

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0281-19

**DATE:** September 20, 2019

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION;  
AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, APPROVING  
GUARANTIES IN FAVOR OF ATN INTERNATIONAL, INC. AND THE UNITED  
STATES GOVERNMENT, DEPARTMENT OF AGRICULTURE, RURAL UTILITY  
SERVICE FOR KAYENTA SOLAR PROJECT FINANCING

**PURPOSE:** The purpose of this proposed resolution is to approve a Guaranty by NTUA in favor of ATN International, Inc. and approve a Parental Guaranty by NTUA in favor of United States Government, Department of Agriculture, Rural Utility Service.

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

5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: 5:35 pm 9-23-19  
Posting End Date: 9-28-19  
Eligible for Action: 9-29-19

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

INTRODUCED BY

  
(Prime Sponsor)

TRACKING NO. 0281-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, APPROVING  
GUARANTIES IN FAVOR OF ATN INTERNATIONAL, INC. AND THE UNITED  
STATES GOVERNMENT, DEPARTMENT OF AGRICULTURE, RURAL UTILITY  
SERVICE FOR KAYENTA SOLAR PROJECT FINANCING

BE IT ENACTED:

**Section One. Authority**

- A. The Resources and Development Committee has oversight authority over public utilities. 2 N.N.C. § 500.
- B. Pursuant to 21 N.N.C § 7(B)(8), the Management Board of the Navajo Tribal Utility Authority (NTUA) is authorized to make loan guarantees, provided that no such guarantee is excess of \$200,000 shall be made without the prior written approval of the Resources and Development Committee of the Navajo Nation Council.

**Section Two. Findings**

- A. Investment Tax Credits are authorized by the Internal Revenue Code Section 48. Such tax credits cannot be utilized directly by NTUA because of its tax-exempt status. NTUA created a corporation under Delaware law through which the use

1 of investment tax credit financing could be accomplished. This corporation is  
2 known as NTUA Generation, Inc. and is wholly owned by NTUA.

3 B. Furthermore, NTUA Generation, Inc. has applied for and received a loan  
4 approval from the United States Government, Department of Agriculture's Rural  
5 Utility Service for the debt financing for both the Kayenta I and Kayenta II solar  
6 projects.

7 C. The Investment Tax Credits financing utilizes an equity investment from ATN  
8 International, Inc. to contribute to the permanent financing of the Kayenta II  
9 Solar Project.

10 D. NTUA, through NTUA Generation, Inc., has constructed the Kayenta Solar  
11 Projects to serve the Navajo Nation.

12 E. As additional security for equity investment utilizing Investment Tax Credit  
13 financing described above with ATN International, Inc. desires a guaranty by  
14 NTUA of the financial obligations of NTUA Generation, Inc. A description of  
15 the terms and obligations are set forth in the attached Guaranty attached hereto  
16 as **Exhibit A**.

17 F. Also, as additional security for the debt financing transaction described above  
18 with the Rural Utility Service, it is required that NTUA provide parental  
19 guaranty to secure the financial obligations of NTUA Generation, Inc. A  
20 description of the terms and obligations are set forth in the attached Guaranty  
21 attached hereto as **Exhibit B**.

### 22 23 **Section Three. Approval**

24  
25 The Resources and Development Committee of the Navajo Nation Council hereby  
26 approves:

27 A. Guaranty by NTUA in favor of ATN International, Inc., attached herto as  
28 **Exhibit A**; and

- 1 B. Parental Guaranty by NTUA in favor of United States Government, Department  
2 of Agriculture, Rural Utility Service, in a form substantially similar to the  
3 document attached hereto as **Exhibit B**; and  
4 C. NTUA is authorized to make modifications to the forms attached hereto to the  
5 extent needed to complete the financing transactions described herein.  
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**GUARANTY AGREEMENT**

**among**

**NAVAJO TRIBAL UTILITY AUTHORITY**

**as Guarantor**

**and**

**KAYENTA II HOLDINGS, LLC,**

**and**

**ATN INTERNATIONAL, INC.,**

**as Guaranty Beneficiaries**

**dated as of \_\_\_\_\_, 2019**

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## GUARANTY AGREEMENT

### PRELIMINARY STATEMENT

This GUARANTY AGREEMENT (this "Guaranty"), dated and effective as of \_\_\_\_\_, 2019, is made by and among KAYENTA II HOLDINGS, LLC, a Delaware limited liability company (the "Company"), ATN INTERNATIONAL, INC., a Delaware corporation (the "Investor Member"), and NAVAJO TRIBAL UTILITY AUTHORITY, a Navajo Nation enterprise (the "Guarantor").

### RECITALS

WHEREAS, NTUA Generation, Inc., a Delaware corporation, is the managing member of the Company (the "Managing Member").

WHEREAS, the Investor Member and the Managing Member are the only members of the Company.

WHEREAS, the Company is operating pursuant to that certain Amended and Restated Operating Agreement dated as of the date hereof (the "Operating Agreement").

WHEREAS, the Company was formed for the purpose of, through one or more subsidiaries, acquiring, constructing, installing, owning, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of solar energy property, in particular the Facilities, and to engage in the business of acting as the owner of such solar energy property.

WHEREAS, Guarantor wholly owns the Managing Member, and will benefit from the installation, completion and operation of the Facilities.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees for the benefit of the Investor Member as follows:

### AGREEMENT

#### ARTICLE I. DEFINITIONS

Section 1.1 **Definitions.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Operating Agreement, as such agreement may be amended from time to time. As used in this Guaranty, capitalized terms not otherwise defined shall have the meanings set forth below:

"**Guaranteed Agreement**" means the Operating Agreement.

"**Guaranteed Obligations**" is defined in Section 3.1(a) of this Guaranty.

"**Guaranty Beneficiaries**" means the Investor Member and the Company.

"**Parties**" means the Guaranty Beneficiaries and the Guarantor.

#### Section 1.2 **Other Definitional Provisions.**

(a) As used in this Guaranty and in any certificate or other documents made or delivered pursuant hereto or thereto, financial and accounting terms not defined in this Guaranty or in any such certificate or other document, and financial and accounting terms partly defined in this Guaranty or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under GAAP. To the extent that the definitions of financial and accounting terms in this Guaranty or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP, the definitions contained in this Guaranty or in any such certificate or other document shall control.

(b) The words “hereof”, “herein”, “hereunder”, and words of similar import when used in this Guaranty will refer to this Guaranty as a whole and not to any particular provision of this Guaranty. Section references contained in this Guaranty are references to Sections in this Guaranty unless otherwise specified. The term “including” will mean “including without limitation”.

(c) The definitions contained in this Guaranty are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(d) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means (unless otherwise indicated herein) such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(e) Any references to a Person are also to its permitted successors and assigns.

## **ARTICLE II.**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES.**

Section 2.1 The Guarantor represents, warrants and covenants to the Guaranty Beneficiaries as follows:

(a) the execution, delivery and performance by it of this Guaranty (including, without limitation the waiver of sovereign immunity set forth in Section 4.4 hereof) does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it;

(b) the execution, delivery and performance by it of this Guaranty does not and will not conflict with or result in a breach of the terms or provisions of any indenture, agreement or instrument to which it is a party, or by which it is bound, or to which it is subject, or constitute a default thereunder;

(c) with the assistance of counsel of its choice, it has read and reviewed this Guaranty and the Operating Agreement (including all of its schedules and ancillary documents) and such other documents as it and its counsel deemed necessary or desirable to read;

(d) it is a tribal utility authority, validly formed and existing and in good standing under the laws of the jurisdiction of its formation and all other jurisdictions where its failure to be so qualified would have a material adverse effect on its financial condition or results of operations and has the full power and authority to enter into and perform its obligations under this Guaranty;

(e) it has duly authorized, executed and delivered this Guaranty (including, without limitation the waiver of sovereign immunity set forth in Section 4.4 hereof), and this Guaranty is fully enforceable against it (in the venue specified in Section 4.5 hereof) in accordance



with its terms, subject to applicable bankruptcy, insolvency and other laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether a proceeding is sought in equity or at law); and

(f) Guarantor acknowledges and agrees it is tenant under that certain Kayenta Chapter Solar Lease by and between the Navajo Nation, a federally recognized Indian tribe, and Guarantor, dated June 24, 2016, and the sublandlord under that certain Kayenta Chapter Solar Sublease by and between NTUA and Managing Member, dated March 1, 2016, and that the Managing Member is the subsublandlord under that certain Kayenta Chapter Solar Subsublease by and between Managing Member and NGI-Kayenta II, LLC, a subsidiary of the Company, dated on or about the date hereof. The foregoing lease documents are collectively referred to herein as the Site Access Agreements. The Guarantor hereby covenants it shall not agree or collude with the Navajo Nation, Managing Member or any other party to amend, modify, grant any waivers under, effectuate any surrender of or termination of any Site Access Agreements in any manner that may be adverse to the Company, the Facilities or the Investor Member. Guarantor shall not amend, modify, grant any waivers under, effectuate any surrender of or otherwise terminate any Site Access Agreements without the prior written consent of the Investor Member.

### **ARTICLE III.**

#### **GUARANTY AND COMPLETION OF PERFORMANCE.**

##### **Section 3.1 Guaranty.**

(a) The Guarantor shall absolutely and unconditionally guarantee due payment, performance and fulfillment of any and all of the Managing Member's obligations under the Operating Agreement, in an amount not to exceed the Investor Member Aggregate Contribution, plus any Attorney's Fees and Expenses, as described in Section 4.1 hereunder (the "Guaranteed Obligations").

(b) In the event that the Guarantor itself assumes any of the Guaranteed Obligations and timely cures any event of default thereunder, the Guaranty Beneficiaries hereby agree that they will perform their respective obligations under the Guaranteed Agreement in favor of such Guarantor to the same extent and with the same effect as if such Guarantor was named as the counterparty to the Guaranteed Agreement, in accordance with the terms and conditions of the Guaranteed Agreement.

Section 3.2 **Direct and Primary Obligations.** The Guarantor agrees that if the Guaranteed Obligations guaranteed by this Guaranty are not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, Guarantor shall immediately upon receipt of written demand therefor from the applicable Guaranty Beneficiary, pay the Guaranteed Obligations due (payable strictly in United States Dollars) or perform all obligations hereby guaranteed in like manner as if the obligations constituted the direct and primary obligations of the Guarantor. Any right of the Guarantor to subrogation as a result of any payment or performance hereunder or any other payment made or performance by the Guarantor on account of the amounts or obligations due hereunder shall be subordinated to the rights of the Guaranty Beneficiaries under this Guaranty, and the Guarantor hereby agrees not to pursue any claim based



on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle the Guarantor to a claim against the Company based on any payment or performance made hereunder or otherwise on account of the amounts or obligations due hereunder until the obligations guaranteed by this Guaranty have been satisfied in full.

Section 3.3 **Continuing and Irrevocable Obligations.** This Guaranty and the obligations of the Guarantor hereunder shall be continuing and irrevocable until the obligations guaranteed by this Guaranty have been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Investor Member from the Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then the Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Investor Member, and the Guarantor's obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Investor Member had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of the Guarantor until satisfied.

Section 3.4 **No Discharge.** The Guarantor acknowledges that the Investor Member is a member of the Company. The Guarantor agrees that the exercise by the Investor Member, of any of its rights or remedies under the Operating Agreement for Managing Member's failure to fulfill its obligations under the Operating Agreement shall not serve to reduce or discharge the liability of the Guarantor hereunder, except to the extent Managing Member's obligations under the Operating Agreement have been reduced or discharged; provided, however that the Investor Member shall have no obligation to exercise any of its rights or remedies under the Operating Agreement.

Section 3.5 **Other Indebtedness Subordinated.** Any payments owing under the Operating Agreement or any Transaction Document (including, without limitation, the Site Access Agreement) to the Guarantor shall be subordinate to the obligations of the Guarantor to the Guaranty Beneficiaries under this Guaranty.

Section 3.6 **Waiver and Estoppel.** The Guarantor knowingly waives and agrees that it will be estopped from asserting any argument to the contrary as follows: (a) any and all notice of acceptance of this Guaranty or of the creation, renewal or accrual of any of the obligations or liabilities hereunder indemnified against, either now or in the future; (b) protest, presentment, demand for payment, notice of default or nonpayment, notice of protest or default; (c) any and all notices or formalities to which it may otherwise be entitled, including, without limitation, notice of the granting of any indulgences or extensions of time of payment of any of the liabilities and obligations hereunder and hereby indemnified against; (d) any promptness in making any claim or demand hereunder; (e) the defense of the statute of limitations in any action hereunder or in any action for the collection of amounts payable hereunder, (f) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons; (g) any defense based upon an election of remedies which destroys



or otherwise impairs any or all of the subrogation rights of the Guaranty Beneficiaries or the right of the Guaranty Beneficiaries to proceed against any other person for reimbursement, or both; (h) any duty or obligation of the Guaranty Beneficiaries to perfect, protect, retain or enforce any security for the payment of amounts payable by the Guarantor hereunder or to proceed against any one or more persons as a condition to proceeding against the Guarantor; and (i) to the extent it may be waived, any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty. The Guarantor hereby waives, to the fullest extent allowed by law, all suretyship rights, defenses and other benefits to which it might otherwise be entitled. Without limiting the generality of the foregoing: (a) Guaranty Beneficiaries shall not be required to furnish the Guarantor with copies of any notices given or required to be given to Manager Member under the Operating Agreement, including, without limitation, notices of default; and (b) Guarantor's liability under this Guaranty shall not be affected, released, terminated, discharged or impaired by (i) any amendment of the Operating Agreement, (ii) any change in time, manner or place of payment, performance or observance of any of the Guaranteed Obligations; (iii) any other guaranty now or hereafter executed by Guarantor or any other guarantor or the release of any other guarantor from liability for the payment, performance or observance of any of the Guaranteed Obligations, whether by operation of law or otherwise; (iv) any waiver of, or any assertion or enforcement or failure or refusal to assert or enforce, or any consent or indulgence granted by Guaranty Beneficiaries with respect to a waiver of, or written agreement with respect to a consent or indulgence with respect to a departure from, any term of the Operating Agreement, including without limitation the waiver of any default by Managing Member, or the making of any other arrangement with, or the accepting of any compensation or settlement from, Managing Member; provided that to the extent that Guaranty Beneficiaries provide Managing Member with a written departure from any term of the Operating Agreement, the Guaranteed Obligations for which Guarantor is liable under the Guaranty shall be deemed modified to reflect the terms of such written waiver or agreement; or (v) any defect in or invalidity of the Operating Agreement. No delay or failure on the part of the Guaranty Beneficiaries in the exercise of any right or remedy against any other party against whom the Guaranty Beneficiaries may have any rights shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by the Guaranty Beneficiaries of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy. No provision of this Guaranty or right of the Guaranty Beneficiaries hereunder can be waived, nor can the Guarantor be released from its obligations hereunder, except by a writing duly executed by the Guaranty Beneficiaries. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever, except by the express terms of a writing duly executed by the Guaranty Beneficiaries and the Guarantor.

Section 3.7 **Duration.** The Guarantor hereby agrees that this Guaranty, shall remain in full force and effect at all times hereinafter until performed in full subject to the limitations and expiration periods set forth herein, notwithstanding any action or undertakings by or against the Guaranty Beneficiaries and the Guarantor in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Investor Member pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure, as same may be applicable from time to time. The Guarantor acknowledges that it may not be possible to determine the existence of liability hereunder until after such time as the IRS is prohibited from assessing additional tax liability against the Investor Member for any year in which it, the Company or any



SPV claimed Tax Credits, which may be at a point in time subsequent to when the Investor Member has disposed of its Membership Interests.

Section 3.8 **Financial Statements.**

(a) Within fifteen (15) calendar days after the end of each fiscal quarter (excluding the fiscal quarter ending on the last day of each Fiscal Year), each Guarantor shall furnish to the Investor Member unaudited financial statements with respect to such fiscal quarter for each Guarantor consisting of (i) a balance sheet showing such Guarantor's financial position as of the end of such fiscal quarter, (ii) profit and loss statements for the Company for such fiscal quarter, and (iii) a statement of cash flows for the Company for such fiscal quarter.

(b) Within one hundred twenty (120) calendar days after the end of the Fiscal Year, the Guarantor shall furnish to the Investor Member financial statements with respect to such Fiscal Year for each Guarantor that are audited and certified by the Accountants, consisting of (i) a balance sheet showing each Guarantor's financial position as of the end of such Fiscal Year, (ii) profit and loss statements for each Guarantor for such Fiscal Year, (iii) a statement of cash flows for each Guarantor for such Fiscal Year and (iv) related footnotes.

**ARTICLE IV.**  
**MISCELLANEOUS**

Section 4.1 **Attorneys' Fees and Expenses.** If any action or proceeding to enforce this Guaranty or any provision hereof is brought by any Party, the prevailing party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and its costs and expenses of suit, including actual attorneys' and consultants' fees. In the event that any Party hereto secures a judgment in any proceeding brought to enforce or interpret this Guaranty, then any cost or expense incurred in enforcing or in successfully appealing from such judgment, including, without limitation, actual attorneys' fees shall be paid by the Party against whom such judgment has been rendered or against whom an appeal is won, and shall be recoverable separately from and in addition to any other amount included in such judgment.

Section 4.2 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given when received if delivered personally or by facsimile transmission with completed transmission acknowledgment, or when delivered or when delivery is refused if mailed by overnight delivery via a nationally recognized courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its address below (or at such other address or facsimile number for a Party as shall be specified by like notice; provided; however, that notices of a change of address shall be effective only upon receipt thereof):

To the Investor Member:  
ATN International, Inc.

500 Cummings Center, Suite 2450

Beverly, MA 01915

Attention: Mary Mabey



Telephone: (978) 619-1323

With a copy to:  
Bocarsly Emden Cowan Esmail

& Arndt LLP

633 West Fifth Street, 64th Floor

Los Angeles, CA 90071

Attention: Robert F. Cowan

Telephone: (213) 239-8051

Facsimile: (213) 239-0410

To the Company:

Kayenta II Holdings, LLC

c/o NTUA Generation, Inc.

P.O. Box 170,

Fort Defance, AZ 86504

Attention: Thomas Nelson

Telephone: 928-729-6202

With copies to:

DWGP

1667 K STREET, SUITE 700

Washington, D.C. 20006

Attention: Derek Dyson

Telephone: (202) 467-6370

Facsimile: (202) 467-6379

ATN International, Inc.

500 Cummings Center, Suite 2450

Beverly, MA 01915

Attention: Mary Mabey

Telephone: (978) 619-1323

Bocarsly Emden Cowan Esmail

& Arndt LLP

633 West Fifth Street, 64th Floor

Los Angeles, CA 90071

Attention: Robert F. Cowan

Telephone: (213) 239-8051

Facsimile: (213) 239-0410

To Guarantor:

Navajo Tribal Utility Authority

P.O. Box 170,

Fort Defance, AZ 86504

Attention: Thomas Nelson

Telephone: 928-729-6202

DWGP

1667 K STREET, SUITE 700

Washington, D.C. 20006

Attention: Derek Dyson

Telephone: (202) 467-6370

Facsimile: (202) 467-6379

Section 4.3 **Assignment**. If the Investor Member Interest is transferred and the person to whom the Investor Member Interest is transferred is admitted as a member to the Company, all in accordance with the Operating Agreement, this Guaranty shall automatically be assigned therewith to such person without the need of any express assignment, and, when so assigned, the Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting the Guarantor's liability.

Section 4.4 **Waiver of Sovereign Immunity**. Guarantor fully and irrevocably waives, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment), (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction, and (vi) any other remedy at law or in equity, and irrevocably agrees, to the extent permitted by applicable law, that it will not claim that immunity in any proceedings.

Section 4.5 **Governing Law**. This Guaranty shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to conflict of law principles as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS GUARANTY, SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR NEW CASTLE, DELAWARE, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 4.6 **Counterparts**. This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile will be considered original signatures, and each Party shall thereafter promptly deliver original signatures to the other Party.

Section 4.7 **Heading**. The articles, section and schedule headings contained in this Guaranty are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Guaranty.



Section 4.8 **Entire Agreement.**

(a) This Guaranty embodies the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Guaranty.

(b) Each Party acknowledges that, in agreeing to enter into this Guaranty, it has not relied on any representation, warranty, collateral contract or other assurance (except those repeated in this Guaranty) made by or on behalf of any other Party at any time before the signature of this Guaranty. Each Party waives all rights and remedies which, but for this clause (b), might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

Section 4.9 **Construction of Agreement.** The terms and provisions of this Guaranty represent the results of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Guaranty shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties hereby waive the application in connection with the interpretation and construction of this Guaranty of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Guaranty shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Guaranty.

Section 4.10 **Severability.** If any term or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

Section 4.11 **Beneficiaries.** The obligations of the Guarantor contained herein are undertaken solely and exclusively for the benefit of the Investor Member, the Company and their respective permitted successors and assigns, and no other Person shall have any standing to enforce such obligations or be deemed to be beneficiaries of such obligations.

Section 4.12 **Miscellaneous.** In the event that more than one person or entity executes this Guaranty as Guarantor (a) the term "Guarantor" shall mean each person or entity, (b) the obligations of each Guarantor shall be joint, several and independent, and (c) this Guaranty shall be construed and enforced as though each Guarantor executed a separate guaranty on the terms set forth in this Guaranty. Time is of the essence of this Guaranty.

*[signatures begin on the following page ]*

IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the date first above written.

**COMPANY:**

**KAYENTA II HOLDINGS, LLC,**  
a Delaware limited liability company

By: NTUA Generation Inc.,  
its managing member

By: \_\_\_\_\_  
Name: Walter Haase  
Title: Manager

IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the date first above written.

**INVESTOR MEMBER:**

**ATN INTERNATIONAL, INC.**  
a Delaware corporation

By: \_\_\_\_\_  
Name: William Kreisher  
Title: SVP Corp Development



IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the date first above written.

**GUARANTOR:**

**NAVAJO TRIBAL UTILITY AUTHORITY,**  
a Navajo Nation enterprise

By: \_\_\_\_\_  
Name: Thomas Nelson  
Title: Chief Financial Officer

\_\_\_\_\_

EXHIBIT B

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**GUARANTY AGREEMENT**

**among**

**NAVAJO TRIBAL UTILITY AUTHORITY**

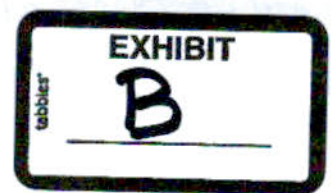
**as Guarantor**

**and**

**RURAL UTILITY SERVICE  
as Guaranty Beneficiaries**

**dated as of \_\_\_\_\_, 2019**

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## GUARANTY AGREEMENT

### PRELIMINARY STATEMENT

This GUARANTY AGREEMENT (this "Guaranty"), dated and effective as of \_\_\_\_\_], 2019, is made by and among Rural Utility Service (the "Lender"), and NAVAJO TRIBAL UTILITY AUTHORITY, a Navajo Nation enterprise (the "Guarantor").

### RECITALS

WHEREAS, NTUA Generation, Inc., a Delaware corporation, is the managing member of the Company (the "Managing Member").

WHEREAS, the Investor Member and the Managing Member are the only members of the Company.

WHEREAS, the Company is operating pursuant to that certain Amended and Restated Operating Agreement dated as of the date hereof (the "Operating Agreement").

WHEREAS, the Company was formed for the purpose of, through one or more subsidiaries, acquiring, constructing, installing, owning, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of solar energy property, in particular the Facilities, and to engage in the business of acting as the owner of such solar energy property.

WHEREAS, Guarantor wholly owns the Managing Member, and will benefit from the installation, completion and operation of the Facilities.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees for the benefit of the Investor Member as follows:

### AGREEMENT

#### ARTICLE V. DEFINITIONS

Section 5.1 **Definitions.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Operating Agreement, as such agreement may be amended from time to time. As used in this Guaranty, capitalized terms not otherwise defined shall have the meanings set forth below:

"**Guaranteed Agreement**" means the Loan Agreement with RUS.

"**Guaranteed Obligations**" is defined in Section 3.1(a) of this Guaranty.

"**Guaranty Beneficiaries**" means the Investor Member and the Company.

"**Parties**" means the Guaranty Beneficiaries and the Guarantor.

#### Section 5.2 **Other Definitional Provisions.**

(a) As used in this Guaranty and in any certificate or other documents made or delivered pursuant hereto or thereto, financial and accounting terms not defined in this Guaranty or in any such certificate or other document, and financial and accounting terms partly defined in this Guaranty or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under GAAP. To the extent that the definitions of financial and accounting terms in this Guaranty or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP, the definitions contained in this Guaranty or in any such certificate or other document shall control.



(b) The words “hereof”, “herein”, “hereunder”, and words of similar import when used in this Guaranty will refer to this Guaranty as a whole and not to any particular provision of this Guaranty. Section references contained in this Guaranty are references to Sections in this Guaranty unless otherwise specified. The term “including” will mean “including without limitation”.

(c) The definitions contained in this Guaranty are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(d) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means (unless otherwise indicated herein) such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(e) Any references to a Person are also to its permitted successors and assigns.

#### **ARTICLE VI.** **COVENANTS, REPRESENTATIONS AND WARRANTIES.**

Section 6.1 The Guarantor represents, warrants and covenants to the Guaranty Beneficiaries as follows:

(a) the execution, delivery and performance by it of this Guaranty (including, without limitation the waiver of sovereign immunity set forth in Section 4.4 hereof) does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it;

(b) the execution, delivery and performance by it of this Guaranty does not and will not conflict with or result in a breach of the terms or provisions of any indenture, agreement or instrument to which it is a party, or by which it is bound, or to which it is subject, or constitute a default thereunder;

(c) with the assistance of counsel of its choice, it has read and reviewed this Guaranty and the Operating Agreement (including all of its schedules and ancillary documents) and such other documents as it and its counsel deemed necessary or desirable to read;

(d) it is a tribal utility authority, validly formed and existing and in good standing under the laws of the jurisdiction of its formation and all other jurisdictions where its failure to be so qualified would have a material adverse effect on its financial condition or results of operations and has the full power and authority to enter into and perform its obligations under this Guaranty;

(e) it has duly authorized, executed and delivered this Guaranty (including, without limitation the waiver of sovereign immunity set forth in Section 4.4 hereof), and this Guaranty is fully enforceable against it (in the venue specified in Section 4.5 hereof) in accordance



with its terms, subject to applicable bankruptcy, insolvency and other laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether a proceeding is sought in equity or at law); and

**ARTICLE VII.**  
**GUARANTY AND COMPLETION OF PERFORMANCE.**

Section 7.1     **Guaranty.**

(a)     The Guarantor shall absolutely and unconditionally guarantee due payment, performance and fulfillment of any and all of the Managing Member's obligations under the Operating Agreement, in an amount not to exceed the Investor Member Aggregate Contribution, plus any Attorney's Fees and Expenses, as described in Section 4.1 hereunder (the "Guaranteed Obligations").

(b)     In the event that the Guarantor itself assumes any of the Guaranteed Obligations and timely cures any event of default thereunder, the Guaranty Beneficiaries hereby agree that they will perform their respective obligations under the Guaranteed Agreement in favor of such Guarantor to the same extent and with the same effect as if such Guarantor was named as the counterparty to the Guaranteed Agreement, in accordance with the terms and conditions of the Guaranteed Agreement.

Section 7.2     **Direct and Primary Obligations.**     The Guarantor agrees that if the Guaranteed Obligations guaranteed by this Guaranty are not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, Guarantor shall immediately upon receipt of written demand therefor from the applicable Guaranty Beneficiary, pay the Guaranteed Obligations due (payable strictly in United States Dollars) or perform all obligations hereby guaranteed in like manner as if the obligations constituted the direct and primary obligations of the Guarantor. Any right of the Guarantor to subrogation as a result of any payment or performance hereunder or any other payment made or performance by the Guarantor on account of the amounts or obligations due hereunder shall be subordinated to the rights of the Guaranty Beneficiaries under this Guaranty, and the Guarantor hereby agrees not to pursue any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle the Guarantor to a claim against the Company based on any payment or performance made hereunder or otherwise on account of the amounts or obligations due hereunder until the obligations guaranteed by this Guaranty have been satisfied in full.

Section 7.3     **Continuing and Irrevocable Obligations.**     This Guaranty and the obligations of the Guarantor hereunder shall be continuing and irrevocable until the obligations guaranteed by this Guaranty have been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Investor Member from the Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then the Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous



receipt of payment by the Investor Member, and the Guarantor's obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Investor Member had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of the Guarantor until satisfied.

Section 7.4 **No Discharge.** The Guarantor acknowledges that the Investor Member is a member of the Company. The Guarantor agrees that the exercise by the Investor Member, of any of its rights or remedies under the Operating Agreement for Managing Member's failure to fulfill its obligations under the Operating Agreement shall not serve to reduce or discharge the liability of the Guarantor hereunder, except to the extent Managing Member's obligations under the Operating Agreement have been reduced or discharged; provided, however that the Investor Member shall have no obligation to exercise any of its rights or remedies under the Operating Agreement.

Section 7.5 **Other Indebtedness Subordinated.** Any payments owing under the Operating Agreement or any Transaction Document (including, without limitation, the Site Access Agreement) to the Guarantor shall be subordinate to the obligations of the Guarantor to the Guaranty Beneficiaries under this Guaranty.

Section 7.6 **Waiver and Estoppel.** The Guarantor knowingly waives and agrees that it will be estopped from asserting any argument to the contrary as follows: (a) any and all notice of acceptance of this Guaranty or of the creation, renewal or accrual of any of the obligations or liabilities hereunder indemnified against, either now or in the future; (b) protest, presentment, demand for payment, notice of default or nonpayment, notice of protest or default; (c) any and all notices or formalities to which it may otherwise be entitled, including, without limitation, notice of the granting of any indulgences or extensions of time of payment of any of the liabilities and obligations hereunder and hereby indemnified against; (d) any promptness in making any claim or demand hereunder; (e) the defense of the statute of limitations in any action hereunder or in any action for the collection of amounts payable hereunder, (f) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons; (g) any defense based upon an election of remedies which destroys or otherwise impairs any or all of the subrogation rights of the Guaranty Beneficiaries or the right of the Guaranty Beneficiaries to proceed against any other person for reimbursement, or both; (h) any duty or obligation of the Guaranty Beneficiaries to perfect, protect, retain or enforce any security for the payment of amounts payable by the Guarantor hereunder or to proceed against any one or more persons as a condition to proceeding against the Guarantor; and (i) to the extent it may be waived, any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty. The Guarantor hereby waives, to the fullest extent allowed by law, all suretyship rights, defenses and other benefits to which it might otherwise be entitled. Without limiting the generality of the foregoing: (a) Guaranty Beneficiaries shall not be required to furnish the Guarantor with copies of any notices given or required to be given to Manager Member under the Operating Agreement, including, without limitation, notices of default; and (b) Guarantor's liability under this Guaranty shall not be affected, released, terminated, discharged or impaired by (i) any amendment of the Operating Agreement, (ii) any change in time, manner or place of payment, performance or observance of any of the Guaranteed



Obligations; (iii) any other guaranty now or hereafter executed by Guarantor or any other guarantor or the release of any other guarantor from liability for the payment, performance or observance of any of the Guaranteed Obligations, whether by operation of law or otherwise; (iv) any waiver of, or any assertion or enforcement or failure or refusal to assert or enforce, or any consent or indulgence granted by Guaranty Beneficiaries with respect to a waiver of, or written agreement with respect to a consent or indulgence with respect to a departure from, any term of the Operating Agreement, including without limitation the waiver of any default by Managing Member, or the making of any other arrangement with, or the accepting of any compensation or settlement from, Managing Member; provided that to the extent that Guaranty Beneficiaries provide Managing Member with a written departure from any term of the Operating Agreement, the Guaranteed Obligations for which Guarantor is liable under the Guaranty shall be deemed modified to reflect the terms of such written waiver or agreement; or (v) any defect in or invalidity of the Operating Agreement. No delay or failure on the part of the Guaranty Beneficiaries in the exercise of any right or remedy against any other party against whom the Guaranty Beneficiaries may have any rights shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by the Guaranty Beneficiaries of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy. No provision of this Guaranty or right of the Guaranty Beneficiaries hereunder can be waived, nor can the Guarantor be released from its obligations hereunder, except by a writing duly executed by the Guaranty Beneficiaries. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever, except by the express terms of a writing duly executed by the Guaranty Beneficiaries and the Guarantor.

Section 7.7 **Duration.** The Guarantor hereby agrees that this Guaranty, shall remain in full force and effect at all times hereinafter until performed in full subject to the limitations and expiration periods set forth herein, notwithstanding any action or undertakings by or against the Guaranty Beneficiaries and the Guarantor in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Investor Member pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure, as same may be applicable from time to time. The Guarantor acknowledges that it may not be possible to determine the existence of liability hereunder until after such time as the IRS is prohibited from assessing additional tax liability against the Investor Member for any year in which it, the Company or any SPV claimed Tax Credits, which may be at a point in time subsequent to when the Investor Member has disposed of its Membership Interests.

Section 7.8 **Financial Statements.**

(a) Within fifteen (15) calendar days after the end of each fiscal quarter (excluding the fiscal quarter ending on the last day of each Fiscal Year), each Guarantor shall furnish to the Investor Member unaudited financial statements with respect to such fiscal quarter for each Guarantor consisting of (i) a balance sheet showing such Guarantor's financial position as of the end of such fiscal quarter, (ii) profit and loss statements for the Company for such fiscal quarter, and (iii) a statement of cash flows for the Company for such fiscal quarter.

(b) Within one hundred twenty (120) calendar days after the end of the Fiscal Year, the Guarantor shall furnish to the Investor Member financial statements with respect to such Fiscal Year for each Guarantor that are audited and certified by the Accountants, consisting of (i)



a balance sheet showing each Guarantor's financial position as of the end of such Fiscal Year, (ii) profit and loss statements for each Guarantor for such Fiscal Year, (iii) a statement of cash flows for each Guarantor for such Fiscal Year and (iv) related footnotes.

## **ARTICLE VIII.**

### **MISCELLANEOUS**

Section 8.1 **Attorneys' Fees and Expenses.** If any action or proceeding to enforce this Guaranty or any provision hereof is brought by any Party, the prevailing party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and its costs and expenses of suit, including actual attorneys' and consultants' fees. In the event that any Party hereto secures a judgment in any proceeding brought to enforce or interpret this Guaranty, then any cost or expense incurred in enforcing or in successfully appealing from such judgment, including, without limitation, actual attorneys' fees shall be paid by the Party against whom such judgment has been rendered or against whom an appeal is won, and shall be recoverable separately from and in addition to any other amount included in such judgment.

Section 8.2 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given when received if delivered personally or by facsimile transmission with completed transmission acknowledgment, or when delivered or when delivery is refused if mailed by overnight delivery via a nationally recognized courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its address below (or at such other address or facsimile number for a Party as shall be specified by like notice; provided; however, that notices of a change of address shall be effective only upon receipt thereof):

To the Lender:  
USDA Rural Utility Service

To Guarantor:

Navajo Tribal Utility Authority

P.O. Box 170,

Fort Defance, AZ 86504

Attention: Thomas Nelson

Telephone: 928-729-6202

DWGP



1667 K STREET, SUITE 700

Washington, D.C. 20006

Attention: Derek Dyson

Telephone: (202) 467-6370

Facsimile: (202) 467-6379

Section 8.3 **Assignment.** If the Investor Member Interest is transferred and the person to whom the Investor Member Interest is transferred is admitted as a member to the Company, all in accordance with the Operating Agreement, this Guaranty shall automatically be assigned therewith to such person without the need of any express assignment, and, when so assigned, the Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting the Guarantor's liability.

Section 8.4 **Waiver of Sovereign Immunity.** Guarantor fully and irrevocably waives, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment), (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction, and (vi) any other remedy at law or in equity, and irrevocably agrees, to the extent permitted by applicable law, that it will not claim that immunity in any proceedings.

Section 8.5 **Governing Law.** This Guaranty shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to conflict of law principles as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS GUARANTY, SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR NEW CASTLE, DELAWARE, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.6 **Counterparts.** This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile will be considered original signatures, and each Party shall thereafter promptly deliver original signatures to the other Party.



Section 8.7 **Heading.** The articles, section and schedule headings contained in this Guaranty are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Guaranty.

Section 8.8 **Entire Agreement.**

(a) This Guaranty embodies the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Guaranty.

(b) Each Party acknowledges that, in agreeing to enter into this Guaranty, it has not relied on any representation, warranty, collateral contract or other assurance (except those repeated in this Guaranty) made by or on behalf of any other Party at any time before the signature of this Guaranty. Each Party waives all rights and remedies which, but for this clause (b), might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

Section 8.9 **Construction of Agreement.** The terms and provisions of this Guaranty represent the results of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Guaranty shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties hereby waive the application in connection with the interpretation and construction of this Guaranty of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Guaranty shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Guaranty.

Section 8.10 **Severability.** If any term or other provision of this Guaranty is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

Section 8.11 **Beneficiaries.** The obligations of the Guarantor contained herein are undertaken solely and exclusively for the benefit of the Investor Member, the Company and their respective permitted successors and assigns, and no other Person shall have any standing to enforce such obligations or be deemed to be beneficiaries of such obligations.

Section 8.12 **Miscellaneous.** In the event that more than one person or entity executes this Guaranty as Guarantor (a) the term "Guarantor" shall mean each person or entity, (b) the obligations of each Guarantor shall be joint, several and independent, and (c) this Guaranty shall be construed and enforced as though each Guarantor executed a separate guaranty on the terms set forth in this Guaranty. Time is of the essence of this Guaranty.

*[signatures begin on the following page ]*



IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the date first above written.

**LENDER:**

**RURAL UTILITY SERVICE**  
UNITED STATES GOVERNMENT

By:

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

Name:

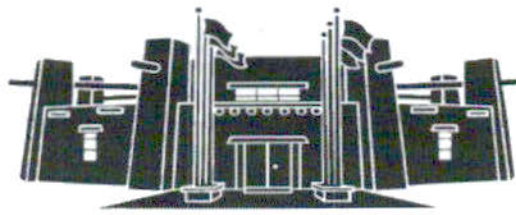
Title: Administrator

IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the date first above written.

**GUARANTOR:**

**NAVAJO TRIBAL UTILITY AUTHORITY,**  
a Navajo Nation enterprise

By: \_\_\_\_\_  
Name: Thomas Nelson  
Title: Chief Financial Officer



## MEMORANDUM

TO: Honorable Mark Freeland  
Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano,  
Nageezi, Crownpoint Chapters

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: September 20, 2019

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING  
TO RESOURCES AND DEVELOPMENT, APPROVING GUARANTIES IN FAVOR  
OF ATN INTERNATIONAL, INC. AND THE UNITED STATES GOVERNMENT,  
DEPARTMENT OF AGRICULTURE, RURAL UTILITY SERVICE FOR KAYENTA  
SOLAR PROJECT FINANCING

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

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.

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).



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0281-19\_\_\_\_\_ SPONSOR: Mark Freeland

TITLE: An Action Relating to Resources and Development, approving guaranties in favor of ATN International, INC. and the United States Government, Department of Agriculture, Rural Utility Service for Kayenta Solar Project Financing

*Date posted: September 23, 2019 at 5:35pm*

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.*