personally liable to the Corporation, its Shareholder or other parties for monetary damages for breach of fiduciary duty as a director unless:

1. Such person has breached or failed to perform the duties of a director as provided in this Article XI, and
2. Such breach or failure to perform constitutes willful wrongdoing, gross negligence, dishonesty or fraud.

ARTICLE XII – Officers

- A. Number of Positions. The officers of the Corporation shall be the President, who shall also serve as the Chief Executive Officer, the Vice President and the Secretary/Treasurer. Any two or more offices may be held by the same person, except the offices of President and Secretary/Treasurer may not be held by the same person at the same time. The Board may by resolution add additional officer positions at any time and appoint persons to fill such positions until the annual election of officers is held as provided in this Charter.
- B. Election. All officers of the Corporation shall be elected annually by the Board at its meeting held immediately after the Annual Meeting, and unless expressly provided otherwise in a written contract of employment or unless removed for cause, as that term is defined herein, shall hold office for a term of one year or until their successors are duly elected. For the purposes hereof, the term “cause” shall mean willful wrongdoing, gross negligence, dishonesty or fraud in a matter causing the Corporation to incur damages.
- C. Vacancies. Vacancies in any office may be filled by the Board, at its sole discretion, at any meeting thereof or at the Annual Meeting.
- D. Resignation and Removal. Any officer may resign at any time by giving written notice to the Chief Executive Officer or, in the case of the Chief Executive Officer, to the Board, and such resignation shall be effective on the date specified in the written notice. Unless expressly provided otherwise in a written contract of employment, any officers may be removed without cause, at any time, by a vote of the Board at any special meeting called for that purpose or at the Annual Meeting. Except as

provided in an employment agreement, each officer serves at the will of the Corporation, which power is exercised by the Board.

- E. Duties and Powers. The duties and powers of the officers of the Corporation shall be provided in the Bylaws.
- F. Compensation. The Board shall determine policies for officer compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.

#### ARTICLE XIII – Indemnification

- A. Right to Indemnification. Each person (hereafter an “Agent”) who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereafter a “Proceeding”), by reason of the fact that such person, or another person of whom such person is the legal representative, is or was a Shareholder Representative, director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall, subject to Paragraph B of this Article XIII, be indemnified and held harmless by the Corporation to the fullest extent authorized by statutory and decisional law, as the same exists or may hereafter be interpreted or amended (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability and loss (including attorneys’ fees, judgments, fines, excise taxes and penalties, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article XIII) incurred or suffered by such person in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (“Expenses”); provided, however, that except as to actions to enforce indemnification rights pursuant to Paragraph C of this Article XIII, the Corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such Agent only if the Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article XIII shall be a contract right.
- B. Indemnification Claims. To obtain indemnification under this Article XIII, an Indemnitee shall submit to the Secretary/Treasurer a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the “Supporting Documentation”). The determination of the Agent’s entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary/Treasurer shall, promptly upon receipt of such a request

for indemnification, advise the Board in writing that the Indemnitee has requested indemnification. The Agent's entitlement to indemnification under this Article XIII shall be granted only if: 1) the Agent acted in good faith and in a manner the Agent reasonably believed to be in, or not opposed to, the best interests of the Corporation; and 2) the Agent did not engage in willful wrongdoing, gross negligence, dishonesty or fraud, nor did the Indemnitee fail or refuse to act such that his or her failure or refusal constituted willful wrongdoing, gross negligence, dishonesty or fraud; 3) any legal fees paid or any settlements made are reasonable, provided that with respect to any criminal action or proceeding the Corporation shall not be liable to indemnify the Agent against any criminal fine for which the Agent is personally liable; and 4) the Agent did not act beyond the scope of his or her employment or office.

- C. **Right of Indemnitee to Bring Suit.** If a claim under Paragraphs A and B of this Article XIII is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, subject to the provisions of Article XVI, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct under applicable law and Paragraph B of Article XIII that make it permissible for the Corporation to indemnify the claimant for the amount claimed. The burden of disproving such a defense shall be on the claimant.
- D. **Authority to Advance Expenses.** Expenses incurred by an Agents in defending a Proceeding may be advanced upon such terms and conditions as the Board deems appropriate, including, if determined by the Board, an undertaking by or on behalf of such Agent to repay any amount advanced if it shall ultimately be determined that the Agent is not entitled to be indemnified by the Corporation as authorized in this Article XIII or otherwise. Any obligation to reimburse the Corporation for Expense advances shall be unsecured and no interest shall be charged thereon.
- E. **Provisions Nonexclusive.** The right of indemnification provided in this Article XIII shall not be exclusive of any other rights to which an Agent may otherwise be entitled, including, without limitation, from the Shareholder or its affiliates. Notwithstanding the foregoing, the Corporation shall not be liable under this Article to make any payment in connection with any claim made against an Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder, unless otherwise agreed between the Corporation and the Agent.
- F. **Survival of Rights.** The provisions of this Article XIII shall inure to the benefit of the heirs and legal representatives of any Agent entitled to indemnification under this Article XIII and shall be applicable to Proceedings commenced or continuing after the adoption of this Article XIII, whether arising from acts or omissions occurring before or after such adoption, and whether or not the Agent has ceased to be an Agent. Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.
- G. **Insurance and Contracts.** The Corporation may (a) purchase and maintain insurance to protect itself and any Agent against any Expense asserted against or incurred by such Agent in such amounts as the Board deems appropriate, and (b) enter into contracts with any director or officer of the Corporation

to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article XIII, in each case (i) notwithstanding any interest of the directors in the decision to purchase and maintain such insurance or enter into such contracts, and (ii) whether or not the Corporation would have the power or would be required to indemnify that person against such liability under the provisions of this Article XIII or the Navajo Nation Corporation Code.

- H. Settlement of Claims. The Corporation shall not be liable to indemnify any Agent under this Article XIII for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award, if the Corporation was not given a reasonable and timely opportunity to participate, at its expense, in the defense of such action.
- I. Subrogation. In the event of payment under this Article XIII, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.
- J. Shareholder Representative Action. If the Board is unable to act with respect to any matter under this Article XIII due to lack of a quorum of disinterested directors, such matter shall be submitted to the Shareholder Representatives.

#### ARTICLE XIV – Net Profits, Dividends and Redemptions

- A. Net Profit. Each fiscal year, the net profits or losses of the Corporation shall be determined in accordance with generally accepted accounting principles in the United States and applied as if the Corporation was not subject to Governmental Accounting Standards, but was subject to standards prescribed by the Financial Accounting Standards Board ("FASB") or by the International Financial Accounting Standards ("IFRS"). It is recognized that such accounting principles may result in the accounting reports and opinions thereon being issued as an Other Comprehensive Basis of Accounting ("OCBOA"). Unless such action would violate any financing covenant or other governing agreement, the Board shall annually, within 120 days following the end of the Corporation's fiscal year, determine the portion of the net profits of the Corporation that are available for distribution in the form of dividends.
- B. Dividends.
  - 1. Subject to the other provisions of this Charter, the Board shall have the sole authority to declare dividends for payment to the Shareholder.
  - 2. In respect of its Preferred Shares, the Shareholder shall be entitled to receive dividends (the "Preferred Share Dividend"), out of assets legally available therefor, prior and in preference to any declaration or payment of any other dividend on the Common Shares, equal to a percentage, as set forth in the following sentence, of the net profits in any fiscal year when the Corporation realizes a net profit, as determined in accordance with Paragraph A of this Article XIV. The percentage applicable to the Preferred Share Dividend shall be twenty percent (20%) from the Inception Date (as defined below) through the five-year anniversary of the Inception Date, thirty percent (30%) thereafter until the ten-year anniversary of the Inception Date, and forty percent (40%) thereafter, provided, however, that effective after the first 10 years from the Inception

Date, the Preferred Share Dividend may be set to a different amount by the supermajority (2/3) vote of the full NNC. The "Inception Date" shall be set by the Shareholder Representatives by notice delivered to the Board and the Corporation. Preferred Share Dividends shall be cumulative, such that, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency, shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Shares. Any accumulation of Preferred Share Dividends shall not bear interest. Twenty-eight percent (28%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the account of the Navajo Nation Permanent Trust Fund Trust, and the remaining seventy-two percent (72%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the Navajo Nation's general revenue fund; provided that the foregoing allocation percentages may be adjusted, from time to time, by the supermajority (2/3) vote of the full NNC.

3. After the payment in full of the Preferred Share Dividends in any year, additional dividends may be declared by the Board out of assets legally available therefor and distributed to the Shareholder.
  4. The Board shall not declare any Preferred Share Dividends or any other dividends, notwithstanding the determination that the Corporation possesses funds available for distribution for any fiscal year, to the extent any of the following conditions would exist following such declaration:
    - i. The Corporation would not be able to pay its debts as they become due in the usual course of its business;
    - ii. The Corporation's total assets would be less than the sum of its total liabilities; or
    - iii. The Corporation would be unable to meet any other existing financial commitments that had been previously approved by the Board.
- C. Redemptions. Neither the Corporation nor the Shareholder shall have the unilateral right to call or redeem or cause to have called or redeemed any Preferred Shares; provided, however, that the Corporation and the Shareholder agree that the Preferred Shares shall be redeemed with the consent of, and in accordance with terms approved by, the Shareholder Representatives and a supermajority (2/3) vote of the NNC. The Common Shares shall not be redeemable.
- D. General. Any amounts received by the Shareholder from the Corporation pursuant to this Article XIV shall be distributed and used in the manner set forth by Navajo Nation law.

#### ARTICLE XV – Accounting and Reports to Shareholder

- A. The Corporation shall adopt a fiscal year that begins on the first day of January each year and ends on the thirty-first day of December each year.
- B. The Corporation shall maintain its financial records in accordance with ARTICLE XIV.
- C. The Board shall, no less frequently than on a quarterly basis, deliver a confidential report in writing to the Shareholder Representatives, with a copy to the office of the Controller of the Navajo Nation, on the financial and operating condition of the Corporation, including (i) unaudited financial statements

showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal quarter and reporting on the financial results of the fiscal quarter, (ii) a formal performance evaluation report prepared by a CFA or a Certified Valuation Analyst (the "Quarterly Performance Assessment"), and (iii) a report of the official actions of the Corporation's directors, officers and employees.

- D. Except as otherwise provided by applicable law, in furtherance of his or her duties under this Charter, any Shareholder Representative shall in person or by attorney or other agent, upon written request certifying the purpose thereof, have the right to inspect all books and records of the Corporation or its subsidiaries during business hours. Any such Shareholder Representative shall hold in confidence, and use for the certified purpose, all information provided to it or learned by it in connection with the preceding sentence, except to the extent otherwise required by law and any other regulatory process to which such Shareholder Representative is subject.
- E. The Corporation shall within 120 days following the close of the Corporation's fiscal year, submit to the Shareholder Representatives, with a copy of the office of the Controller of the Navajo Nation: (i) audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, which financial statements shall be prepared by an independent CPA, and (ii) the Annual Performance Assessment.

#### ARTICLE XVI – Claims Against the Corporation

- A. The Corporation is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Article XVI. The Corporation and its directors, officers, employees and agents, while acting in their official capacities, are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, 1N.N.C. § 551, et. seq., the Board may waive, on behalf of the Corporation, the defenses identified in this Article XVI, in conformity with the procedures established in this Article, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article XVI must be express and must be agreed to by the Board prior to the time any alleged cause of action accrues.
- B. The Corporation, by action of the Board, is hereby authorized to waive, as provided in this Article XVI, any defense of sovereign immunity from suit the Corporation, its directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal and/or federal court. The Corporation is authorized, in conformity with 13 C.F.R. § 124.112(c)(1) (1992), to designate United States federal courts to be among the courts of competent jurisdiction for all matters, including those related to the Small Business Administration's programs including but not limited to 8(a) Program Participation, loans, advance payments and contract performance.

- C. The Corporation is hereby authorized to waive, as provided in this Article XVI, any defense the Corporation, its directors, officers, employees, attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- D. Any waiver or designation by the Corporation or the Board authorized by Paragraphs A, B or C of this Article XVI shall be in the form of a resolution duly adopted by the Board, upon thirty (30) days' written notice to the NNC of the Board's intention to adopt such resolution, and which waiver or designation shall require approval by the Shareholder Representatives prior to its becoming effective. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of the Corporation which may be subject to execution to satisfy any judgment with may be entered in the claim, and shall identify the court or courts in which suit against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its directors, officers, employees or agents, and shall be construed only to affect the property and income of the Corporation.
- E. Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article XVI, shall be construed as a waiver of the sovereign immunity of the Navajo Nation or of any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or of any other instrumentality of the Navajo Nation for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or of any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, its directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.
- F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the Navajo Nation.

#### ARTICLE XVII – Prohibited Transactions

- A. The Corporation shall not make any loan of money or property to, or guarantee the obligation of, any director, officer, employee or agent; provided, however, that the Corporation may advance money to a director, officer, employee or agent of the Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director, officer, employee or agent so long as such individual would be entitled to be reimbursed for such expenses absent that advance.
- B. Except as provided in Paragraph C of this Article XVII, the Board shall not approve or permit the Corporation to engage in any transaction to which the Corporation is a party and in which one or more of its directors has a material financial interest (an "Interested Transaction").
- C. The Corporation may engage in an Interested Transaction if the Interested Transaction is approved by a majority of each of (a) the Shareholder Representatives and (b) the NNC upon the finding that (i)

the Corporation is entering into the Interested Transaction for its own benefit, (ii) the Interested Transaction is fair and reasonable to the Corporation, and (iii) after reasonable investigation, the Corporation has determined that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

#### ARTICLE XVIII – Seal

The seal of the Corporation shall be as follows:

Naat’áanii Development Corporation

#### ARTICLE XIX – Dissolution

- A. After issuance of this Charter by the Secretary of the Interior and its Ratification, the Corporation may be dissolved only as provided in this Article.
- B. The Corporation may be dissolved as follows:
  - 1. The Board shall adopt a resolution recommending that the Corporation be dissolved and such dissolution shall be submitted to a vote of the Shareholder Representatives at a meeting of the Shareholder Representatives, which may be either a regular or a special meeting.
  - 2. Written notice shall be given to the Shareholder Representatives in the manner provided in this Charter for giving notice of meetings of the Shareholder Representatives and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.
  - 3. At such meeting of the Shareholder Representatives, a vote shall be taken on a resolution to dissolve the Corporation.
  - 4. Upon adoption of the resolution, a statement of intent to dissolve shall be executed by the President or Vice President and by the Secretary/Treasurer acting on behalf of the Corporation, and shall be delivered to the Secretary of the Interior.
  - 5. Upon filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up the activities thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress, in accordance with the Act.
  - 6. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Shareholder; pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.
  - 7. By resolution of the Board or by resolution adopted by the NNC at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing the

notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and Corporation may again carry on its business.

8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the Corporation have been distributed to the Navajo Nation, Navajo Nation shall seek to have the Secretary of the Interior take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

#### ARTICLE XX – Amendments

- A. The authority to petition for amendments to this Charter is vested in the NNC, but no amendment shall have legal effect until approved by the Secretary of the Interior and ratified by the NNC in accordance with the Act and applicable Navajo Nation law.
- B. The Board may request that the NNC petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the NNC.

**CERTIFICATE OF APPROVAL**

I, Sharon Pinto, BIA, Regional Director, Navajo by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended, and re-delegated to me by 3 IAM 4.1.4B. I do hereby approve this Federal Charter of Incorporation for use by the Navajo Nation and the Naat'áanii Development Corporation, Inc. This Charter shall become effective upon ratification by the Navajo Nation Council, PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.



Regional Director, Navajo

Date: **SEP 15 2017**

SEP 15 '17 PM 2:37



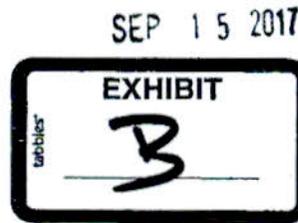
## United States Department of the Interior

Bureau of Indian Affairs  
Navajo Region  
P. O. Box 1060  
Gallup, New Mexico 87305



Reply to: N101

Honorable Lorenzo Bates  
Office of the Speaker,  
Navajo Nation Legislative Branch  
P.O. Box 3390  
Window Rock, Arizona 86515



Dear Honorable Bates:

On August 18, 2017, we received a request to approve the proposed Charter for the Naataanii Development Corporation, a federally chartered corporation. The petition for approval of the proposed Charter was submitted to the Bureau of Indian Affairs in accordance with Section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124. The request included Navajo Nation Council Resolution No. CJY-38-17, wherein the Navajo Nation Council (NNC) approved a petition to the Secretary of the Interior requesting issuance of the above referenced federal Charter. As stated in the Charter, the authority to request approval of the proposed Charter is vested in the Navajo Nation Council which acts as the governing body for the Navajo Nation.

I have reviewed the proposed Charter, find it not contrary to federal law, and that it has been submitted for approval in accordance with 25 U.S.C. § 5124. As a result, pursuant to the authority delegated to me, I approved the Charter with the understanding that Section Q of Article XI on page 12 contains an apparent typo as described in the following paragraph.

The following change should be made: “No director or Observer shall **‘not’** personally....” should be changed to to “No director or Observer shall **‘be’** personally....”

In addition, in the future and not necessary for approval of the Charter, but for the Nation’s consideration, we make the following suggestions:

1. In Section A of Article X at the top of page 7 we suggest that the Nation consider removing the reference to “special meetings.” Section A relates to the annual meeting. Section B relates to special meetings;
2. We believe the Nation may have intended Section B.11 of Article XI at the top of page 9 to refer to “directors” rather than “shareholder representatives” because Article XI relates to directors and not shareholder representatives.

Finally, we also changed the delegated authority from the “Deputy Commissioner” to “Regional Director, Navajo Region” to reflect the applicable approving authority.

Pursuant to 25 U.S.C. § 5124, the proposed Charter must be ratified by the Council before it becomes effective.

Thank you for providing us with this opportunity to review the proposed Charter with the goal of promoting tribal self-determination and economic development. The signed Charter is enclosed with this letter.

If you have any questions, please contact me at (505) 863-8221.

Sincerely,



Regional Director, Navajo

Enclosure

cc: President Begaye, Navajo Nation  
Assistant Secretary – Indian Affairs  
Director, Bureau of Indian Affairs



FEDERAL CHARTER OF INCORPORATION  
ISSUED BY THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS  
TO THE NAVAJO NATION FOR THE NAAT'ÁANII DEVELOPMENT CORPORATION  
A Federally Chartered Corporation

WHEREAS, Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477, as amended (the "Act"), authorizes the Secretary of the Interior to issue a Federal Charter of Incorporation to an Indian Tribe; and

WHEREAS, the Navajo Nation is a federally recognized Indian Tribe; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation approved a plan for creation of a business corporation that is intended to invest capital in a broad array of business opportunities for the purpose of generating income and wealth for the Navajo Nation and for its members; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation petitioned the Secretary of the Interior to issue a Federal Charter of Incorporation to the Navajo Nation to establish this for-profit business corporation (the "Corporation"), as authorized by the Act; and

WHEREAS, all of the legal prerequisites to the issuance of this CHARTER OF INCORPORATION (this "Charter") have been fulfilled;

NOW THEREFORE, I, \_\_\_\_\_, ~~Deputy Commissioner~~ Regional Director of Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the Act and delegated to me, do hereby issue this Charter to the Navajo Nation, to be operative when ratified by the governing body of the Navajo Nation ("Ratification").

ARTICLE I – Name

The name of the Corporation is Naat'áanii Development Corporation.

ARTICLE II – Principal Office and Registered Office

- A. Principal Office. The principal office of the Corporation shall be located within the Navajo Nation. The Corporation may have such other offices, either within or outside of the Navajo Nation as the Board of Directors of the Corporation (the "Board") may designate or as the business of the Corporation may require from time to time.
- B. Registered Offices. The Corporation shall register as a foreign corporation with the appropriate state offices with respect to those states where the Corporation shall undertake to transact business outside of the exterior boundaries of the Navajo Nation. Any offices so registered need not be identical to the principal place of business of the Corporation at the Corporation or within that state and any registered office may be changed from time to time by the Board.

ARTICLE III – Authority for Charter

The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under the Act and shall have the powers, privileges and immunities granted by the Act embodied in this Charter. This Charter shall not be changed or modified through the bylaws of the Corporation (the “Bylaws”) , nor will the Bylaws supersede the authority of this Charter.

ARTICLE IV – Status of Corporation

- A. The Corporation is a legal entity, wholly-owned by the Navajo Nation, a federally recognized Indian tribe, but distinct and separate from the Navajo Nation. As an instrumentality of the Navajo Nation, the Corporation is entitled to the privileges and immunities of the Navajo Nation. However, the activities, transactions, obligations, liabilities and property of the Corporation are not those of the Navajo Nation.
- B. The Corporation shall have the same immunities under the federal law of the United States as the Navajo Nation. The Corporation shall retain the Navajo Nation’s tax exempt status and shall enjoy any tax advantages available to a corporation of its type.

ARTICLE V – Ownership of the Corporation

A. Shares

- 1. The aggregate number of shares which the Corporation shall have authority to issue is 1,000,000 shares of common stock (hereinafter the “Common Shares”), having no par value, and 1,000,000 shares of preferred stock (hereinafter the “Preferred Shares” and, together with the Common Shares, the “Shares”), having no par value.
  - 2. All Common Shares shall be owned by the Navajo Nation (the “Shareholder”) and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. The holder of each share of Common Stock shall have the right to one (1) vote per such share. Any voting rights with respect to the Common Shares shall be the responsibility of the representatives selected to act on behalf of the Navajo Nation (the “Shareholder Representatives”) in accordance with the other provisions of this Charter, including Paragraph C of this Article V and Paragraph C of Article X.
  - 3. All Preferred Shares shall be owned by the Shareholder and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. Preferred Shares shall have no voting rights, shall not be convertible into Common Shares and shall have the profit, dividend and redemption rights as set forth in Article XIV.
- B. All Shares in the Corporation shall be owned by the Navajo Nation for the benefit of the Navajo Nation and its enrolled members. No individual or legal entity other than the Navajo Nation may acquire any Shares, the Shares shall not be sold, transferred, pledged or hypothecated, voluntarily or involuntarily, and any purported sale, transfer, pledge or hypothecation of the Shares shall be void and of no effect.

C. Shareholder Representatives.

1. Duties. All rights of the Shareholder with respect to the voting of the Shares shall be exercised by the Shareholder Representatives, who shall act in such capacity in the best interest of the Navajo Nation and its enrolled members in accordance with the other provisions of this Charter, including Paragraph C of Article X. In addition, each Appointed Shareholder Representative (as defined below) shall act in a capacity similar to a professional trustee and shall faithfully execute the responsibilities of a Shareholder Representative as a prudent person of business.
2. Composition. There shall be five (5) Shareholder Representatives, composed of: the President of the Navajo Nation or his/her designee, the Speaker of the Navajo Nation Council (the "NNC") or his/her designee, and three (3) additional members (the "Appointed Shareholder Representatives") appointed as follows.
  - i. Appointment. One of the Appointed Shareholder Representatives shall be appointed by the President of the Navajo Nation (the "President Appointee"), one of the Appointed Shareholder Representatives shall be appointed by the Speaker of the NCC (the "Speaker Appointee") and one of the Appointed Shareholder Representatives shall be appointed by mutual agreement of the President of the Navajo Nation and the Speaker of the NCC (the "Joint Appointee"), in each case in accordance with this Charter and applicable Navajo Nation law. Each Appointed Shareholder Representative shall be confirmed by the Resources and Development Committee ("RDC") and the Naa'bik'iyati' Committee, or the successor committees thereof. Except as provided in Paragraph C.2.iii of this Article V, the Appointed Shareholder Representatives shall serve staggered, five-year terms.
  - ii. Qualifications. The Appointed Shareholder Representatives shall be individuals who satisfy the following qualifications: (1) a minimum of one shall be a Certified Public Accountant ("CPA") or Chartered Financial Analyst ("CFA"), or shall have a Masters in Business Administration, who possess educational and/or practical experience in business, accounting, finance and/or investing, (2) any non-CPA or CFA Appointed Shareholder representative shall be a professional with minimum of bachelor's degree and substantial experience in engineering, business administration, finance, accounting and/or investing, (3) each shall be tribally enrolled members of the Navajo Nation, and (4) each shall have good moral and ethical character as representative by background clearance without a felony or other crimes of dishonesty.
  - iii. Initial Appointed Shareholder Representatives. The length of the terms served by the initial Appointed Shareholder Representatives shall be as follows, with each of the initial Appointed Shareholder Representatives to serve until his or her respective successor is appointed as provided in Paragraph C.2.i of this Article V:
    1. Shareholder Representative 1 (the Speaker Appointee): three (3) year term

2. Shareholder Representative 2 (the President Appointee): four (4) year term
3. Shareholder Representative 3 (the Joint Appointee): five (5) year term
3. Compensation. Shareholder Representatives shall be entitled to be compensated and reimbursed to effectuate the actions set forth and in accordance with Article X of this Charter. Shareholder Representative compensation shall be proposed by the Shareholder Representatives and approved by the RDC or its successor committee.
4. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) years has elapsed from the date of vacating the exempt or political appointed position.

#### ARTICLE VI – Period of Duration

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by an act of Congress, pursuant to the Act.

#### ARTICLE VII – Corporate Purposes

The purposes for which the Corporation is organized are:

- A. To own, invest in and manage, directly or through subsidiary corporations, joint ventures, associations, partnerships, limited liability companies or otherwise, any lawful business as determined by the Board.
- B. To form, in any state within the United States, subsidiary corporations and to enter into and form partnerships, limited liability companies, joint ventures, associations and other business arrangements as determined from time to time by the Board.
- C. To provide stable diversified investments to optimize returns where risk is minimized either within or outside the Navajo Nation for the benefit of enrolled members of the Navajo Nation.
- D. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.
- E. To pursue the above purposes for the benefit of the Navajo Nation and its enrolled members, and to distribute dividends when, as and if declared by the Corporation in the manner generally herein described.

#### ARTICLE VIII – Corporate Powers

The Corporation is authorized:

- A. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.

- B. To buy, sell, lease and otherwise acquire and maintain property, including but not limited to, personal and real property such as buildings, offices and other appurtenances proper and necessary for the carrying on of its business, and to dispose of assets in the ordinary course of its business.
- C. To carry on its business either within or outside of the Navajo Nation, as permitted by law.
- D. To guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership thereof.
- E. To enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- F. Subject to the limitations imposed by Article IX, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issuance and sale or other disposal of stocks and other evidences of ownership, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- G. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters, patent, and to use, exercise, develop, grant and give licenses in respect thereto.
- H. To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and, subject to the limitations imposed by Article IX, to pay for and to appropriate any of the Corporation's assets to defray the necessary costs, charges and expenses thereof.
- I. To sue and be sued in its corporate name to the extent provided in Article XVI, and to that extent only.
- J. To employ or appoint employees, attorneys, professional consultants and agents of the Corporation and define their duties and fix their compensation.
- K. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payments of funds so loaned and invested.
- L. To form subsidiary corporations, partnerships and/or limited liability companies pursuant to the laws of any state.
- M. To adopt and approve the Bylaws, which may contain any provision, but not those inconsistent with the federal law of the United States or the Navajo Nation or this Charter, relating to the business of the Corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The Bylaws may not contain any provision that would

- impose liability on a Shareholder Representatives for the attorneys' fees or expenses of the Corporation or any other party in connection with an internal corporate claim.
- N. To pay pensions and establish pension plans, profit-sharing plans, pension and profit-sharing trusts and other incentive plans for any or all of its directors, officers and employees. Such plans shall be based on key performance indicators or measurements that evaluate both financial and non-financial items.
- O. To obtain a certificate of authority to transact business in any state or foreign country as a foreign corporation and to comply with applicable state law governing foreign corporations.
- P. To have a corporate seal, which may be altered at the discretion of the Board.

#### ARTICLE IX – Limitations on Corporate Powers

The Corporation shall have no power:

- A. To expressly or by implication enter into any agreement of any kind on behalf of the Navajo Nation.
- B. To pledge the credit of the Navajo Nation.
- C. To dispose of, pledge or otherwise encumber real or personal property of the Navajo Nation.
- D. To waive any right, privilege or immunity of, or release any obligation owed to, the Navajo Nation.
- E. To enter into any sublease or other encumbrance or instrument respecting lands leased to the Corporation by the Navajo Nation without the express written approval of the Navajo Nation, unless otherwise provided in the lease.
- F. To sell, exchange or otherwise dispose of all or substantially all of the assets of the Corporation without prior written approval of each of (a) the Board, (b) a majority of the Shareholder Representatives, and (c) the NNC. The Corporation shall give notice to the Board, the Shareholder Representatives and the NNC not fewer than fifteen (15) days prior to seeking such approval for any such transaction.

#### ARTICLE X – Shareholder Action

- A. Annual Meeting. The annual meeting of the Shareholder Representatives (the "Annual Meeting") shall be held on the date and hour specified in the Bylaws, after the end of the Corporation's fiscal year and after the Corporation's annual audit is completed. The Chairperson of the Board or, in his or her absence, the Vice Chairperson of the Board or, in his or her absence, the Chief Executive Officer, shall preside over the Annual Meeting. If the day fixed for the Annual Meeting is a legal holiday within the Navajo Nation, the Annual Meeting shall be held on the following business day. The President of the Navajo Nation, all members of the NNC and the Shareholder Representatives shall be invited to the Annual Meeting for the purpose of (1) meeting with and reviewing a presentation by the officers of the Corporation and the Board regarding the Corporation's business plan, (2) reviewing the audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, (3) reviewing a formal performance evaluation report prepared by a CFA or a Certified Valuation

- Analyst (the "Annual Performance Assessment"), (4) reviewing the disclosure of any material information, (5) reviewing evaluations of the Board and its committees, and (6) any other business that comes before the Annual Meeting. The members of the Board shall be elected at the Annual Meeting as provided in Article XI. Written notice of the Annual Meeting must be delivered to each of the Shareholder Representatives, each member of the Board, the President of the Navajo Nation and each member of the NNC. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the Annual Meeting, either personally or by mail.
- B. Special Meetings. Special meetings of the Shareholder Representatives, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the Chief Executive Officer or by a majority of the Board, and shall be called by the Chief Executive Officer at the request of a majority of the Shareholder Representatives. Written notice of a special meeting must be delivered to each of the Shareholder Representatives and to each member of the Board. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the special meeting, either personally or by mail.
- C. Quorum. A majority of the Shareholder Representatives shall constitute a quorum for any meeting of the Shareholder Representatives.
- D. Voting. At all meetings of the Shareholder Representatives, whether the Annual Meeting or a special meeting, the Shareholder Representatives shall sit in their capacity as independent, individual representatives of the Shareholder and not in any other capacity. Matters within the scope and legal authority of the Shareholder under this Charter shall only be discussed and decided by the Shareholder Representatives present at a Shareholder Representatives' meeting duly called as provided in this Charter. On any item presented to the Shareholder, a vote shall be taken of those Shareholder Representatives present, providing that a quorum is present. All of the Common Shares shall be voted in the manner decided by a majority of those Shareholder Representatives present.

#### ARTICLE XI – Board of Directors

- A. Management Authority. The business affairs of the Corporation shall be managed exclusively by the Board. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as Shareholder (acting through the Shareholder Representatives) and as provided in this Charter.
- B. Number, Composition and Observers. The Board shall be established and shall serve in accordance with the following provisions:
1. The Board shall be initially composed of seven (7) directors, elected by the Shareholder or by the Shareholder Representatives acting on its behalf and shall be subject to the election procedures and eligibility requirements provided in this Article XI. By a duly adopted resolution of the Shareholder Representatives at an Annual Meeting or a special meeting, the number of directors composing the Board may be increased or decreased, but shall not exceed nine (9) nor be less than five (5).

2. A majority of the directors shall be enrolled members of the Navajo Nation.
3. Each director shall be of good moral and ethical character, as evidenced by a satisfactory credit check and background check.
4. Each director shall possess at least ten (10) years' experience, by virtue of formal education or practical experience, in engineering, business administration, finance, accounting and/or investing, or in another specialized area that, in the opinion of the Board, corresponds to the activities or anticipated activities of the Corporation. Experience gained by serving on committees or other boards of directors shall not be considered. Minimum eligibility requirements and qualifications for directors may be further defined by the Corporation or the Board.
5. At least: one (1) director shall be a licensed CPA or CFA; one (1) director shall have experience in federal government contracts; one (1) director shall have experience in agribusiness operations; one (1) director shall have either real estate, energy-related, or hospitality experience; one (1) director shall have managed healthcare experience; and one (1) director shall be a grassroots representative with traditional cultural background.
6. No employee of the Bureau of Indian Affairs shall be eligible to serve as a director during the time of such employment.
7. At any given time, a minimum of three (3) directors must qualify as "independent directors" under the standards of the New York Stock Exchange, as such standards would apply if the Common Shares were listed on that securities exchange (the "Independent Directors").
8. No director shall be an employee or an elected official of the Navajo Nation or any government at the time of their service on the Board, nor shall any director have been an employee of the Corporation at any time during the four (4) years preceding his or her service on the Board.
9. The Board shall elect a Chairperson and Vice Chairperson from among its members. The Chairperson shall preside at Board meetings. The Vice-Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. The Secretary/Treasurer of the Board need not be a Board member.
10. In addition to the Board members, the Director of the Navajo Nation Division of Economic Development (the "NNDED") and the Chairperson of the RDC or its successor committee shall each be designated observers to the Board (the "Observers") for the purpose of discussing with the Board the Corporation's business operations, strategic initiatives and any other matters to come before the Board. The Observers shall not have voting rights (except as set forth in Paragraph O of this Article XI), they shall not be compensated by the Corporation for their service, and they shall not count toward the presense or absense of a quorum. However, the Observers shall be invited to attend each regularly scheduled, special and other meeting (including telephonic meetings) of the Board, including each committee of the Board, and shall be included on communications requesting action by written consent of the Board, including each committee of the Board. In addition, each Observer shall have the right to receive any and all materials provided to the Board (including each committee of the Board) at the same time such materials are distributed to the other members of the Board (or such committee). In respect of their participation at meetings of the Board, their receipt of the foregoing information, their

participation on Board committees and any other actions relating to the Corporation, the Observers shall act in a manner consistent with the duties applicable to directors pursuant to Paragraph H of this Article XI

11. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) yeears has elapsed from the date of vacating the exempt or political appointed position.
- C. Elections. Except as provided in Paragraphs C.4 and C.5 of this Article XI, and other than the Director of the NNED and the Chairperson of the RDC, directors shall be elected by the Shareholder Representatives at the Annual Meeting from among the candidates proposed by the Nominating Committee.
1. The Nomination Committee shall nominate candidates to the Board as provided in Paragraph O of this Article XI and shall nominate up to three (3) candidates per Board seat.
  2. No candidate may be nominated to more than one (1) Board seat at each Annual Meeting.
  3. With respect to each Board Seat, each Shareholder Representative may vote once, which vote shall be either (a) a "for" vote in favor of one (1) candidate nominated to the Board seat, (b) a "withheld" vote with respect to all of the candidates nominated to the Board seat, or (c) a "non-vote." A candidate must receive an Electoral Majority (as defined herein) with respect to the Board seat for which he or she has been nominated in order to be elected to such Board seat. To receive an "Electoral Majority," a candidate must receive that number of "for" votes equal to more than half of (a) the number of "for" votes received by all candidates for the Board seat plus (b) the number of "withheld" votes cast with respect to the Board seat. If no candidate for a given Board seat receives an Electoral Majority, the candidate that received the fewest "for" votes shall be withdrawn from consideration, and the Shareholder Representatives shall cast their votes among the two (2) remaining candidates. The remaining candidate that receives an Electoral Majority shall be elected to the Board seat.
  4. If, after giving effect to the procedures set forth in Paragraph C.3 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall nominate up to three (3) candidates to that Board seat, and elect a director from among such candidates in accordance with the procedures set forth in Paragraph C.3 of this Article XI.
  5. If, after giving effect to the procedures set forth in Paragraphs C.3 and C.4 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall so notify the Chairperson of the Board and the Chief Executive Officer, whereupon alternative candidates may be nominated within forty-five (45) days in accordance with the provisions hereof and submitted to the Shareholder Representatives for consideration.
  6. Any currently serving director who is nominated for re-election to his or her Board seat at an Annual Meeting and who does not receive an Electoral Majority after giving effect to the procedures set forth in Paragraph C.3 of this Article XI shall thereupon immediately tender his or her resignation by giving written notice to the Shareholder Representatives.

- D. Term of Office. Directors shall serve in a pattern of staggered terms. Each director's term shall begin on the date of the Annual Meeting at which such director was elected and end on the date of the Annual Meeting occurring within the second calendar year thereafter. A director may serve no more than four (4) consecutive terms on the Board, after which such director may not serve on the Board until the third Annual Meeting following the end of his most recent term, whereupon he may again serve up to four (4) consecutive terms on the Board.
- E. Initial Directors. The initial members of the Board shall be elected as soon as practicable following the Ratification of this Charter by written consent of the Shareholder Representatives. Notwithstanding the provisions of Paragraph D of this Article XI, the terms of the initial members of the board shall be as follows:
1. Directors 1-4: one (1) year term;
  2. Directors 5-7: two (2) year term.
- F. Vacancies. Vacancies and newly created Board seats resulting from an increase in the authorized number of directors, or by the death, removal or resignation of any director, may be filled by a candidate appointed by a majority of the directors then in office, and such candidate may continue to hold office until his or her successor is duly elected at the next Annual Meeting.
- G. Resignation and Removal. Any director may resign at any time by giving written notice to the Chairperson of the Board, or, in the case of the Chairperson, to the Secretary/Treasurer, at any time, and such resignation shall be effective on the date specified in the notice. Any director may be removed from the Board with or without cause by the Shareholder Representatives at a special meeting of the Shareholder Representatives called for that purpose, or at the Annual Meeting.
- H. Duties. A director shall perform the duties of a director in good faith, in a fiduciary manner the director believes to be in the best interests of the Corporation and with such care as a reasonably prudent person would use under similar circumstances. Unless the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted, in performing his or her duties a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
1. One or more officers or employees of the Corporation whom the director reasonably believes to be reliable, knowledgeable and competent in the matters presented;
  2. Legal counsel, public accountants, professional consultants or other persons as to matters which the director reasonably believes to be within such person's professional expertise; or
  3. A committee of the Board upon which the director does not serve, duly designated in accordance with a provision of the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to be reliable, knowledgeable and competent in the matters presented.
- I. Directors' Meetings. A meeting of the Board shall be held following each Annual Meeting. Regular meetings of the Board may be held monthly at times and on dates that are set by the Board at each preceding regular meeting. Special meetings may be called by the Chief Executive Officer after consultation with the Chairperson of the Board or in his or her absence, the Vice-Chairperson, and shall be called by the Chief Executive Officer or the Secretary/Treasurer upon the request of a

majority of the Board. The Board may adopt such rules and regulations for the conduct of its meetings as it may deem proper and that are not inconsistent with this Charter, the Bylaws or applicable Navajo Nation or United States federal law.

- J. Notice of Meetings. Written notice of a meeting of the Board must be delivered to each of the directors. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the meeting, either personally or by mail. No business other than that specified in such written notice shall be transacted at any meeting, excepting that if a majority of the directors present at a meeting consent to the transaction of other business in order to facilitate a time-sensitive matter, then such other business may be transacted. The foregoing notice requirements may be waived at any time by an individual director.
- K. Quorum. At a meeting of the Board, a majority of the directors shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting without further notice.
- L. Voting. At a meeting of the Board, each director shall have one (1) vote. The Board shall in all cases act by a majority vote of the directors present at a meeting.
- M. Presumption of Assent. A director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary/Treasurer immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.
- N. Meeting Options. Except as otherwise restricted by the Bylaws, members of the Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting. Except as otherwise restricted by the Bylaws, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by the unanimous written consent of the directors, and such consent shall have the same effect as a vote at a meeting.
- O. Committees. The Board may from time to time establish committees of directors having such responsibilities as the Board may assign, provided that the Board may not relinquish its powers or duties with respect to the business and affairs of the Corporation to any committee, director, officer, employee or agent of the Corporation. The following committees are hereby established:
  - 1. The Audit & Compensation Committee, or its designee, shall oversee the Company's financial audit, disclosures, monitoring and compliance. The Audit & Compensation Committee shall comprise three (3) directors, at least two (2) of which are Independent Directors. All members of the Audit & Compensation Committee shall be financially literate and at least (1) one member shall be a CPA or CFA in good standing.
  - 2. The Nomination Committee, or its designee, shall, recruit, interview, evaluate and screen all candidates for the Board and senior management of the Corporation. The Nomination Committee

shall comprise three (3) directors, including each Board Observer, each of whom shall have the right to vote and and who shall count toward quorum for the purposes of service on the Nomination Committee.

P. Compensation.

1. The Board shall determine policies regarding director compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.
2. Directors shall initially have a base annual salary of twenty-five thousand dollars (\$25,000). Compensation for directors may include an incentive bonus based on revenue growth, earnings, dividend schedule and job production as approved by the Shareholder Representatives. Compensation of directors may be changed by the Board, provided that any such change is approved by the Shareholder or the Shareholder Representatives acting on its behalf.

Q. Liability of Directors. No director or Observer shall ~~not~~ be personally liable to the Corporation, its Shareholder or other parties for monetary damages for breach of fiduciary duty as a director unless:

1. Such person has breached or failed to perform the duties of a director as provided in this Article XI, and
2. Such breach or failure to perform constitutes willful wrongdoing, gross negligence, dishonesty or fraud.

## ARTICLE XII – Officers

- A. Number of Positions. The officers of the Corporation shall be the President, who shall also serve as the Chief Executive Officer, the Vice President and the Secretary/Treasurer. Any two or more offices may be held by the same person, except the offices of President and Secretary/Treasurer may not be held by the same person at the same time. The Board may by resolution add additional officer positions at any time and appoint persons to fill such positions until the annual election of officers is held as provided in this Charter.
- B. Election. All officers of the Corporation shall be elected annually by the Board at its meeting held immediately after the Annual Meeting, and unless expressly provided otherwise in a written contract of employment or unless removed for cause, as that term is defined herein, shall hold office for a term of one year or until their successors are duly elected. For the purposes hereof, the term “cause” shall mean willful wrongdoing, gross negligence, dishonesty or fraud in a matter causing the Corporation to incur damages.
- C. Vacancies. Vacancies in any office may be filled by the Board, at its sole discretion, at any meeting thereof or at the Annual Meeting.
- D. Resignation and Removal. Any officer may resign at any time by giving written notice to the Chief Executive Officer or, in the case of the Chief Executive Officer, to the Board, and such resignation shall be effective on the date specified in the written notice. Unless expressly provided otherwise in a written contract of employment, any officers may be removed without cause, at any time, by a vote of the Board at any special meeting called for that purpose or at the Annual Meeting. Except as

provided in an employment agreement, each officer serves at the will of the Corporation, which power is exercised by the Board.

- E. Duties and Powers. The duties and powers of the officers of the Corporation shall be provided in the Bylaws.
- F. Compensation. The Board shall determine policies for officer compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.

#### ARTICLE XIII – Indemnification

- A. Right to Indemnification. Each person (hereafter an “Agent”) who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereafter a “Proceeding”), by reason of the fact that such person, or another person of whom such person is the legal representative, is or was a Shareholder Representative, director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall, subject to Paragraph B of this Article XIII, be indemnified and held harmless by the Corporation to the fullest extent authorized by statutory and decisional law, as the same exists or may hereafter be interpreted or amended (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability and loss (including attorneys’ fees, judgments, fines, excise taxes and penalties, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article XIII) incurred or suffered by such person in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (“Expenses”); provided, however, that except as to actions to enforce indemnification rights pursuant to Paragraph C of this Article XIII, the Corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such Agent only if the Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article XIII shall be a contract right.
- B. Indemnification Claims. To obtain indemnification under this Article XIII, an Indemnitee shall submit to the Secretary/Treasurer a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the “Supporting Documentation”). The determination of the Agent’s entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary/Treasurer shall, promptly upon receipt of such a request

for indemnification, advise the Board in writing that the Indemnitee has requested indemnification. The Agent's entitlement to indemnification under this Article XIII shall be granted only if: 1) the Agent acted in good faith and in a manner the Agent reasonably believed to be in, or not opposed to, the best interests of the Corporation; and 2) the Agent did not engage in willful wrongdoing, gross negligence, dishonesty or fraud, nor did the Indemnitee fail or refuse to act such that his or her failure or refusal constituted willful wrongdoing, gross negligence, dishonesty or fraud; 3) any legal fees paid or any settlements made are reasonable, provided that with respect to any criminal action or proceeding the Corporation shall not be liable to indemnify the Agent against any criminal fine for which the Agent is personally liable; and 4) the Agent did not act beyond the scope of his or her employment or office.

- C. Right of Indemnitee to Bring Suit. If a claim under Paragraphs A and B of this Article XIII is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, subject to the provisions of Article XVI, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct under applicable law and Paragraph B of Article XIII that make it permissible for the Corporation to indemnify the claimant for the amount claimed. The burden of disproving such a defense shall be on the claimant.
- D. Authority to Advance Expenses. Expenses incurred by an Agents in defending a Proceeding may be advanced upon such terms and conditions as the Board deems appropriate, including, if determined by the Board, an undertaking by or on behalf of such Agent to repay any amount advanced if it shall ultimately be determined that the Agent is not entitled to be indemnified by the Corporation as authorized in this Article XIII or otherwise. Any obligation to reimburse the Corporation for Expense advances shall be unsecured and no interest shall be charged thereon.
- E. Provisions Nonexclusive. The right of indemnification provided in this Article XIII shall not be exclusive of any other rights to which an Agent may otherwise be entitled, including, without limitation, from the Shareholder or its affiliates. Notwithstanding the foregoing, the Corporation shall not be liable under this Article to make any payment in connection with any claim made against an Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder, unless otherwise agreed between the Corporation and the Agent.
- F. Survival of Rights. The provisions of this Article XIII shall inure to the benefit of the heirs and legal representatives of any Agent entitled to indemnification under this Article XIII and shall be applicable to Proceedings commenced or continuing after the adoption of this Article XIII, whether arising from acts or omissions occurring before or after such adoption, and whether or not the Agent has ceased to be an Agent. Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.
- G. Insurance and Contracts. The Corporation may (a) purchase and maintain insurance to protect itself and any Agent against any Expense asserted against or incurred by such Agent in such amounts as the Board deems appropriate, and (b) enter into contracts with any director or officer of the Corporation

to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article XIII, in each case (i) notwithstanding any interest of the directors in the decision to purchase and maintain such insurance or enter into such contracts, and (ii) whether or not the Corporation would have the power or would be required to indemnify that person against such liability under the provisions of this Article XIII or the Navajo Nation Corporation Code.

- H. Settlement of Claims. The Corporation shall not be liable to indemnify any Agent under this Article XIII for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award, if the Corporation was not given a reasonable and timely opportunity to participate, at its expense, in the defense of such action.
- I. Subrogation. In the event of payment under this Article XIII, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.
- J. Shareholder Representative Action. If the Board is unable to act with respect to any matter under this Article XIII due to lack of a quorum of disinterested directors, such matter shall be submitted to the Shareholder Representatives.

#### ARTICLE XIV – Net Profits, Dividends and Redemptions

- A. Net Profit. Each fiscal year, the net profits or losses of the Corporation shall be determined in accordance with generally accepted accounting principles in the United States and applied as if the Corporation was not subject to Governmental Accounting Standards, but was subject to standards prescribed by the Financial Accounting Standards Board ("FASB") or by the International Financial Accounting Standards ("IFRS"). It is recognized that such accounting principles may result in the accounting reports and opinions thereon being issued as an Other Comprehensive Basis of Accounting ("OCBOA"). Unless such action would violate any financing covenant or other governing agreement, the Board shall annually, within 120 days following the end of the Corporation's fiscal year, determine the portion of the net profits of the Corporation that are available for distribution in the form of dividends.
- B. Dividends.
  - 1. Subject to the other provisions of this Charter, the Board shall have the sole authority to declare dividends for payment to the Shareholder.
  - 2. In respect of its Preferred Shares, the Shareholder shall be entitled to receive dividends (the "Preferred Share Dividend"), out of assets legally available therefor, prior and in preference to any declaration or payment of any other dividend on the Common Shares, equal to a percentage, as set forth in the following sentence, of the net profits in any fiscal year when the Corporation realizes a net profit, as determined in accordance with Paragraph A of this Article XIV. The percentage applicable to the Preferred Share Dividend shall be twenty percent (20%) from the Inception Date (as defined below) through the five-year anniversary of the Inception Date, thirty percent (30%) thereafter until the ten-year anniversary of the Inception Date, and forty percent (40%) thereafter, provided, however, that effective after the first 10 years from the Inception

Date, the Preferred Share Dividend may be set to a different amount by the supermajority (2/3) vote of the full NNC. The "Inception Date" shall be set by the Shareholder Representatives by notice delivered to the Board and the Corporation. Preferred Share Dividends shall be cumulative, such that, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency, shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Shares. Any accumulation of Preferred Share Dividends shall not bear interest. Fifty percent (50%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the account of the Navajo Nation Permanent Trust Fund Trust, and the remaining fifty percent (50%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the Navajo Nation's general revenue fund; provided that the foregoing allocation percentages may be adjusted, from time to time, by the supermajority (2/3) vote of the full NNC.

3. After the payment in full of the Preferred Share Dividends in any year, additional dividends may be declared by the Board out of assets legally available therefor and distributed to the Shareholder.
  4. The Board shall not declare any Preferred Share Dividends or any other dividends, notwithstanding the determination that the Corporation possesses funds available for distribution for any fiscal year, to the extent any of the following conditions would exist following such declaration:
    - i. The Corporation would not be able to pay its debts as they become due in the usual course of its business;
    - ii. The Corporation's total assets would be less than the sum of its total liabilities; or
    - iii. The Corporation would be unable to meet any other existing financial commitments that had been previously approved by the Board.
- C. Redemptions. Neither the Corporation nor the Shareholder shall have the unilateral right to call or redeem or cause to have called or redeemed any Preferred Shares; provided, however, that the Corporation and the Shareholder agree that the Preferred Shares shall be redeemed with the consent of, and in accordance with terms approved by, the Shareholder Representatives and a supermajority (2/3) vote of the NNC. The Common Shares shall not be redeemable.
- D. General. Any amounts received by the Shareholder from the Corporation pursuant to this Article XIV shall be distributed and used in the manner set forth by Navajo Nation law.

#### ARTICLE XV – Accounting and Reports to Shareholder

- A. The Corporation shall adopt a fiscal year that begins on the first day of January each year and ends on the thirty-first day of December each year.
- B. The Corporation shall maintain its financial records in accordance with ARTICLE XIV.
- C. The Board shall, no less frequently than on a quarterly basis, deliver a confidential report in writing to the Shareholder Representatives, with a copy to the office of the Controller of the Navajo Nation, on the financial and operating condition of the Corporation, including (i) unaudited financial statements

showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal quarter and reporting on the financial results of the fiscal quarter, (ii) a formal performance evaluation report prepared by a CFA or a Certified Valuation Analyst (the "Quarterly Performance Assessment"), and (iii) a report of the official actions of the Corporation's directors, officers and employees.

- D. Except as otherwise provided by applicable law, in furtherance of his or her duties under this Charter, any Shareholder Representative shall in person or by attorney or other agent, upon written request certifying the purpose thereof, have the right to inspect all books and records of the Corporation or its subsidiaries during business hours. Any such Shareholder Representative shall hold in confidence, and use for the certified purpose, all information provided to it or learned by it in connection with the preceding sentence, except to the extent otherwise required by law and any other regulatory process to which such Shareholder Representative is subject.
- E. The Corporation shall within 120 days following the close of the Corporation's fiscal year, submit to the Shareholder Representatives, with a copy of the office of the Controller of the Navajo Nation: (i) audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, which financial statements shall be prepared by an independent CPA, and (ii) the Annual Performance Assessment.

#### ARTICLE XVI – Claims Against the Corporation

- A. The Corporation is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Article XVI. The Corporation and its directors, officers, employees and agents, while acting in their official capacities, are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, I.N.N.C. § 551, et. seq., the Board may waive, on behalf of the Corporation, the defenses identified in this Article XVI, in conformity with the procedures established in this Article, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article XVI must be express and must be agreed to by the Board prior to the time any alleged cause of action accrues.
- B. The Corporation, by action of the Board, is hereby authorized to waive, as provided in this Article XVI, any defense of sovereign immunity from suit the Corporation, its directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal and/or federal court. The Corporation is authorized, in conformity with 13 C.F.R. § 124.112(c)(1) (1992), to designate United States federal courts to be among the courts of competent jurisdiction for all matters, including those related to the Small Business Administration's programs including but not limited to 8(a) Program Participation, loans, advance payments and contract performance.

- C. The Corporation is hereby authorized to waive, as provided in this Article XVI, any defense the Corporation, its directors, officers, employees, attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- D. Any waiver or designation by the Corporation or the Board authorized by Paragraphs A, B or C of this Article XVI shall be in the form of a resolution duly adopted by the Board, upon thirty (30) days' written notice to the NNC of the Board's intention to adopt such resolution, and which waiver or designation shall require approval by the Shareholder Representatives prior to its becoming effective. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of the Corporation which may be subject to execution to satisfy any judgment with may be entered in the claim, and shall identify the court or courts in which suit against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its directors, officers, employees or agents, and shall be construed only to affect the property and income of the Corporation.
- E. Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article XVI, shall be construed as a waiver of the sovereign immunity of the Navajo Nation or of any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or of any other instrumentality of the Navajo Nation for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or of any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, its directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.
- F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the Navajo Nation.

#### ARTICLE XVII – Prohibited Transactions

- A. The Corporation shall not make any loan of money or property to, or guarantee the obligation of, any director, officer, employee or agent; provided, however, that the Corporation may advance money to a director, officer, employee or agent of the Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director, officer, employee or agent so long as such individual would be entitled to be reimbursed for such expenses absent that advance.
- B. Except as provided in Paragraph C of this Article XVII, the Board shall not approve or permit the Corporation to engage in any transaction to which the Corporation is a party and in which one or more of its directors has a material financial interest (an "Interested Transaction").
- C. The Corporation may engage in an Interested Transaction if the Interested Transaction is approved by a majority of each of (a) the Shareholder Representatives and (b) the NNC upon the finding that (i)

the Corporation is entering into the Interested Transaction for its own benefit, (ii) the Interested Transaction is fair and reasonable to the Corporation, and (iii) after reasonable investigation, the Corporation has determined that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

#### ARTICLE XVIII – Seal

The seal of the Corporation shall be as follows:

Naat'áanii Development Corporation

#### ARTICLE XIX – Dissolution

- A. After issuance of this Charter by the Secretary of the Interior and its Ratification, the Corporation may be dissolved only as provided in this Article.
- B. The Corporation may be dissolved as follows:
  1. The Board shall adopt a resolution recommending that the Corporation be dissolved and such dissolution shall be submitted to a vote of the Shareholder Representatives at a meeting of the Shareholder Representatives, which may be either a regular or a special meeting.
  2. Written notice shall be given to the Shareholder Representatives in the manner provided in this Charter for giving notice of meetings of the Shareholder Representatives and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.
  3. At such meeting of the Shareholder Representatives, a vote shall be taken on a resolution to dissolve the Corporation.
  4. Upon adoption of the resolution, a statement of intent to dissolve shall be executed by the President or Vice President and by the Secretary/Treasurer acting on behalf of the Corporation, and shall be delivered to the Secretary of the Interior.
  5. Upon filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up the activities thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress, in accordance with the Act.
  6. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Shareholder; pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.
  7. By resolution of the Board or by resolution adopted by the NNC at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing the

notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and Corporation may again carry on its business.

8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the Corporation have been distributed to the Navajo Nation, Navajo Nation shall seek to have the Secretary of the Interior take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

#### ARTICLE XX – Amendments

- A. The authority to petition for amendments to this Charter is vested in the NNC, but no amendment shall have legal effect until approved by the Secretary of the Interior and ratified by the NNC in accordance with the Act and applicable Navajo Nation law.
- B. The Board may request that the NNC petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the NNC.

CERTIFICATION OF APPROVAL

I, \_\_\_\_\_, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended, and delegated to me by 209 D.M. 8.1, do hereby approve this Federal Charter of Incorporation for use by the Navajo Nation and the Naat'áanii Development Corporation, Inc. This Charter shall become effective upon ratification by the Navajo Nation Council, provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Deputy Commissioner of Indian Affairs

Washington, D.C.

Date:



FEDERAL CHARTER OF INCORPORATION  
ISSUED BY THE UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS

TO THE NAVAJO NATION FOR THE NAAT'ÁANII DEVELOPMENT CORPORATION  
A Federally Chartered Corporation

WHEREAS, Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477, as amended (the "Act"), authorizes the Secretary of the Interior to issue a Federal Charter of Incorporation to an Indian Tribe; and

WHEREAS, the Navajo Nation is a federally recognized Indian Tribe; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation approved a plan for creation of a business corporation that is intended to invest capital in a broad array of business opportunities for the purpose of generating income and wealth for the Navajo Nation and for its members; and

WHEREAS, on \_\_\_\_\_, 2017, the governing body of the Navajo Nation petitioned the Secretary of the Interior to issue a Federal Charter of Incorporation to the Navajo Nation to establish this for-profit business corporation (the "Corporation"), as authorized by the Act; and

WHEREAS, all of the legal prerequisites to the issuance of this CHARTER OF INCORPORATION (this "Charter") have been fulfilled;

NOW THEREFORE, I, \_\_\_\_\_, Regional Director of Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the Act and delegated to me, do hereby issue this Charter to the Navajo Nation, to be operative when ratified by the governing body of the Navajo Nation ("Ratification").

ARTICLE I – Name

The name of the Corporation is Naat'áanii Development Corporation.

ARTICLE II – Principal Office and Registered Office

- A. Principal Office. The principal office of the Corporation shall be located within the Navajo Nation. The Corporation may have such other offices, either within or outside of the Navajo Nation as the Board of Directors of the Corporation (the "Board") may designate or as the business of the Corporation may require from time to time.
- B. Registered Offices. The Corporation shall register as a foreign corporation with the appropriate state offices with respect to those states where the Corporation shall undertake to transact business outside of the exterior boundaries of the Navajo Nation. Any offices so registered need not be identical to the principal place of business of the Corporation at the Corporation or within that state and any registered office may be changed from time to time by the Board.

### ARTICLE III – Authority for Charter

The Corporation is organized, incorporated and chartered under the laws of the United States as a Federally Chartered Corporation under the Act and shall have the powers, privileges and immunities granted by the Act embodied in this Charter. This Charter shall not be changed or modified through the bylaws of the Corporation (the “Bylaws”), nor will the Bylaws supersede the authority of this Charter.

### ARTICLE IV – Status of Corporation

- A. The Corporation is a legal entity, wholly-owned by the Navajo Nation, a federally recognized Indian tribe, but distinct and separate from the Navajo Nation. As an instrumentality of the Navajo Nation, the Corporation is entitled to the privileges and immunities of the Navajo Nation. However, the activities, transactions, obligations, liabilities and property of the Corporation are not those of the Navajo Nation.
- B. The Corporation shall have the same immunities under the federal law of the United States as the Navajo Nation. The Corporation shall retain the Navajo Nation’s tax exempt status and shall enjoy any tax advantages available to a corporation of its type.

### ARTICLE V – Ownership of the Corporation

#### A. Shares

- 1. The aggregate number of shares which the Corporation shall have authority to issue is 1,000,000 shares of common stock (hereinafter the “Common Shares”), having no par value, and 1,000,000 shares of preferred stock (hereinafter the “Preferred Shares” and, together with the Common Shares, the “Shares”), having no par value.
  - 2. All Common Shares shall be owned by the Navajo Nation (the “Shareholder”) and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. The holder of each share of Common Stock shall have the right to one (1) vote per such share. Any voting rights with respect to the Common Shares shall be the responsibility of the representatives selected to act on behalf of the Navajo Nation (the “Shareholder Representatives”) in accordance with the other provisions of this Charter, including Paragraph C of this Article V and Paragraph C of Article X.
  - 3. All Preferred Shares shall be owned by the Shareholder and shall be deemed issued and outstanding immediately upon the Ratification of this Charter. Preferred Shares shall have no voting rights, shall not be convertible into Common Shares and shall have the profit, dividend and redemption rights as set forth in Article XIV.
- B. All Shares in the Corporation shall be owned by the Navajo Nation for the benefit of the Navajo Nation and its enrolled members. No individual or legal entity other than the Navajo Nation may acquire any Shares, the Shares shall not be sold, transferred, pledged or hypothecated, voluntarily or involuntarily, and any purported sale, transfer, pledge or hypothecation of the Shares shall be void and of no effect.

C. Shareholder Representatives.

1. Duties. All rights of the Shareholder with respect to the voting of the Shares shall be exercised by the Shareholder Representatives, who shall act in such capacity in the best interest of the Navajo Nation and its enrolled members in accordance with the other provisions of this Charter, including Paragraph C of Article X. In addition, each Appointed Shareholder Representative (as defined below) shall act in a capacity similar to a professional trustee and shall faithfully execute the responsibilities of a Shareholder Representative as a prudent person of business.
2. Composition. There shall be five (5) Shareholder Representatives, composed of: the President of the Navajo Nation or his/her designee, the Speaker of the Navajo Nation Council (the "NCC") or his/her designee, and three (3) additional members (the "Appointed Shareholder Representatives") appointed as follows.
  - i. Appointment. One of the Appointed Shareholder Representatives shall be appointed by the President of the Navajo Nation (the "President Appointee"), one of the Appointed Shareholder Representatives shall be appointed by the Speaker of the NCC (the "Speaker Appointee") and one of the Appointed Shareholder Representatives shall be appointed by mutual agreement of the President of the Navajo Nation and the Speaker of the NCC (the "Joint Appointee"), in each case in accordance with this Charter and applicable Navajo Nation law. Each Appointed Shareholder Representative shall be confirmed by the Resources and Development Committee ("RDC") and the Naa'bik'iyati' Committee, or the successor committees thereof. Except as provided in Paragraph C.2.iii of this Article V, the Appointed Shareholder Representatives shall serve staggered, five-year terms.
  - ii. Qualifications. The Appointed Shareholder Representatives shall be individuals who satisfy the following qualifications: (1) a minimum of one shall be a Certified Public Accountant ("CPA") or Chartered Financial Analyst ("CFA"), or shall have a Masters in Business Administration, who possess educational and/or practical experience in business, accounting, finance and/or investing, (2) any non-CPA or CFA Appointed Shareholder representative shall be a professional with minimum of bachelor's degree and substantial experience in engineering, business administration, finance, accounting and/or investing, (3) each shall be tribally enrolled members of the Navajo Nation, and (4) each shall have good moral and ethical character as representative by background clearance without a felony or other crimes of dishonesty.
  - iii. Initial Appointed Shareholder Representatives. The length of the terms served by the initial Appointed Shareholder Representatives shall be as follows, with each of the initial Appointed Shareholder Representatives to serve until his or her respective successor is appointed as provided in Paragraph C.2.i of this Article V:
    1. Shareholder Representative 1 (the Speaker Appointee): three (3) year term

2. Shareholder Representative 2 (the President Appointee): four (4) year term
3. Shareholder Representative 3 (the Joint Appointee): five (5) year term
3. Compensation. Shareholder Representatives shall be entitled to be compensated and reimbursed to effectuate the actions set forth and in accordance with Article X of this Charter. Shareholder Representative compensation shall be proposed by the Shareholder Representatives and approved by the RDC or its successor committee.
4. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) years has elapsed from the date of vacating the exempt or political appointed position.

#### ARTICLE VI – Period of Duration

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by an act of Congress, pursuant to the Act.

#### ARTICLE VII – Corporate Purposes

The purposes for which the Corporation is organized are:

- A. To own, invest in and manage, directly or through subsidiary corporations, joint ventures, associations, partnerships, limited liability companies or otherwise, any lawful business as determined by the Board.
- B. To form, in any state within the United States, subsidiary corporations and to enter into and form partnerships, limited liability companies, joint ventures, associations and other business arrangements as determined from time to time by the Board.
- C. To provide stable diversified investments to optimize returns where risk is minimized either within or outside the Navajo Nation for the benefit of enrolled members of the Navajo Nation.
- D. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.
- E. To pursue the above purposes for the benefit of the Navajo Nation and its enrolled members, and to distribute dividends when, as and if declared by the Corporation in the manner generally herein described.

#### ARTICLE VIII – Corporate Powers

The Corporation is authorized:

- A. To engage in any lawful business with the powers permitted to a corporation organized pursuant to the Act.

- B. To buy, sell, lease and otherwise acquire and maintain property, including but not limited to, personal and real property such as buildings, offices and other appurtenances proper and necessary for the carrying on of its business, and to dispose of assets in the ordinary course of its business.
- C. To carry on its business either within or outside of the Navajo Nation, as permitted by law.
- D. To guarantee, purchase, hold, assign, mortgage, pledge or otherwise dispose of capital stock of, or any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership thereof.
- E. To enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- F. Subject to the limitations imposed by Article IX, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issuance and sale or other disposal of stocks and other evidences of ownership, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, without the approval of the Navajo Nation or the Secretary of the Interior, except when the use of entrusted or federally-restricted Indian property requires such approval.
- G. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters, patent, and to use, exercise, develop, grant and give licenses in respect thereto.
- H. To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and, subject to the limitations imposed by Article IX, to pay for and to appropriate any of the Corporation's assets to defray the necessary costs, charges and expenses thereof.
- I. To sue and be sued in its corporate name to the extent provided in Article XVI, and to that extent only.
- J. To employ or appoint employees, attorneys, professional consultants and agents of the Corporation and define their duties and fix their compensation.
- K. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payments of funds so loaned and invested.
- L. To form subsidiary corporations, partnerships and/or limited liability companies pursuant to the laws of any state.
- M. To adopt and approve the Bylaws, which may contain any provision, but not those inconsistent with the federal law of the United States or the Navajo Nation or this Charter, relating to the business of the Corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The Bylaws may not contain any provision that would

impose liability on a Shareholder Representatives for the attorneys' fees or expenses of the Corporation or any other party in connection with an internal corporate claim.

- N. To pay pensions and establish pension plans, profit-sharing plans, pension and profit-sharing trusts and other incentive plans for any or all of its directors, officers and employees. Such plans shall be based on key performance indicators or measurements that evaluate both financial and non-financial items.
- O. To obtain a certificate of authority to transact business in any state or foreign country as a foreign corporation and to comply with applicable state law governing foreign corporations.
- P. To have a corporate seal, which may be altered at the discretion of the Board.

#### ARTICLE IX – Limitations on Corporate Powers

The Corporation shall have no power:

- A. To expressly or by implication enter into any agreement of any kind on behalf of the Navajo Nation.
- B. To pledge the credit of the Navajo Nation.
- C. To dispose of, pledge or otherwise encumber real or personal property of the Navajo Nation.
- D. To waive any right, privilege or immunity of, or release any obligation owed to, the Navajo Nation.
- E. To enter into any sublease or other encumbrance or instrument respecting lands leased to the Corporation by the Navajo Nation without the express written approval of the Navajo Nation, unless otherwise provided in the lease.
- F. To sell, exchange or otherwise dispose of all or substantially all of the assets of the Corporation without prior written approval of each of (a) the Board, (b) a majority of the Shareholder Representatives, and (c) the NNC. The Corporation shall give notice to the Board, the Shareholder Representatives and the NNC not fewer than fifteen (15) days prior to seeking such approval for any such transaction.

#### ARTICLE X – Shareholder Action

- A. Annual Meeting. The annual meeting of the Shareholder Representatives (the "Annual Meeting") shall be held on the date and hour specified in the Bylaws, after the end of the Corporation's fiscal year and after the Corporation's annual audit is completed. The Chairperson of the Board or, in his or her absence, the Vice Chairperson of the Board or, in his or her absence, the Chief Executive Officer, shall preside over the Annual Meeting. If the day fixed for the Annual Meeting is a legal holiday within the Navajo Nation, the Annual Meeting shall be held on the following business day. The President of the Navajo Nation, all members of the NNC and the Shareholder Representatives shall be invited to the Annual Meeting for the purpose of (1) meeting with and reviewing a presentation by the officers of the Corporation and the Board regarding the Corporation's business plan, (2) reviewing the audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, (3) reviewing a formal performance evaluation report prepared by a CFA or a Certified Valuation

Analyst (the "Annual Performance Assessment"), (4) reviewing the disclosure of any material information, (5) reviewing evaluations of the Board and its committees, and (6) any other business that comes before the Annual Meeting. The members of the Board shall be elected at the Annual Meeting as provided in Article XI. Written notice of the Annual Meeting must be delivered to each of the Shareholder Representatives, each member of the Board, the President of the Navajo Nation and each member of the NNC. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the Annual Meeting, either personally or by mail.

- B. Special Meetings. Special meetings of the Shareholder Representatives, for any purpose or purposes, unless otherwise proscribed by applicable law, may be called by the Chief Executive Officer or by a majority of the Board, and shall be called by the Chief Executive Officer at the request of a majority of the Shareholder Representatives. Written notice of a special meeting must be delivered to each of the Shareholder Representatives and to each member of the Board. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the special meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the special meeting, either personally or by mail.
- C. Quorum. A majority of the Shareholder Representatives shall constitute a quorum for any meeting of the Shareholder Representatives.
- D. Voting. At all meetings of the Shareholder Representatives, whether the Annual Meeting or a special meeting, the Shareholder Representatives shall sit in their capacity as independent, individual representatives of the Shareholder and not in any other capacity. Matters within the scope and legal authority of the Shareholder under this Charter shall only be discussed and decided by the Shareholder Representatives present at a Shareholder Representatives' meeting duly called as provided in this Charter. On any item presented to the Shareholder, a vote shall be taken of those Shareholder Representatives present, providing that a quorum is present. All of the Common Shares shall be voted in the manner decided by a majority of those Shareholder Representatives present.

#### ARTICLE XI – Board of Directors

- A. Management Authority. The business affairs of the Corporation shall be managed exclusively by the Board. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as Shareholder (acting through the Shareholder Representatives) and as provided in this Charter.
- B. Number, Composition and Observers. The Board shall be established and shall serve in accordance with the following provisions:
  - 1. The Board shall be initially composed of seven (7) directors, elected by the Shareholder or by the Shareholder Representatives acting on its behalf and shall be subject to the election procedures and eligibility requirements provided in this Article XI. By a duly adopted resolution of the Shareholder Representatives at an Annual Meeting or a special meeting, the number of directors composing the Board may be increased or decreased, but shall not exceed nine (9) nor be less than five (5).

2. A majority of the directors shall be enrolled members of the Navajo Nation.
3. Each director shall be of good moral and ethical character, as evidenced by a satisfactory credit check and background check.
4. Each director shall possess at least ten (10) years' experience, by virtue of formal education or practical experience, in engineering, business administration, finance, accounting and/or investing, or in another specialized area that, in the opinion of the Board, corresponds to the activities or anticipated activities of the Corporation. Experience gained by serving on committees or other boards of directors shall not be considered. Minimum eligibility requirements and qualifications for directors may be further defined by the Corporation or the Board.
5. At least: one (1) director shall be a licensed CPA or CFA; one (1) director shall have experience in federal government contracts; one (1) director shall have experience in agribusiness operations; one (1) director shall have either real estate, energy-related, or hospitality experience; one (1) director shall have managed healthcare experience; and one (1) director shall be a grassroots representative with traditional cultural background.
6. No employee of the Bureau of Indian Affairs shall be eligible to serve as a director during the time of such employment.
7. At any given time, a minimum of three (3) directors must qualify as "independent directors" under the standards of the New York Stock Exchange, as such standards would apply if the Common Shares were listed on that securities exchange (the "Independent Directors").
8. No director shall be an employee or an elected official of the Navajo Nation or any government at the time of their service on the Board, nor shall any director have been an employee of the Corporation at any time during the four (4) years preceding his or her service on the Board.
9. The Board shall elect a Chairperson and Vice Chairperson from among its members. The Chairperson shall preside at Board meetings. The Vice-Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson. The Secretary/Treasurer of the Board need not be a Board member.
10. In addition to the Board members, the Director of the Navajo Nation Division of Economic Development (the "NNDED") and the Chairperson of the RDC or its successor committee shall each be designated observers to the Board (the "Observers") for the purpose of discussing with the Board the Corporation's business operations, strategic initiatives and any other matters to come before the Board. The Observers shall not have voting rights (except as set forth in Paragraph O of this Article XI), they shall not be compensated by the Corporation for their service, and they shall not count toward the presence or absence of a quorum. However, the Observers shall be invited to attend each regularly scheduled, special and other meeting (including telephonic meetings) of the Board, including each committee of the Board, and shall be included on communications requesting action by written consent of the Board, including each committee of the Board. In addition, each Observer shall have the right to receive any and all materials provided to the Board (including each committee of the Board) at the same time such materials are distributed to the other members of the Board (or such committee). In respect of their participation at meetings of the Board, their receipt of the foregoing information, their

participation on Board committees and any other actions relating to the Corporation, the Observers shall act in a manner consistent with the duties applicable to directors pursuant to Paragraph H of this Article XI

11. Restriction. An Appointed Shareholder Representative shall not be an exempt employee or political appointee, as defined by the Navajo Nation Personnel Policy Manual, until eight (8) yeears has elapsed from the date of vacating the exempt or political appointed position.

C. Elections. Except as provided in Paragraphs C.4 and C.5 of this Article XI, and other than the Director of the NNED and the Chairperson of the RDC, directors shall be elected by the Shareholder Representatives at the Annual Meeting from among the candidates proposed by the Nominating Committee.

1. The Nomination Committee shall nominate candidates to the Board as provided in Paragraph O of this Article XI and shall nominate up to three (3) candidates per Board seat.
2. No candidate may be nominated to more than one (1) Board seat at each Annual Meeting.
3. With respect to each Board Seat, each Shareholder Representative may vote once, which vote shall be either (a) a "for" vote in favor of one (1) candidate nominated to the Board seat, (b) a "withheld" vote with respect to all of the candidates nominated to the Board seat, or (c) a "non-vote." A candidate must receive an Electoral Majority (as defined herein) with respect to the Board seat for which he or she has been nominated in order to be elected to such Board seat. To receive an "Electoral Majority," a candidate must receive that number of "for" votes equal to more than half of (a) the number of "for" votes received by all candidates for the Board seat *plus* (b) the number of "withheld" votes cast with respect to the Board seat. If no candidate for a given Board seat receives an Electoral Majority, the candidate that received the fewest "for" votes shall be withdrawn from consideration, and the Shareholder Representatives shall cast their votes among the two (2) remaining candidates. The remaining candidate that receives an Electoral Majority shall be elected to the Board seat.
4. If, after giving effect to the procedures set forth in Paragraph C.3 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall nominate up to three (3) candidates to that Board seat, and elect a director from among such candidates in accordance with the procedures set forth in Paragraph C.3 of this Article XI.
5. If, after giving effect to the procedures set forth in Paragraphs C.3 and C.4 of this Article XI, no candidate receives an Electoral Majority with respect to a Board seat, the Shareholder Representatives shall so notify the Chairperson of the Board and the Chief Executive Officer, whereupon alternative candidates may be nominated within forty-five (45) days in accordance with the provisions hereof and submitted to the Shareholder Representatives for consideration.
6. Any currently serving director who is nominated for re-election to his or her Board seat at an Annual Meeting and who does not receive an Electoral Majority after giving effect to the procedures set forth in Paragraph C.3 of this Article XI shall thereupon immediately tender his or her resignation by giving written notice to the Shareholder Representatives.

- D. Term of Office. Directors shall serve in a pattern of staggered terms. Each director's term shall begin on the date of the Annual Meeting at which such director was elected and end on the date of the Annual Meeting occurring within the second calendar year thereafter. A director may serve no more than four (4) consecutive terms on the Board, after which such director may not serve on the Board until the third Annual Meeting following the end of his most recent term, whereupon he may again serve up to four (4) consecutive terms on the Board.
- E. Initial Directors. The initial members of the Board shall be elected as soon as practicable following the Ratification of this Charter by written consent of the Shareholder Representatives. Notwithstanding the provisions of Paragraph D of this Article XI, the terms of the initial members of the board shall be as follows:
1. Directors 1-4: one (1) year term;
  2. Directors 5-7: two (2) year term.
- F. Vacancies. Vacancies and newly created Board seats resulting from an increase in the authorized number of directors, or by the death, removal or resignation of any director, may be filled by a candidate appointed by a majority of the directors then in office, and such candidate may continue to hold office until his or her successor is duly elected at the next Annual Meeting.
- G. Resignation and Removal. Any director may resign at any time by giving written notice to the Chairperson of the Board, or, in the case of the Chairperson, to the Secretary/Treasurer, at any time, and such resignation shall be effective on the date specified in the notice. Any director may be removed from the Board with or without cause by the Shareholder Representatives at a special meeting of the Shareholder Representatives called for that purpose, or at the Annual Meeting.
- H. Duties. A director shall perform the duties of a director in good faith, in a fiduciary manner the director believes to be in the best interests of the Corporation and with such care as a reasonably prudent person would use under similar circumstances. Unless the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted, in performing his or her duties a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
1. One or more officers or employees of the Corporation whom the director reasonably believes to be reliable, knowledgeable and competent in the matters presented;
  2. Legal counsel, public accountants, professional consultants or other persons as to matters which the director reasonably believes to be within such person's professional expertise; or
  3. A committee of the Board upon which the director does not serve, duly designated in accordance with a provision of the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to be reliable, knowledgeable and competent in the matters presented.
- I. Directors' Meetings. A meeting of the Board shall be held following each Annual Meeting. Regular meetings of the Board may be held monthly at times and on dates that are set by the Board at each preceding regular meeting. Special meetings may be called by the Chief Executive Officer after consultation with the Chairperson of the Board or in his or her absence, the Vice-Chairperson, and shall be called by the Chief Executive Officer or the Secretary/Treasurer upon the request of a

majority of the Board. The Board may adopt such rules and regulations for the conduct of its meetings as it may deem proper and that are not inconsistent with this Charter, the Bylaws or applicable Navajo Nation or United States federal law.

- J. Notice of Meetings. Written notice of a meeting of the Board must be delivered to each of the directors. Such written notice shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such written notice shall be delivered not fewer than seven (7) days before the date of the meeting, either personally or by mail. No business other than that specified in such written notice shall be transacted at any meeting, excepting that if a majority of the directors present at a meeting consent to the transaction of other business in order to facilitate a time-sensitive matter, then such other business may be transacted. The foregoing notice requirements may be waived at any time by an individual director.
- K. Quorum. At a meeting of the Board, a majority of the directors shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting without further notice.
- L. Voting. At a meeting of the Board, each director shall have one (1) vote. The Board shall in all cases act by a majority vote of the directors present at a meeting.
- M. Presumption of Assent. A director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary/Treasurer immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.
- N. Meeting Options. Except as otherwise restricted by the Bylaws, members of the Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting. Except as otherwise restricted by the Bylaws, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting by the unanimous written consent of the directors, and such consent shall have the same effect as a vote at a meeting.
- O. Committees. The Board may from time to time establish committees of directors having such responsibilities as the Board may assign, provided that the Board may not relinquish its powers or duties with respect to the business and affairs of the Corporation to any committee, director, officer, employee or agent of the Corporation. The following committees are hereby established:
  - 1. The Audit & Compensation Committee, or its designee, shall oversee the Company's financial audit, disclosures, monitoring and compliance. The Audit & Compensation Committee shall comprise three (3) directors, at least two (2) of which are Independent Directors. All members of the Audit & Compensation Committee shall be financially literate and at least (1) one member shall be a CPA or CFA in good standing.
  - 2. The Nomination Committee, or its designee, shall, recruit, interview, evaluate and screen all candidates for the Board and senior management of the Corporation. The Nomination Committee

shall comprise three (3) directors, including each Board Observer, each of whom shall have the right to vote and and who shall count toward quorum for the purposes of service on the Nomination Committee.

P. Compensation.

1. The Board shall determine policies regarding director compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.
2. Directors shall initially have a base annual salary of twenty-five thousand dollars (\$25,000). Compensation for directors may include an incentive bonus based on revenue growth, earnings, dividend schedule and job production as approved by the Shareholder Representatives. Compensation of directors may be changed by the Board, provided that any such change is approved by the Shareholder or the Shareholder Representatives acting on its behalf.

Q. Liability of Directors. No director or Observer shall be personally liable to the Corporation, its Shareholder or other parties for monetary damages for breach of fiduciary duty as a director unless:

1. Such person has breached or failed to perform the duties of a director as provided in this Article XI, and
2. Such breach or failure to perform constitutes willful wrongdoing, gross negligence, dishonesty or fraud.

#### ARTICLE XII – Officers

- A. Number of Positions. The officers of the Corporation shall be the President, who shall also serve as the Chief Executive Officer, the Vice President and the Secretary/Treasurer. Any two or more offices may be held by the same person, except the offices of President and Secretary/Treasurer may not be held by the same person at the same time. The Board may by resolution add additional officer positions at any time and appoint persons to fill such positions until the annual election of officers is held as provided in this Charter.
- B. Election. All officers of the Corporation shall be elected annually by the Board at its meeting held immediately after the Annual Meeting, and unless expressly provided otherwise in a written contract of employment or unless removed for cause, as that term is defined herein, shall hold office for a term of one year or until their successors are duly elected. For the purposes hereof, the term “cause” shall mean willful wrongdoing, gross negligence, dishonesty or fraud in a matter causing the Corporation to incur damages.
- C. Vacancies. Vacancies in any office may be filled by the Board, at its sole discretion, at any meeting thereof or at the Annual Meeting.
- D. Resignation and Removal. Any officer may resign at any time by giving written notice to the Chief Executive Officer or, in the case of the Chief Executive Officer, to the Board, and such resignation shall be effective on the date specified in the written notice. Unless expressly provided otherwise in a written contract of employment, any officers may be removed without cause, at any time, by a vote of the Board at any special meeting called for that purpose or at the Annual Meeting. Except as

provided in an employment agreement, each officer serves at the will of the Corporation, which power is exercised by the Board.

- E. Duties and Powers. The duties and powers of the officers of the Corporation shall be provided in the Bylaws.
- F. Compensation. The Board shall determine policies for officer compensation and expense reimbursement, provided that such policies are fully and regularly disclosed to the Shareholder Representatives.

#### ARTICLE XIII – Indemnification

- A. Right to Indemnification. Each person (hereafter an “Agent”) who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereafter a “Proceeding”), by reason of the fact that such person, or another person of whom such person is the legal representative, is or was a Shareholder Representative, director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall, subject to Paragraph B of this Article XIII, be indemnified and held harmless by the Corporation to the fullest extent authorized by statutory and decisional law, as the same exists or may hereafter be interpreted or amended (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the Corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability and loss (including attorneys’ fees, judgments, fines, excise taxes and penalties, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article XIII) incurred or suffered by such person in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (“Expenses”); provided, however, that except as to actions to enforce indemnification rights pursuant to Paragraph C of this Article XIII, the Corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such Agent only if the Proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Article XIII shall be a contract right.
- B. Indemnification Claims. To obtain indemnification under this Article XIII, an Indemnitee shall submit to the Secretary/Treasurer a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the “Supporting Documentation”). The determination of the Agent’s entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary/Treasurer shall, promptly upon receipt of such a request

for indemnification, advise the Board in writing that the Indemnitee has requested indemnification. The Agent's entitlement to indemnification under this Article XIII shall be granted only if: 1) the Agent acted in good faith and in a manner the Agent reasonably believed to be in, or not opposed to, the best interests of the Corporation; and 2) the Agent did not engage in willful wrongdoing, gross negligence, dishonesty or fraud, nor did the Indemnitee fail or refuse to act such that his or her failure or refusal constituted willful wrongdoing, gross negligence, dishonesty or fraud; 3) any legal fees paid or any settlements made are reasonable, provided that with respect to any criminal action or proceeding the Corporation shall not be liable to indemnify the Agent against any criminal fine for which the Agent is personally liable; and 4) the Agent did not act beyond the scope of his or her employment or office.

- C. Right of Indemnitee to Bring Suit. If a claim under Paragraphs A and B of this Article XIII is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, subject to the provisions of Article XVI, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct under applicable law and Paragraph B of Article XIII that make it permissible for the Corporation to indemnify the claimant for the amount claimed. The burden of disproving such a defense shall be on the claimant.
- D. Authority to Advance Expenses. Expenses incurred by an Agents in defending a Proceeding may be advanced upon such terms and conditions as the Board deems appropriate, including, if determined by the Board, an undertaking by or on behalf of such Agent to repay any amount advanced if it shall ultimately be determined that the Agent is not entitled to be indemnified by the Corporation as authorized in this Article XIII or otherwise. Any obligation to reimburse the Corporation for Expense advances shall be unsecured and no interest shall be charged thereon.
- E. Provisions Nonexclusive. The right of indemnification provided in this Article XIII shall not be exclusive of any other rights to which an Agent may otherwise be entitled, including, without limitation, from the Shareholder or its affiliates. Notwithstanding the foregoing, the Corporation shall not be liable under this Article to make any payment in connection with any claim made against an Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder, unless otherwise agreed between the Corporation and the Agent.
- F. Survival of Rights. The provisions of this Article XIII shall inure to the benefit of the heirs and legal representatives of any Agent entitled to indemnification under this Article XIII and shall be applicable to Proceedings commenced or continuing after the adoption of this Article XIII, whether arising from acts or omissions occurring before or after such adoption, and whether or not the Agent has ceased to be an Agent. Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.
- G. Insurance and Contracts. The Corporation may (a) purchase and maintain insurance to protect itself and any Agent against any Expense asserted against or incurred by such Agent in such amounts as the Board deems appropriate, and (b) enter into contracts with any director or officer of the Corporation

to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article XIII, in each case (i) notwithstanding any interest of the directors in the decision to purchase and maintain such insurance or enter into such contracts, and (ii) whether or not the Corporation would have the power or would be required to indemnify that person against such liability under the provisions of this Article XIII or the Navajo Nation Corporation Code.

- H. Settlement of Claims. The Corporation shall not be liable to indemnify any Agent under this Article XIII for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award, if the Corporation was not given a reasonable and timely opportunity to participate, at its expense, in the defense of such action.
- I. Subrogation. In the event of payment under this Article XIII, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.
- J. Shareholder Representative Action. If the Board is unable to act with respect to any matter under this Article XIII due to lack of a quorum of disinterested directors, such matter shall be submitted to the Shareholder Representatives.

#### ARTICLE XIV – Net Profits, Dividends and Redemptions

- A. Net Profit. Each fiscal year, the net profits or losses of the Corporation shall be determined in accordance with generally accepted accounting principles in the United States and applied as if the Corporation was not subject to Governmental Accounting Standards, but was subject to standards prescribed by the Financial Accounting Standards Board (“FASB”) or by the International Financial Accounting Standards (“IFRS”). It is recognized that such accounting principles may result in the accounting reports and opinions thereon being issued as an Other Comprehensive Basis of Accounting (“OCBOA”). Unless such action would violate any financing covenant or other governing agreement, the Board shall annually, within 120 days following the end of the Corporation's fiscal year, determine the portion of the net profits of the Corporation that are available for distribution in the form of dividends.
- B. Dividends.
  - 1. Subject to the other provisions of this Charter, the Board shall have the sole authority to declare dividends for payment to the Shareholder.
  - 2. In respect of its Preferred Shares, the Shareholder shall be entitled to receive dividends (the “Preferred Share Dividend”), out of assets legally available therefor, prior and in preference to any declaration or payment of any other dividend on the Common Shares, equal to a percentage, as set forth in the following sentence, of the net profits in any fiscal year when the Corporation realizes a net profit, as determined in accordance with Paragraph A of this Article XIV. The percentage applicable to the Preferred Share Dividend shall be twenty percent (20%) from the Inception Date (as defined below) through the five-year anniversary of the Inception Date, thirty percent (30%) thereafter until the ten-year anniversary of the Inception Date, and forty percent (40%) thereafter, provided, however, that effective after the first 10 years from the Inception

Date, the Preferred Share Dividend may be set to a different amount by the supermajority (2/3) vote of the full NNC. The "Inception Date" shall be set by the Shareholder Representatives by notice delivered to the Board and the Corporation. Preferred Share Dividends shall be cumulative, such that, if such dividends in respect of any previous or current annual dividend period, at the annual rate specified above, shall not have been paid the deficiency, shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the Common Shares. Any accumulation of Preferred Share Dividends shall not bear interest. Fifty percent (50%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the account of the Navajo Nation Permanent Trust Fund Trust, and the remaining fifty percent (50%) of the Preferred Share Dividends payable to the Shareholder shall be paid to the Navajo Nation's general revenue fund; provided that the foregoing allocation percentages may be adjusted, from time to time, by the supermajority (2/3) vote of the full NNC.

3. After the payment in full of the Preferred Share Dividends in any year, additional dividends may be declared by the Board out of assets legally available therefor and distributed to the Shareholder.
  4. The Board shall not declare any Preferred Share Dividends or any other dividends, notwithstanding the determination that the Corporation possesses funds available for distribution for any fiscal year, to the extent any of the following conditions would exist following such declaration:
    - i. The Corporation would not be able to pay its debts as they become due in the usual course of its business;
    - ii. The Corporation's total assets would be less than the sum of its total liabilities; or
    - iii. The Corporation would be unable to meet any other existing financial commitments that had been previously approved by the Board.
- C. Redemptions. Neither the Corporation nor the Shareholder shall have the unilateral right to call or redeem or cause to have called or redeemed any Preferred Shares; provided, however, that the Corporation and the Shareholder agree that the Preferred Shares shall be redeemed with the consent of, and in accordance with terms approved by, the Shareholder Representatives and a supermajority (2/3) vote of the NNC. The Common Shares shall not be redeemable.
- D. General. Any amounts received by the Shareholder from the Corporation pursuant to this Article XIV shall be distributed and used in the manner set forth by Navajo Nation law.

#### ARTICLE XV – Accounting and Reports to Shareholder

- A. The Corporation shall adopt a fiscal year that begins on the first day of January each year and ends on the thirty-first day of December each year.
- B. The Corporation shall maintain its financial records in accordance with ARTICLE XIV.
- C. The Board shall, no less frequently than on a quarterly basis, deliver a confidential report in writing to the Shareholder Representatives, with a copy to the office of the Controller of the Navajo Nation, on the financial and operating condition of the Corporation, including (i) unaudited financial statements

showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal quarter and reporting on the financial results of the fiscal quarter, (ii) a formal performance evaluation report prepared by a CFA or a Certified Valuation Analyst (the "Quarterly Performance Assessment"), and (iii) a report of the official actions of the Corporation's directors, officers and employees.

- D. Except as otherwise provided by applicable law, in furtherance of his or her duties under this Charter, any Shareholder Representative shall in person or by attorney or other agent, upon written request certifying the purpose thereof, have the right to inspect all books and records of the Corporation or its subsidiaries during business hours. Any such Shareholder Representative shall hold in confidence, and use for the certified purpose, all information provided to it or learned by it in connection with the preceding sentence, except to the extent otherwise required by law and any other regulatory process to which such Shareholder Representative is subject.
- E. The Corporation shall within 120 days following the close of the Corporation's fiscal year, submit to the Shareholder Representatives, with a copy of the office of the Controller of the Navajo Nation: (i) audited financial statements showing the financial status of the Corporation as of the last day of the Corporation's most recent fiscal year and reporting on the financial results of the fiscal year, which financial statements shall be prepared by an independent CPA, and (ii) the Annual Performance Assessment.

#### ARTICLE XVI – Claims Against the Corporation

- A. The Corporation is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Article XVI. The Corporation and its directors, officers, employees and agents, while acting in their official capacities, are immune from suit, and the assets and other property of the Corporation are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, 1N.N.C. § 551, et. seq., the Board may waive, on behalf of the Corporation, the defenses identified in this Article XVI, in conformity with the procedures established in this Article, in order to further the purposes of the Corporation. Any waiver of the defenses identified in this Article XVI must be express and must be agreed to by the Board prior to the time any alleged cause of action accrues.
- B. The Corporation, by action of the Board, is hereby authorized to waive, as provided in this Article XVI, any defense of sovereign immunity from suit the Corporation, its directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of the Corporation, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal and/or federal court. The Corporation is authorized, in conformity with 13 C.F.R. § 124.112(c)(1) (1992), to designate United States federal courts to be among the courts of competent jurisdiction for all matters, including those related to the Small Business Administration's programs including but not limited to 8(a) Program Participation, loans, advance payments and contract performance.

- C. The Corporation is hereby authorized to waive, as provided in this Article XVI, any defense the Corporation, its directors, officers, employees, attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- D. Any waiver or designation by the Corporation or the Board authorized by Paragraphs A, B or C of this Article XVI shall be in the form of a resolution duly adopted by the Board, upon thirty (30) days' written notice to the NNC of the Board's intention to adopt such resolution, and which waiver or designation shall require approval by the Shareholder Representatives prior to its becoming effective. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of the Corporation which may be subject to execution to satisfy any judgment with may be entered in the claim, and shall identify the court or courts in which suit against the Corporation may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the Corporation, its directors, officers, employees or agents, and shall be construed only to affect the property and income of the Corporation.
- E. Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article XVI, shall be construed as a waiver of the sovereign immunity of the Navajo Nation or of any other instrumentality of the Navajo Nation, and no such waiver by the Corporation shall create any liability on the part of the Navajo Nation or of any other instrumentality of the Navajo Nation for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or of any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by the Corporation. The acts and omissions of the Corporation, its directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.
- F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing or granting any state any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the Navajo Nation.

#### ARTICLE XVII – Prohibited Transactions

- A. The Corporation shall not make any loan of money or property to, or guarantee the obligation of, any director, officer, employee or agent; provided, however, that the Corporation may advance money to a director, officer, employee or agent of the Corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director, officer, employee or agent so long as such individual would be entitled to be reimbursed for such expenses absent that advance.
- B. Except as provided in Paragraph C of this Article XVII, the Board shall not approve or permit the Corporation to engage in any transaction to which the Corporation is a party and in which one or more of its directors has a material financial interest (an "Interested Transaction").
- C. The Corporation may engage in an Interested Transaction if the Interested Transaction is approved by a majority of each of (a) the Shareholder Representatives and (b) the NNC upon the finding that (i)

the Corporation is entering into the Interested Transaction for its own benefit, (ii) the Interested Transaction is fair and reasonable to the Corporation, and (iii) after reasonable investigation, the Corporation has determined that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

#### ARTICLE XVIII – Seal

The seal of the Corporation shall be as follows:

Naat’áanii Development Corporation

#### ARTICLE XIX – Dissolution

- A. After issuance of this Charter by the Secretary of the Interior and its Ratification, the Corporation may be dissolved only as provided in this Article.
- B. The Corporation may be dissolved as follows:
1. The Board shall adopt a resolution recommending that the Corporation be dissolved and such dissolution shall be submitted to a vote of the Shareholder Representatives at a meeting of the Shareholder Representatives, which may be either a regular or a special meeting.
  2. Written notice shall be given to the Shareholder Representatives in the manner provided in this Charter for giving notice of meetings of the Shareholder Representatives and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.
  3. At such meeting of the Shareholder Representatives, a vote shall be taken on a resolution to dissolve the Corporation.
  4. Upon adoption of the resolution, a statement of intent to dissolve shall be executed by the President or Vice President and by the Secretary/Treasurer acting on behalf of the Corporation, and shall be delivered to the Secretary of the Interior.
  5. Upon filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up the activities thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress, in accordance with the Act.
  6. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Shareholder; pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.
  7. By resolution of the Board or by resolution adopted by the NNC at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing the

notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and Corporation may again carry on its business.

8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the Corporation have been distributed to the Navajo Nation, Navajo Nation shall seek to have the Secretary of the Interior take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

#### ARTICLE XX – Amendments

- A. The authority to petition for amendments to this Charter is vested in the NNC, but no amendment shall have legal effect until approved by the Secretary of the Interior and ratified by the NNC in accordance with the Act and applicable Navajo Nation law.
- B. The Board may request that the NNC petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the NNC.

CERTIFICATION OF APPROVAL

I, \_\_\_\_\_, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended, and delegated to me by 209 D.M. 8.1, do hereby approve this Federal Charter of Incorporation for use by the Navajo Nation and the Naat'áanii Development Corporation, Inc. This Charter shall become effective upon ratification by the Navajo Nation Council, provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Deputy Commissioner of Indian Affairs

Washington, D.C.

Date:

NAVAJO NATION

RCS# 860

10/17/2017

NNC Fall Session

08:41:04 PM

Amd# to Amd#

Legislation No. 0415-17

PASSED

MOT Begay, K  
SEC Tso

Ratifying the Federal Charter  
for the Naat'aanii Dev. Corp

Yea : 11

Nay : 2

Not Voting : 10

Yea : 11

Begay, K  
BeGaye, N  
Brown

Chee  
Damon  
Perry

Phelps  
Shepherd  
Slim

Smith  
Tso

Nay : 2

Yazzie

Begay, S

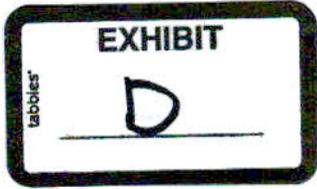
Not Voting : 10

Bates  
Begay, NM  
Bennett

Crotty  
Daniels  
Filfred

Hale  
Jack  
Pete

Tsosie  
Witherspoon



# New Mexico Indian Managed Care Entity: Potential Opportunities

November 15, 2019



# The IMCE's Goals

## SELF-DETERMINATION



Improve  
Health



Build  
Healthcare  
Infrastructure



Support  
Tribal  
Providers



Invest in the  
Community



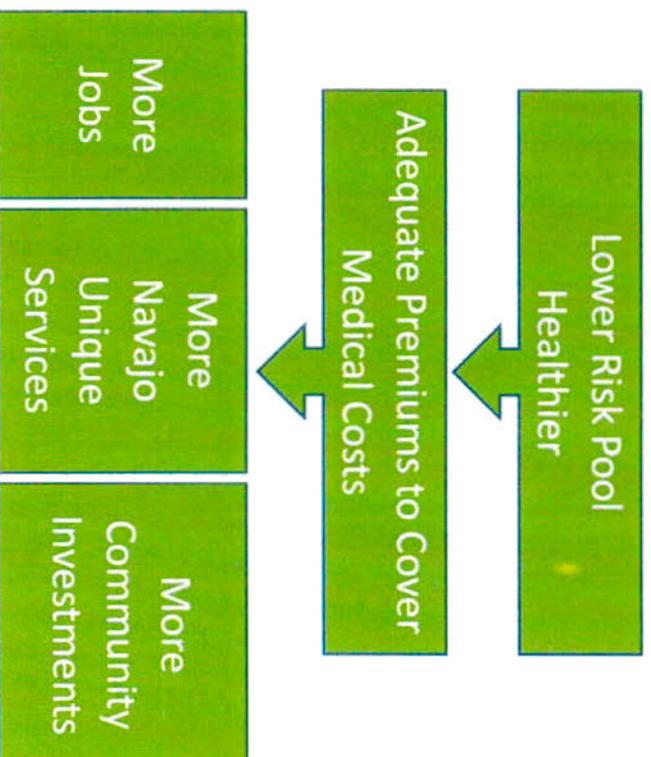
Increase Jobs

# Why is Passive Enrollment Important?

**Passive Enrollment is Key to Achieving Our Goals**

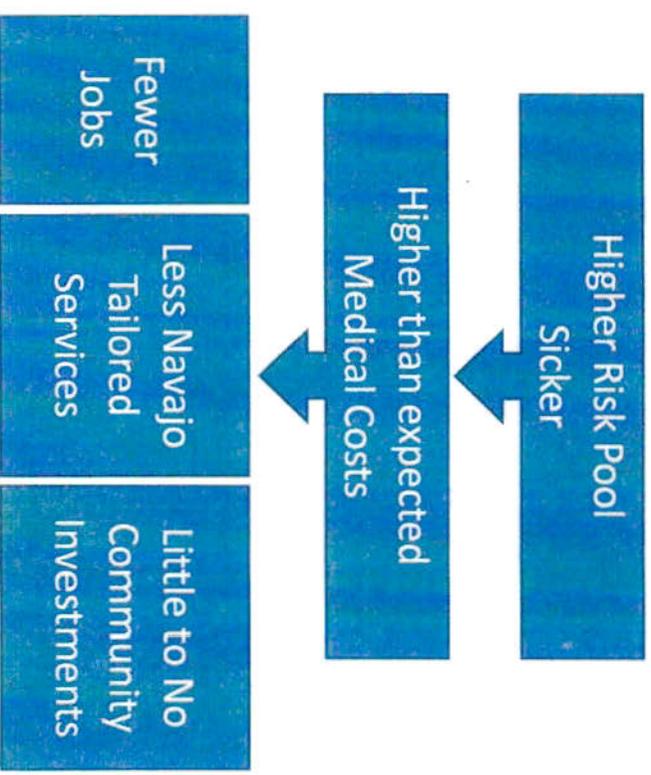
## PASSIVE ENROLLMENT

Est. Operating Revenue: \$8.3M



## BASIC ENROLLMENT

Est. Operating Revenue: - \$3.4M



Cost estimates based on following membership estimates:

Passive – 70K members & Basic – 14K members



# Passive Enrollment → More Economic Opportunity

**Passive Enrollment leads to more Fiscal and Program Sustainability**

---

**That means more:**



Federal funding and Incentives for IHS/638 Providers



Contracts for Navajo Businesses



Jobs at the IMCE plan for Navajos



Investments for Tribal Community Based Programs



# How does Passive Enrollment Work?

## Passive Enrollment Preserves Freedom of Choice!

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### You're Enrolled!

- **Only** if you qualify for the IMCE
  - Navajo & Immediate Family Members
  - Reside in certain zip codes
- **AND do *not*** select an MCO

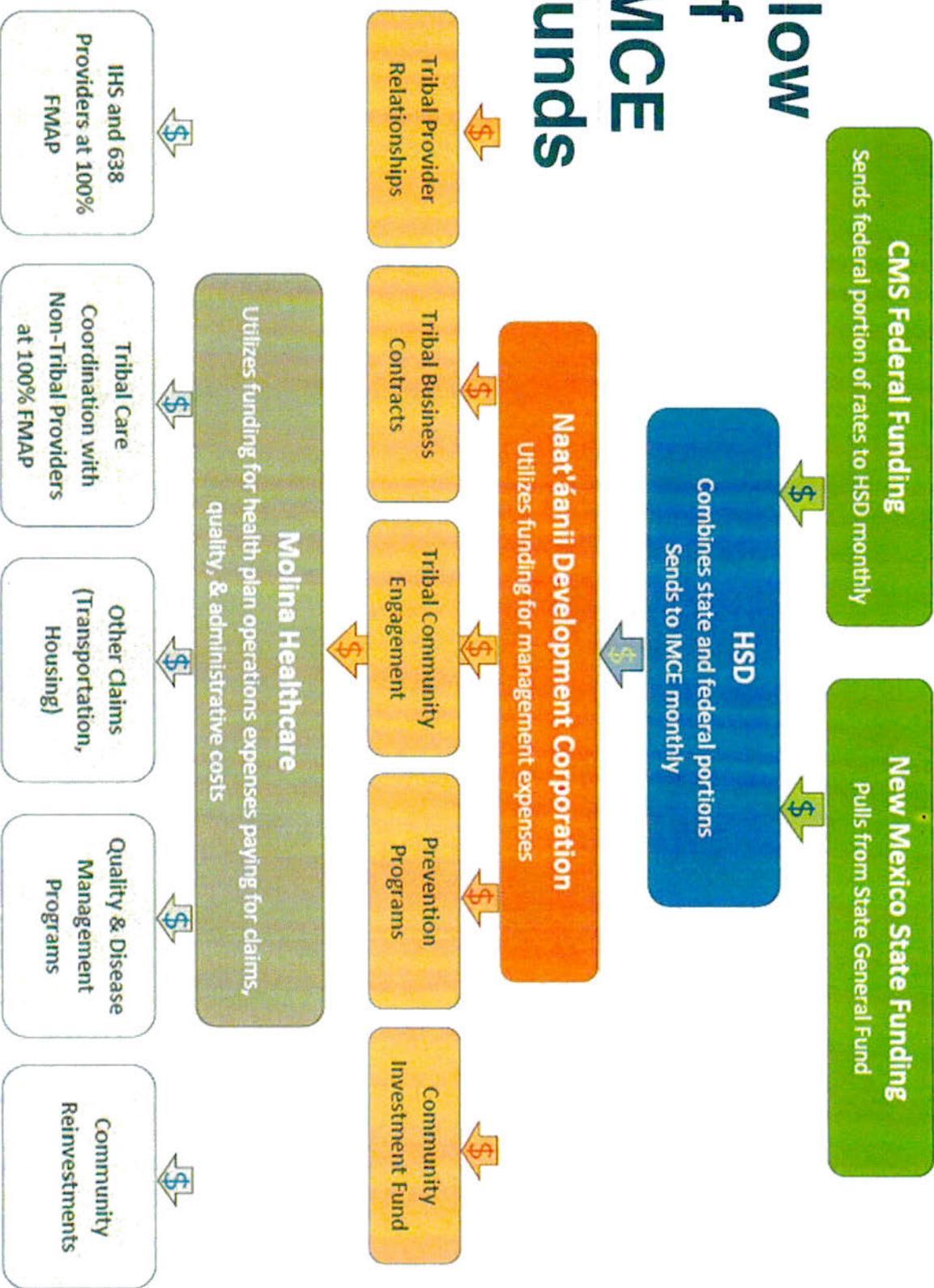
### You Can Change in the 1<sup>st</sup> 3 Months

- **You do NOT have to stay with the IMCE**
- You may select another MCO or FFS within the first 3 months of enrolling into the IMCE

### You Can Change Every Year

- You are free to stay or select another MCO or FFS during any open enrollment period.
- Open enrollment occurs every year

# Flow of IMCE Funds



# Member Benefits

**IMCE provides value added services for Navajos and tribal members**

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Enhanced  
Dental Benefits



Traditional  
Healing



Employment Counseling  
Workforce Development



Diabetes Food  
Boxes



Wellness  
Incentives



GED Incentive  
Vouchers



Enhanced  
Transportation



School / sports  
physicals



Suicide  
Prevention



NAAT'ANII  
DEVELOPMENT  
CORPORATION



# Provider Benefits

**IMCE offers additional funding opportunities for Tribal Providers**

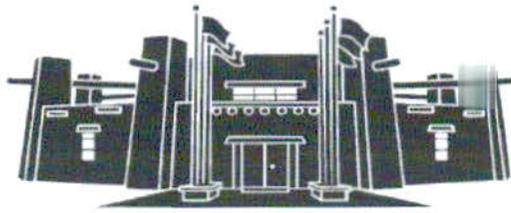
	MEDICAID FEE-FOR-SERVICE (FFS)	INDIAN MANAGED CARE ENTITY (IMCE)
Outpatient OMB Rate* (Per Visit)	\$455.00	\$455.00
Provider Incentives & Funding	None	<ul style="list-style-type: none"> <li>❖ Care Coordination Enablement Funding</li> <li>❖ Traditional Healing Allowance</li> <li>❖ Provider Incentives (Pay-for-Performance)                             <ul style="list-style-type: none"> <li>• HEDIS Measures incentives</li> <li>• Prompt claim submission incentive</li> <li>• Diagnosis code capture incentive</li> <li>• Care Coordination with non I/T/U providers</li> </ul> </li> </ul>

\*Federal Register / Vol. 84, No. 25 / Wednesday, February 6, 2019 / Notices



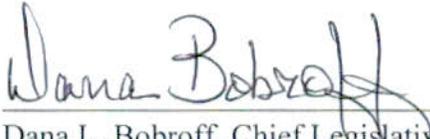
# Questions





**MEMORANDUM**

TO: Honorable Daniel Tso.  
Littlewater, Pueblo Pintado, Torreon, Whitehorse Lake, Baca/Brewitt, Casamero  
Lake, Ojo Encino, Counselor

FROM:   
Dana L. Bobroff, Chief Legislative Counsel  
Office of Legislative Counsel

DATE: November 27, 2019

SUBJECT: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'ÍYÁTI' COMMITTEES; REQUESTING THAT THE GOVERNOR OF THE STATE OF NEW MEXICO AND NEW MEXICO HUMAN SERVICES DEPARTMENT COLLABORATE WITH THE NAAT'AANII DEVELOPMENT CORPORATION TO SECURE ALL NECESSARY APPROVALS FOR EXPEDITIOUSLY LAUNCHING THE NAAT'AANII DEVELOPMENT CORPORATION – MOLINA HEALTHCARE, INC. INDIAN MANAGED CARE ENTITY; SUPPORTING PASSIVE ENROLLMENT FOR THE NAAT'AANII DEVELOPMENT CORPORATION – MOLINA HEALTHCARE, INC MANAGED CARE PROGRAM

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the

legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration.” 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0367-19 \_\_\_\_\_ SPONSOR: DanielTso

**TITLE: An Action Relating to Health, Education and Human Services and Naabik'iyáti' Committee; Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; Supporting passive enrollment for the Naat'aanii Development Corporation – Molina Healthcare, Inc Managed Care Program**

*Date posted:* November 27, 2019 at 2:11pm

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*



# 24<sup>TH</sup> NAVAJO NATION COUNCIL

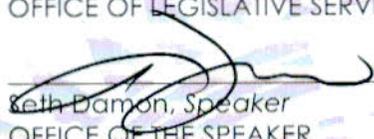
## OFFICE OF THE SPEAKER

HONORABLE SETH DAMON

*Speaker, 24<sup>th</sup> Navajo Nation Council*

### MEMORANDUM

TO: Tom Platero, Executive Director  
OFFICE OF LEGISLATIVE SERVICES

FROM:   
Seth Damon, Speaker  
OFFICE OF THE SPEAKER

DATE: December 2, 2019

SUBJECT: **Revised Committee Assignment – Legislation 0367-19**

This memorandum shall serve as official notification that Legislation 0367-19: *An Action Relating to Health, Education and Human Services and Naabik'íyáti' Committee; Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; Supporting passive enrollment for the Naat'aanii Development Corporation – Molina Healthcare, Inc. Managed Care Program*, shall include the Resources and Development Committee (RDC) on the committee assignment listing. RDC is the oversight to Navajo Nation Enterprises.

The revised committee listing shall be as follows: 1. Health, Education, and Human Services Committee, 2. Resources and Development Committee, and 3. Naabik'íyáti' Committee. Please make the changes as soon as possible as this legislation is coming off the 5-Day comment period on December 2, 2019 and is eligible for committee action on December 3, 2019.

If you should have any questions, please contact Chief of Staff, Lashawna Tso at (928) 871-7160 or lrtso@navajo-nsn.gov.

Cc: Daniel E. Tso, Council Delegate (Sponsor)  
Rickie Nez, Council Delegate (Co-Sponsor)  
Dana Bobroff, Chief Legislative Counsel

LEGISLATIVE BRANCH

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0367-19

**SPONSOR:** Honorable Daniel Tso

**TITLE:** An Action Relating to Health, Education and Human Services and Naabik'iyáti' Committee; Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; Supporting passive enrollment for the Naat'aanii Development Corporation – Molina Healthcare, Inc Managed Care Program

**Posted:** November 27, 2019 at 2:11 PM

**5 DAY Comment Period Ended:** December 02, 2019

**Digital Comments received:**

<b>Comments Supporting</b>	
<b>Comments Opposing</b>	1) Juanita J. Martinez 2) Lynette Bonar, TCRHCC
<b>Inconclusive Comments</b>	1) Robert Salabye, WIHCC, President

  
 \_\_\_\_\_  
**Legislative Tracking Secretary  
Office of Legislative Services**

12/03/19 9:44 AM

**Date/Time**

December 2, 2019

To Whom It May Concern:

While it is commendable for the tribe to consider the use of a subsidiary like Naat'aanii Development Corporation (NDC) to create an Indian Managed Care Entity (ICME) with Molina Healthcare, Incorporated. I am currently in opposition to Legislation 0367-19, An Action Relating to Health, Education and Human Services and Naabik'iyati' Committee; Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the NDC to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation-Molina Healthcare, Inc. Indian Managed Care Entity; Supporting passive enrollment for the Naat'aanii Development Corporation-Molina Healthcare, Inc. Managed Care.

There are numerous questions that have yet to be asked and answered by those in the healthcare industry and NDC. The pace at which the IMCE is being established is abrupt and without mutual consultation. An action of this caliber when the healthcare of the Navajo people is at stake is quite premature without the careful advisement of all participants.

I am confident that there are capable entities that can execute the current ambitions of the proposed IMCE, however, the current timeline does not allow for much of a learning curve nor can our people afford to have their benefits experimented with before all complications and successes are discovered.

Please reconsider this legislation and continue to encourage NDC and Molina Healthcare, Inc. to consult with Navajo tribal health organizations that have had actual experience navigating Medicare and Medicaid benefits for our Navajo people.

Respectfully submitted,

Juanita J. Martinez

# TCRHCC Comments to Legislation 0367-19

Butler, Lisa (TCRHCC) <Lisa.Butler@TCHEALTH.ORG>

Mon 12/2/2019 4:44 PM

To: comments <comments@navajo-nsn.gov>; Otto Tso <otso@navajo-nsn.gov>; Paul Begay <paulbegay@navajo-nsn.gov>; Thomas Walker (jaywalker\_t2011@hotmail.com) <jaywalker\_t2011@hotmail.com>;

Cc: Bonar, Lynette (TCRHCC) <Lynette.Bonar@TCHEALTH.ORG>; Walters, Joette (TCRHCC) <Joette.Walters@TCHEALTH.ORG>; Christopher Curley TCRHCC BOD President (ccurley07@hotmail.com) <ccurley07@hotmail.com>;

1 attachment

12-2-19 TCRHCC Comments to Legislation 0367-19 - signed.pdf;

**Re: Comments on Legislation No. 0367-19:** An Action Relating to Health, Education, and Human Resources and Naabik'iyáti Committees: Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; supporting passive enrollment for the Naat'aanii Development Corporation – Molina HealthCare, Inc. Indian Managed Care

Dear Sir or Madam:

Tuba City Regional Health Care Corporation (“**TCRHCC**”) hereby respectfully provides its comments on Legislation No. 0367-19 (the “Legislation”). The Legislation would request the State of New Mexico to issue all necessary approvals to Naat'aanii Development Corporation (“NDC”), in “partnership” with its “subcontractor” Molina Healthcare, Inc. (“Molina”), to launch an Indian Managed Care Entity (“IMCE”) utilizing a passive enrollment system. As explained below, TCRHCC has several questions about NDC's proposal that remain unanswered by NDC, and TCRHCC therefore opposes the Legislation and NDC's proposal at this time, pending additional information and study and satisfactory answers being provided to TCRHCC's questions.

Pursuant to Resolution No. NABID-96-18 of the Naabik'iyáti Committee of the Navajo Nation Council, TCRHCC is authorized and designated as a Title V Tribal Organization for the purpose of managing and operating contracts with the Indian Health Service (“IHS”) under the Indian Self Determination and Education Assistance Act. TCRHCC provides an integrated health care system, operating an expanding regional hospital in Tuba City, Arizona; the Sacred Peaks Health Center in Flagstaff; the LeChee Health Facility; and a mobile health program. TCRHCC provides comprehensive health care services to over 75,000 Native Americans on the Navajo Nation and in surrounding communities, operating on a limited IHS budget supplemented by Medicaid, Medicare, CHIP, VA, and private insurance. TCHRCC is committed to improving and expanding the delivery of high-quality health care services on the Navajo Nation and has a significant interest in all proposals that may impact TCRHCC's daily operations and access to the critical health care services TCRHCC provides.

TCRHCC has a number of concerns and questions related to the NDC IMCE proposal that are not addressed in the Legislation or exhibits and which have not been answered by NDC. TCRHCC has raised its concerns and questions directly with NDC, including how it will partner with tribally operated providers, but has yet to receive a response. TCRHCC also requested a copy of NDC's draft Managed Care Organization contract, but only received a link to a copy of a Molina contract on the New Mexico Centennial Care website. The lack of information in NDC's proposal and its non-responsiveness to TCRHCC's questions are unsatisfactory. TCRHCC's outstanding questions include:

- There is currently a shortage of Primary Care Providers ("PCPs"). What process will NDC use for assigning PCPs, and will it take into account historical relationships? How will it do so?
- Will network providers have input into "Quality Metrics"? It is important that data systems are discussed ahead of time, as well as timelines for reporting. How will NDC provide such input?
- How will any "savings" be reinvested into health care on the Navajo Nation and what are the specifics of such reinvestment that NDC will commit to?
- What incentives will network providers receive for positive results? To support network providers, NDC should commit, at a minimum, to providing funding for Navajo language teaching; funding for retention and recruitment in "hard to access areas"; and case management support of network providers.
- Currently, American Indians and Alaska Natives may enroll throughout the year. Why does NDC's IMCE proposal only allow for one open enrollment period every year?
- NDC states that there will be many "enhanced" benefits. What are these benefits and does the request for these benefits need to be approved via a State Plan Amendment or 1115 waiver prior to starting?
- Will NDC commit to have a representative from the Association for Indians of Self-Determination in Healthcare ("AISDH") on the NDC IMCE Advisory Board? AISDH members are uniquely qualified and situated to advise on the health care needs of the communities they serve and should be on the NDC IMCE Advisory Board.
- Will NDC seek to improve access to and reimbursement for specialty care, and partner with the Navajo Nation to achieve correct reimbursements? How will it do so?
- Will NDC commit to use the American Indian/Alaska Native Managed Care Organization Addendum developed by the Center for Medicaid and Medicare Services in any provider contract it offers to a tribally operated provider?
- The Proposed Legislation No. 0367-19 in Letter "O" proposes further expansion in the states of Arizona and Utah. TCRHCC believes that this "blanket" preapproval is premature, in that this also states the NDC IMCE will have a network in place, when Indian Health Services and TCRHCC are constantly understaffed in all areas of Physician and Mid-Level Provider recruitment.

In some cases, Managed Care Organizations may provide better coordination of care and access to additional health care services compared to fee for service providers. However, Indian Health Care Providers such as TCRHCC already manage care coordination, actively engage members in their care, and meet multiple quality standards and measures. TCRHCC is concerned that the NDC ICME proposal could result in inconsistencies in how tribal providers are already managing care: in the areas of credentialing processes; in certification requirements; in proposed benefit plans; in reimbursements to network providers; in pre-authorization requirements; and in referrals. Before the Navajo Nation provides its support for NDC's proposal through legislation – and before TCRHCC can provide its support for such a proposal – it is critical that NDC fully and satisfactorily provide a detailed plan how it will avoid these issues.

As a final matter, TCRHCC notes that NDC has no healthcare experience. Accordingly, the nature of the relationship between NDC and Molina needs to be better explained, including an explanation of why and how, in accordance with Navajo law, NDC has selected Molina as a "partner" and/or "subcontractor." TCRHCC understands that the State of New Mexico did not renew Molina's Medicaid contract effective 2019, although it retained two other incumbents, that Molina unsuccessfully sued the State over its competitive procurement process, and that Molina may therefore be exiting New Mexico. Is NDC's proposal a means for Molina to gain non-competitive access to the Navajo Nation Medicaid market? Is Molina the best insurer for that market?

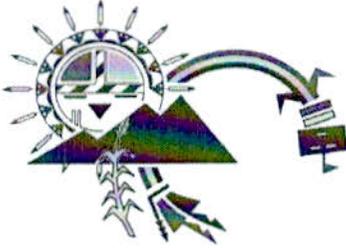
TCRHCC has made tremendous progress in providing first class health care services for its patients since taking over operations from IHS. There are simply too many unknowns in NDC's proposal that could compromise the quality of that care. TCRHCC therefore respectfully urges that the Legislation be withdrawn by its sponsor or disapproved by the Navajo Nation Council pending additional information and study, and pending satisfactory answers and solutions being provided to the questions and issues posed above.

Thank you for the opportunity to comment on Legislation No. 0367-19.

Sincerely,  
Lynette Bonar, RN, MBA, FACHE  
Chief Executive Officer

\*Letter attached

Lisa Butler, Sr. Executive Assistant  
Office of the Chief Executive Officer  
Tuba City Regional Health Care Corporation  
[www.tchealth.org](http://www.tchealth.org)



## TUBA CITY REGIONAL HEALTH CARE CORPORATION

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167 North Main Street  
P.O. Box 600 Tuba City, Arizona 86045-0600  
(928) 283.2501

December 2, 2019

Executive Director  
Office of Legislative Services  
P. O. Box 3390  
Window Rock, AZ 86515

VIA EMAIL to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

**Re:** Comments on Legislation No. 0367-19: An Action Relating to Health, Education, and Human Resources and Naabik'iyáti Committees: Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; supporting passive enrollment for the Naat'aanii Development Corporation – Molina HealthCare, Inc. Indian Managed Care

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Thank you for the opportunity to comment on Legislation No. 0367-19.

Sincerely,



Lynette Bonar, RN, MBA, FACHE  
Chief Executive Officer

CC: TCRHCC Board of Directors



By E-mail to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

December 2, 2019

Executive Director  
Office of Legislative Services  
P. O. Box 3390  
Window Rock, AZ 86515

Re: Proposed Legislation No. 0367-19

Dear Executive Director:

Thank you for the opportunity to submit comments concerning Legislation No. 0367-19, which concerns the Naat'annii Development Corporation's ("NDC") initiative to contract with Molina Healthcare to operate a managed care organization ("MCO") for the Navajo population in New Mexico. While we understand the current initiative is planned to begin in New Mexico, this is of great interest to the Winslow Indian Health Care Center ("WIHCC") in the event the NDC MCO would expand into the State of Arizona, as suggested by Legislation 03676-19. In FY 2018, fifty-seven percent of WIHCC's revenue was generated from third-party resources. For this reason, any initiative concerning over half of WIHCC's annual revenue can have very significant effects on WIHCC's revenue, and services.

We are enclosing with this letter brief background and talking points that were developed for the NDC MCO meeting on Friday, November 15, 2019 at Twin Arrows. While some of our questions and comments were addressed at that meeting, we continue to need additional and more detailed information as to how this initiative will affect WIHCC and other similarly situated Indian Self-Determination Act Self-Governance health care providers on the Navajo Nation. We would like to be involved in determining the benefits that will be provided, and to be assured that the third-party revenue on which we depend to provide quality services to our people will not be adversely affected. We also have significant questions about how any profits will be used and in particular, whether profits will be invested in healthcare and in the communities whose populations were used to generate the profits.

Thank you for the opportunity to submit comments. Please contact me at (928)289-6100 if you have any questions.

Sincerely,



Robert Salabye, President  
Board of Directors

Enclosure

Copies: WIHCC Board Members (8)  
Honorable President Jonathan Nez  
Honorable Vice President Myron Lizer  
Milton Bluehouse, Deputy Chief of Staff, OPVP



WINSLOW INDIAN HEALTH CARE CENTER

Honorable Seth Damon, Speaker  
Honorable Daniel Tso, Chairman, HEHSC  
Honorable Charlaine Tso, Vice Chairwoman, HEHSC  
Honorable Elmer Begay, Navajo Nation Council  
Honorable Thomas Walker, Navajo Nation Council  
Dr. Jill Jim, Director, NDOH

Naat'aanii Development Corporation (NDC)  
Managed Care Organization (MCO)

**BACKGROUND:**

The American Recovery and Reinvestment Act of 2009 ("ARRA"), Section 5006, provides protection for Indians in Medicaid and the Children's Health Insurance Program ("CHIP"). Section 5006 provides premium and cost-sharing protections and exemptions for certain Indian-specific property from determinations of Medicaid eligibility and Medicaid estate recovery. It also allows for Indian Managed Care Entities ("IMCE"), contains certain Medicaid managed care protections for Indian health programs and beneficiaries and establishes consultation requirements. In 2016, Medicaid Managed Care regulations were approved. These regulations implement Section 5006 of ARRA.

NNC Resolution CO-69-17 ratified the Naat'aanii Development Corporation (NDC) charter approved by the Department of the Interior, Bureau of Indian Affairs, as a federal corporation under Section 17 of the Indian Reorganization Act. The NDC is also chartered under the Navajo Nation Corporation Act as a Navajo corporation.

One of the NDC's projects is the development of a Managed Care Organization (MCO) that is working with the State of New Mexico and Molina Healthcare. The New Mexico Naat'aanii IMCE Project is described in a document entitled, "The New Mexico Naat'aanii IMCE Program: Improving Access & Outcomes for the State's American Indians/Alaska Natives", dated September 23, 2019. In addition to this document, we have attended several presentations with the principals from the NDC and Molina and have had initial discussions regarding the same.

At this time, WIHCC needs to continue to gather information and analyze how implementation of an Indian managed care entity in the State of Arizona would affect its services, patients, and revenue.

**TALKING POINTS**

1. Under the Medicaid managed care regulations, there is a requirement that MCOs demonstrate that there are sufficient IHCPs participating in the network to ensure timely access to services available under the contract? What will NDC's MCO network be comprised of in NM? AZ? (§§ 438.14(b)(1) and 457.1209)
2. Currently, WIHCC provides services to Medicaid enrollees and is reimbursed by the State Medicaid program, AHCCCS, on a Fee-for-service (FSS) basis based on the current OMB approved rate of \$455/encounter? (§§ 438.14(c)(2) & 457.1209) Would this change under the NDC MCO proposal, and if so, how?
  - a. The managed care regulations provide for payment of less than the OMB AIR, in which case the State pays a supplemental payment. (§§ 438.14(c)(3) & 457.?) Is the NDC MCO proposing this reimbursement model?
3. Please explain the process for enrollment of WIHCC patients with the NDC MCO. WIHCC has been informed that enrollment will be "passive" as opposed to "mandatory". The September 23, 2019 document indicates that up to 50,000 participants would be enrolled at the launch of the NM IMCE

and could leave the MCO and return to FFS after three months. Please explain how the initial passive enrollment would work and how an enrollee would leave the MCO if he/she wanted to return to FFS. How does the initial enrollment affect a provider seeking reimbursement for services provided to the enrollee? What zip codes or communities were used to arrive at the estimated number of Navajo participants under passive enrollment?

4. Does WIHCC have to be a contracted provider with NDC MCO to receive reimbursement? If so, would there be a proposed negotiated reimbursement rate, or can WIHCC continue to receive its FFS OMB rate?
  - a. If NDC MCO expanded into AZ and WIHCC contracted with the MCO, and some of its patients did not enroll with the MCO, can WIHCC still bill the MCO or AHCCCS for reimbursement?
5. What is the functional relationship between the NN Department of Health and the NDC MCO, and its proposed contract with New Mexico? Would the NN Department of Health monitor or oversee the NDC MCO, or its providers?
6. In the proposed contract between New Mexico and the NDC MCO, how is risk allocated between CMS, the State of New Mexico and the NDC MCO? If the NDC MCO receives a capitated payment from NM, what is the amount of that payment based on?
7. Is the NDC MCO's business model/business assumptions based on a minimum enrollment? If so, how will that minimum enrollment be achieved? How will the NDC MCO educate and market itself to WIHCC and its patients?
8. Currently, at WIHCC, patients including Medicaid beneficiaries have access to a Patient Centered Medical Home (PMCH) at WIHCC to ensure that quality, coordinated care is accessible and available. PMCH is accredited by Accreditation Association for Ambulatory Health Care (AAAHC). Also, WIHCC does provide coordination of direct care and care provided through its Purchased Referred Care (PRC) program; indirect services. Some of the information in the September 23, 2019 states/infers there is currently no care coordination. Will and if so, how will this change under NDC MCO's contract with New Mexico/Arizona?
9. Providers in NM, AZ, and UT are not experienced with reimbursement methodologies other than FFS. Please explain the payment methodologies permitted under 42 C.F.R. § 438.14(c)(1,2&3), and which the NDC MCO proposes to use.
10. What will the processes be for denying care/referrals and payment?
11. How is the NDC responding to the concerns identified in the State of New Mexico's letter dated April 20, 2018? There are many issues identified in that letter concerning the proposed organization and subcontracts involved. Even though we understand Molina has replaced Agilon, we would like to know how the State of New Mexico's questions were resolved in NDC's proposed contract with Molina. It is noted that the RFI response did not include any analysis of potential capitation rates and how they would be incorporated in the work plan; the letter asks for detail in several areas, including flow charts of care coordination processes and accompanying software. Can the response

information provided to the State of New Mexico be provided to us including the contract with Molina?

12. How will NDC/MCO interface with 638 and Indian Health Service IT system, i.e., Resource Patient Management System (RPMS)? This is important because NDC and Molina have talked about reporting requirements? Will funds be provided to providers, in addition to earned reimbursements, if necessary to upgrade IT systems to meet reporting requirements?
13. Will NDC/MCO contract with Veterans Administration for reimbursements or will that be maintained at the local level?
14. What about for profit organization (NDC) vs non-profit 638 organizations as approved by the NNC in the contract/compact? Will net profits be used for healthcare purposes? Will net profits be used to help the populations that helped NDC generate the profit, e.g. NDC is starting in New Mexico – will profits be used to help with the needs of Navajos in New Mexico?
15. Referral services to a non-Indian Health Service/Tribal/Urban (ITU) provider, does the non-ITU provider need to participate in NDC/Molina MCO for reimbursement or how will the non-ITU provider seek reimbursement for a NDC/MCO member?
16. How does NDC/Molina interact with Federal Funding for Services “Received Through” an I.H.S./Tribal Facility and Furnished to Medicaid-Eligible AI/AN – CMS/DHHS SHO#16002 (Four Walls Agreement)?
17. We would like to be involved in determining the benefits to be added/included in the NDC/MCO package.

#### **Additional Comments Specific to Proposed Legislation 0367-19**

- Passive Enrollment - Requests collaboration between the State of NM and Naat’aanii Development Corporation (NDC) to secure approvals to launch NDC/Molina IMCE & support for passive enrollment. Patients need to understand what passive enrollment means so who is going to do the education to the people?
- Paragraph F – stated purpose is to improve Medicaid benefits within the Navajo Nation. (Are there findings as to current problems/issues?) CMS determined this was feasible and potentially could have exponential benefits. (Where are these findings? Can we see them?)
- Paragraph G – “Dire state” of Medicaid benefits in NM. (Who made this finding? What is it based on?)
- Paragraphs G, H, I and P – refers to Exhibits A – D. We need these exhibits to fully understand what those are.

- Paragraph H – refers to specific provider network and specific services and products. (One of the problems in assessing the pros and cons of the proposed MCO is a lack of details; this paragraph refers to “specific services and products”. Can we see what these are? Same for provider network?)
- Paragraph M – affirmative statement of what the MCO “will” bring to the population served. (Infers the current state of services and benefits needs significant improvement. While improvements can always be made, this reads to us that improvements need to be made but what are those with the current programs. This is where the feasibility study needs to be done. Where is the information and data to support these assumptions? What will the promises be measured against?)
- Paragraphs N and O – refers to Arizona and Utah and it will be huge undertaking. Who will plan these programs so it is under umbrella, will be Molina Health IMCE?
- Resolve paragraph A – urges NM Governor and HSD to collaborate with NDC to expeditiously secure approvals, contracts and infrastructure, have it fully operational in NM in first quarter of 2020, and in AZ and UT thereafter. Since this is addressed to the NM Governor, suggest deleting AZ and UT.
- Resolve paragraph B – urges passive enrollment. Passive enrollment is vague concept but it is fishing concept.
- Resolve paragraph C – urges inclusion of non-Indian family members?
- Overall – Legislation “urges” collaboration and moving forward with this initiative. It is basically a position statement by the Committees for the Council. What is the position of the OPVP and Department of Health?
- Assuming the NDC/Molina project will go forward at some point; is it ready to proceed in New Mexico in the first quarter of 2020.
- In order to support this initiative we need assurances that there will be: 1) No reduction in Medicaid revenue. (While neither NDC nor anyone can make such a guarantee, we don’t want anything about the MCO/IMCE to reduce WIHCC’s Medicaid revenue. WIHCC needs to make sure NDC, the Council and OPVP understand how critical Medicaid revenue is to WIHCC’s ongoing operation.) 2) No reduction in reimbursable services. (Same issues.) 3) An inclusive process in which WIHCC has a meaningful voice in the “services and products” offered in the MCO if/when it comes to Arizona.

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0367-19

**SPONSOR:** Honorable Daniel Tso

**TITLE:** An Action Relating to Health, Education and Human Services and Naabik'iyáti' Committee; Requesting that the Governor of the State of New Mexico and New Mexico Human Services Department collaborate with the Naat'aanii Development Corporation to secure all necessary approvals for expeditiously launching the Naat'aanii Development Corporation – Molina Healthcare, Inc. Indian Managed Care Entity; Supporting passive enrollment for the Naat'aanii Development Corporation – Molina Healthcare, Inc Managed Care Program

**Posted:** November 27, 2019 at 2:11 PM

**5 DAY Comment Period Ended:** December 02, 2019

**Digital Comments received:**

Comments Supporting	1) Lori Hewlett
Comments Opposing	
Inconclusive Comments	

  
 \_\_\_\_\_  
 Legislative Tracking Secretary  
 Office of Legislative Services

12/11/19      10:35AM

**Date/Time**

## LEGISLATION NO: \_0367-19\_\_\_\_\_ SPONSOR: Daniel Tso

Lori Hewlett <lori.hewlett@rmmcomp.com>

Tue 12/10/2019 10:36 AM

To: comments <comments@navajo-nsn.gov>;

1 attachment

Malina.docx;

Please secure all necessary approvals for New Mexico Dine' Medicaid participants to passively be enrolled into the Naat'aanii Development Corporation (NDC) – Molina Healthcare, Inc Managed Care Program.

Reasons (there's much more):

\*Further self-determination of Dine' peoples. Navajos will manage their own health care for the first time. NM Medicaid is only the beginning. Please stop giving our Medicaid patient money/re-embossments to off reservation hospitals. They will use that money to build more healthcare facilities off the Navajo reservation. Let the federal government healthcare money (Medicaid) work for us. Quote by National Indian Health Board Chair Victoria Kitcheyan.

"The ability for our tribal clinics to bill and receive reimbursement from Medicare and Medicaid is a true exercise of sovereignty, self-governance and an example of a federal agency living up to its trust responsibility."

\*The Human Services Department of NM is backing this legislations which insures Naat'aanii Development Corporation to succeed!

\*EXPERIENCE! Molina Healthcare, Inc Managed Care Program a company ranked 150th on the Fortune 500 in 2017 will be backing these approvals.

\*All this started with my mother Annabell Harrison, who is in her late 80s, in Red Valley AZ. She was in need of immediate care but there was none. My sister tried to help her but she too was disaable. With New Mexico Indian Managed Care Entity, the loopholes will be tremendously reduced.

We need personalized health management therefore accessible healthcare in all areas of the Navajo reservation; especially in the remote areas. Why should only the off reservation population get FULL benefits from federal and state government healthcare funding. Thank you for reading my plea. Contact me at (            -            ). [lori.hewlett@rmmcomp.com](mailto:lori.hewlett@rmmcomp.com)

Lori Hewlett