

**ENVIRONMENTAL ASSESSMENT FOR THE
ARCADIAN INFRACOM BROADBAND FIBER PROJECT
North-South Route**

Navajo Nation Council
Coconino County, Navajo Nation

Bureau of Indian Affairs
Navajo Region Regional Office
Indian Affairs

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1. PURPOSE AND NEED FOR THE PROPOSED ACTION

1.1. INTRODUCTION

This Environmental Assessment (EA) was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the regulations of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. This EA is an informational document for use by the decision-makers, the Bureau of Indian Affairs (BIA), and the public. It discloses the relevant information and anticipated environmental impacts of the proposed action and no action alternative. This analysis was completed to determine if impacts to the environment could be significant and would require completion of an Environmental Impact Statement (EIS) or if a Finding of No Significant Impact (FONSI) is the appropriate outcome of the analysis.

1.2. PROJECT DESCRIPTION (PROPOSED ACTION)

Arcadian Infracom, Inc. (Arcadian), is requesting a right-of-way on Navajo Nation Trust Lands for their proposed project to construct approximately 81 miles of fiber within the Navajo Nation located along existing public rights-of-way (the Project). The alignment runs along Navajo Route (NR) 20 for approximately 57 miles from LeChee, Arizona to U.S. Highway 89 (US 89), west of Tuba City, Arizona and continues south for 24 miles along US 89 to Gray Mountain, Arizona. The proposed right-of-way for the Project will consist of 10-foot-wide corridor and be approximately 81 miles in length across Navajo Nation Trust Lands.

The Resources and Development Committee of the Navajo Nation Council (the Council) 2020 Resolution (**Appendix A**) grants rights-of-way and leases to Arcadian, subject to additional compliance with Navajo law, located on Navajo Nation Trust Lands in Arizona on the Navajo Nation. Arcadian holds the necessary development rights which means the Navajo Nation has authorized construction to commence while the Navajo Nation's environmental and cultural studies are being completed.

The Project would consist of the installation of buried fiber optic lines and the construction of electronic regenerating stations (regens or Huts) along the route spaced at 50-mile intervals (Proposed Action). Huts are small structures where the signals transmitted through the fiber optic cable are regenerated to reduce signal distortion (Federal Highway Administration 2009). The new conduits and fiber optic line will be installed by a tractor-mounted cable plow (plowed) and, where needed, trenching and boring. A rock-cutting trencher or micro-trencher will be used if solid rock is encountered, and horizontal boring equipment will be used to cross washes, access roads, and driveways. Most of the system will be plowed in with a typical disturbance width of 1 foot (30 cm), with negligible impacts to local vegetation. It is also anticipated that there will be some aerial placement to avoid sensitive terrain, resources, or excessive disturbance.

Construction activities associated with the Proposed Action would consist of the following:

1. Arcadian will comply with the 25 Code of Federal Regulations, Part 169: Right-of-way over Indian Lands.
2. Arcadian and their contractors will comply with the 1970 Federal Occupational and Safety Act during construction activities.
3. Arcadian and their contractors will comply with the Navajo Nation General Conditions and all construction activities will be restricted to the right-of-way.
4. Arcadian will only use only construction material that meets the specification as outlined in the federal, and Navajo Area specifications.
5. Arcadian will have the right-of-way clearly flagged prior to construction, and any clearing performed by Arcadian will be limited to the right-of-way.
6. Arcadian is responsible to get the necessary permits for clearance and approval prior to start of construction activities.
7. Arcadian will comply with OSHA 220 7, 1983 during excavation, trenching, and shoring activities. Barriers and signs will be displayed prior to construction activities as appropriate.
8. Arcadian's trench width will be constrained to the width of approximately 30 inches to extent possible.
9. Backfilling will be completed with previous excavated material, and hand fill and machines will be used as outlined in the engineering specifications.
10. Construction crew will pick up all debris resulting from the construction. Surface disturbance will be restored in accordance with requirements designated by the Navajo Department of Agriculture, Window Rock, Arizona.

1.3. PURPOSE AND NEED FOR ACTION

The construction of this Project has been approved by the NN Council, and right-of-way has been granted via the Council's 2020 Resolution (**Appendix A**). As the lead federal agency, the Bureau of Indian Affairs (BIA) must act on this request for a right-of-way for the Project alignment. This is a federal action the requires the BIA to comply with NEPA before granting the right-of-way.

These facilities have been requested by the Council. The purpose of Project is to address the immediate needs of Navajo Nation communities and provide bandwidth to support data intensive applications for education, employment within the Navajo Nation and remote work, and telemedicine. This Project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Project revenues and services as compensation for use of Navajo rights-of-way, 3) generate new Page 1 of 6 RDCAU-32-20 tax revenues through the construction and operation of infrastructure built on the Navajo Nation, and 4) assist the Navajo Nation in providing high speed internet to remote Navajo and surrounding communities.

1.4. LOCATION

The Project is located within existing road rights-of-way from LeChee, Arizona to Gray Mountain, Arizona. The Project is located within the right-of-way along US 89 between Gray Mountain and the NR 20 junction and continues within the right-of-way of NR 20 north to LeChee, Arizona just south of Page, Arizona.

The easement will be 10 feet wide with the edge offset approximately 5 feet west of the eastern Arizona Department of Transportation (ADOT) fence or as construction requires on US 89 starting at the intersection of the section line at approximately the midpoint of $\frac{1}{4}$ SE $\frac{1}{4}$ SE Section 31 T28N R9E. It will then proceed north for approximately 23 miles to the intersection of US 160 at $\frac{1}{4}$ SE, $\frac{1}{4}$ SE Section 11 T31N R9E, continuing north for approximately 16.9 miles to the intersection of NR 20 at about the middle of $\frac{1}{4}$ SE, $\frac{1}{4}$ NE Section 31 T34N R9E. It will then cross under NR 20 to the north side of the road approximately 5 feet from the fence or as construction requires for approximately 42.2 miles to the endpoint located at about the middle of $\frac{1}{4}$ NW Section 16 T40N R9E on the section line.

The Project falls within the following quadrangles: Page, White Dome, Dead Monkey Ridge, Dove Spring, Toh Bih Nosteny, The Gap, Willow Springs, Shadow Mountain Well, Cameron North, Cameron South, Gray Mountain.

1.5. VICINITY MAPS

- Figure 1: Vicinity Map
- Figure 2: Aerial Overview Map

2. ALTERNATIVES

2.1. FORMULATION OF ALTERNATIVES

The formulation of alternatives to the Proposed Action (**Section 1.2**) for broadband fiber optic support for the Navajo Nation considered alternate routes for the fiber line and the current practices which is the No Action alternative.

2.2. REASONABLE ALTERNATIVES

2.2.1. No Action Alternative

Under the No Action Alternative, BIA would not grant the right-of-way for construction of the Project. Section 3 describes the existing conditions, or affected environment, within the Project area and provides the baseline conditions that would continue under the No Action Alternative. There would be no environmental impacts associated with the No Action Alternative. The No Action Alternative would not meet the purpose and need for the Project.

2.2.2. Alternate Routes

Preliminary alternative routes, including the preferred route, were evaluated by Arcadian and it was determined that the preferred route, which is located within the existing rights-of-way, would have the least disturbance to land, habitat, and any potential resources present. The following alternatives were considered but dropped from further analysis in this EA:

- 1) Arizona Public Service (APS) distribution lines south of US 160 and south of Cameron. This was not pursued as the pole lines were old and would have required significant replacement and new pole insertions. This line also intersected a number of environmental and cultural resources.
- 2) Western Area Power Administration/Arizona Public Service (Western/APS) transmission facilities from Cameron to Glen Canyon. This route was not fully developed as it would not meet the purpose of providing access along the route due to limited locations to bring in distribution facilities.

Arcadian has the resources, expertise, and manpower available to construct, operate, and maintain the facilities, and to modify the facilities to meet community needs, future growth and sustain large broadband services for the Navajo Nation.

3. DESCRIPTIONS OF THE AFFECTED ENVIRONMENT

3.1. LAND RESOURCES

The Project area is located within the road right-of-way and is general devoid of vegetation due to clearing associated with routine highway maintenance.

The landscape within the vicinity of the Project area is characterized by numerous named and unnamed ridges, escarpments, buttes, mesas, basins, washes, and arroyos. Surface sediments vary across the Project area, within the region are rocky-outcrops, gravel, clay and sandy loams, fine sand deposits, alluvial, silts, and cobbly rocks. The elevation ranges from approximately 4,200 feet to 6,090 feet above mean sea level (amsl).

Brown and Lowe (The Nature Conservancy 2012) map the vegetation throughout the vicinity of the Project area as: Great Basin Desertscrub, Plains and Great Basin Grassland, and Great Basin Conifer Woodland. The vegetation is a mixture of shrubs, herbs, and grasses. Some plants include creosote bush (*Larrea tridentata*), ocotillo (*Fouquieria sp.*), hedgehog cacti (*Echinocereus sp.*), ragweed (*Ambrosia sp.*), needle-grasses (*Achnatherum sp.*), grama grasses (*Bouteloua sp.*), catclaw acacia (*Acacia greggii*), Palmer's century plant (*Agave palmeri*), prickly pear (*Opuntia sp.*), cholla (*Cylindropuntia sp.*) and desert-thorn (*Lycium sp.*).

3.2. WATER RESOURCES

Surface drainage within the Project vicinity is characterized by often braided, dry, desert washes that convey stormwater flows generally in an east to west direction across the landscape. The main waterway within the region, the Colorado River located north of Page, conveys perennial flows to the southwest but is not crossed by the Project. The Project alignment follows US 89 and NR 20 which cross the Little Colorado River and other small, ephemeral washes including Tanner, Moenkopi, Fivemile, and Hamblin in several locations. There are no perennial water resources within the immediate vicinity of the Project.

3.3. CLIMATE AND AIR RESOURCES

Air quality on the Navajo Nation is monitored by the Navajo Nation Environmental Protection Agency (EPA). The area has a Class II status and is therefore designated as an "unclassifiable/attainment area" for the National Ambient Air Quality Standards (NAAQS). Pollutants measures on the Navajo Nation include nitrogen dioxide, sulfur dioxide, ozone and particulate matter (PM₁₀ and PM_{2.5}). According to the interactive map of the air quality index (AQI) in the state, no AQI information indicated air quality concerns with ozone or PMs were identified within the Project alignment (AirNow 2021)¹. The air quality in the area may be influenced by air pollution from local vehicle traffic or wildfires in the region.

¹ Accessed online June 22, 2021.

Depending on the season and weather, visibility is limited due to changing weather changes. The northern terminus of the Project is located at about 4,950 feet amsl and receives between 6 inches of rainfall annually with average temperatures ranging from 30°F during the winter months to 80°F during the summer months, sometimes as high as 95°F. Gray Mountain, at the southern terminus, is about 5,029 feet amsl with winter low temperatures of 24°F (average 43°F) to 90°F in the summer. Rainfall averages 8 inches per year.

3.4. BIOTIC RESOURCES

3.4.1. Wildlife

WestLand Resources, Inc. (WestLand), conducted a screening analysis based on available information to determine the potential need for species-specific surveys along the North-South Route. Species-specific survey potential was evaluated for special-status species within the North-South Route. Special-status species are as defined in the Navajo Endangered Species List (NESL) provided by the Navajo Natural Heritage Program (NNHP). This NESL provides a screening of potential species occurrence by U.S. Geological Survey 7.5-minute quadrangles. As the Project area constitutes a small area of each of these quadrangles, WestLand expanded the assessment to include the known habitat requirements of each NESL species to determine the need for potential surveys for each species on the screening list.

Fourteen wildlife species of concern were evaluated for the potential need for survey including American Dipper (*Cinclus mexicanus*), ferruginous hawk (*Buteo regalis*), bald eagle (*Haliaeetus leucocephalus*), humpback chub (*Gila cypha*), northern leopard frog (*Lithobates pipiens*), razorback sucker (*Xyrauchen texanus*), southwestern willow flycatcher (*Empidonax traillii extimus*), yellow-billed cuckoo (*Coccyzus americanus*), golden eagle (*Aquila chrysaetos*), Mountain Sheep (*Ovis canadensis*), Arizona (Wupatki) Pocket Mouse, (*Perognathus amplus cineris*), chuckwalla (*Sauromalus ater*), Kanab ambersnail (*Oxyloma haydeni kanabensis*), and Townsend's big-eared bat (*Corynorhinus townsendii*) (WestLand 2021).

Brent Powers, Zoologist, Navajo Natural Heritage Program, Window Rock, Arizona, stated in a meeting on March 12, 2021, that the species known to occur within the Project area based on the habitat and location is the golden eagle; however, if construction occurs outside of nesting season, impacts to golden eagle would not occur. Surveys for other wildlife species are not required.

3.4.2. Forestry/Trust Assets

The following information for each Chapter was provided by the BIA (email from Robert Begay to Kimberly Otero, June 3, 2021), prepared by the Navajo Nation Forestry Department in accordance with the *Navajo Nation Woodland Inventory Analysis Report* (1986-1991 measurement). The Project alignment is located along US 89 and NN 20 and forestry resources are not located within the existing rights-of way for these roadways.

The Bodaway-Gap Chapter estimates there is approximately 37.66 cubic feet of commercial woodland forest products per acre. These woodland forest products are composed of juniper (*Juniperus spp.*) and pinyon pine (*Pinus edulis*) trees. The site produces approximately 0.46 cubic feet of woodland forest products per acre, per year. In addition, ponderosa pine (*Pinus ponderosa*) may be present within the Project area.

The Cameron Chapter estimates there is approximately 969.71 cubic feet of commercial woodland forest products per acre. These woodland forest products are composed of juniper (*Juniperus spp.*) and pinyon pine (*Pinus edulis*) trees. The site produces approximately 2.76 cubic feet of woodland forest products per acre, per year. In addition, ponderosa pine (*Pinus ponderosa*) may be present within the Project area.

The Coppermine Chapter estimates there is approximately 222.63 cubic feet of commercial woodland forest products per acre. These woodland forest products are composed of juniper (*Juniperus spp.*) and pinyon pine (*Pinus edulis*) trees. The site produces approximately 0.16 cubic feet of woodland forest products per acre, per year. In addition, ponderosa pine (*Pinus ponderosa*) may be present within the Project area.

The LeChee Chapter estimates there is approximately 280.52 cubic feet of commercial woodland forest products per acre. These woodland forest products are composed of juniper (*Juniperus spp.*) and pinyon pine (*Pinus edulis*) trees. The site produces approximately 2.09 cubic feet of woodland forest products per acre, per year. In addition, ponderosa pine (*Pinus ponderosa*) may be present within the Project area.

The Navajo Nation Ten-Year Forest Management Plan estimates there is approximately 1,000 board feet of commercial timber per acre in the adjacent timberlands.

3.4.3. Vegetation

As described under Section 3.4.1, WestLand, conducted a screening analysis based on available information to determine the potential need for species-specific surveys along the North-South Route. Species-specific survey potential was evaluated for special-status plant species identified on the NESL provided by the Navajo Natural Heritage Program (NNHP).

Based on that analysis, Navajo Nation Department of Fish and Wildlife (NNDFW) biologists provided survey areas for six plant species for which surveys were requested. The six species

surveyed for were: Beath milk-vetch (*Astragalus beathii*), Fickeisen plains cactus (*Pediocactus peeblesianus* var. *fickeiseniae*), Parish's alkali grass (*Puccinellia Parishii*), Peeble's blue star (*Amsonia peeblesii*), round dunebroom (*Errazurizia rotunda*), and Welsh's milkweed (*Asclepias welshii*). On April 26-29, 2021, WestLand biologists conducted the field surveys along the proposed right-of-way corridors within the areas identified for each plant species, 1 foot on both sides of the proposed center line. No individuals of any of the six species were identified during the surveys within the areas identified by NNDFW in the Project area.

3.5. CULTURAL RESOURCES

WestLand developed a Historic Properties Treatment Plan (HPTP) to identify and mitigate adverse effects to the archaeological sites eligible for inclusion in the National Register of Historic Places (NRHP) and/or eligible for protection under the Archaeological Resource Protection Act (ARPA) that are located within the Project area (Charest 2021). This HPTP was submitted to the Navajo Nation Historic Preservation Department (NNHPD), and the NNHPD has reviewed and accepted the methodology detailed within the HPTP. As part of the implementation of the HPTP for the Project, WestLand conducted a Class I inventory, a Class II site assessment of previously recorded sites in the entire Project area and a 53-mile-long Class III cultural resources inventory of the previously unsurveyed portions of the proposed Project area (the survey area) that will extend across the Navajo Nation from Gray Mountain to LeChee, as well as a review of the Traditional Cultural Properties (TCPs) in the Project area. The Class II site assessment and Class III inventory occurred between April 19 and May 6, 2021, and resulted in the discovery of three new archaeological sites, the relocation of seven previously documented sites, and 14 isolated occurrences of archaeological materials.

Of the seven previously recorded sites, four are recommended and/or determined eligible for inclusion in the NRHP. However, the portions of the old route of US Highway 89, AZ I:3:10(ASM) documented within the Project area are recommended as non-contributing elements to the overall eligibility of the site. Two of these previously recorded sites, AZ-K-21-81 and AZ-K-21-14 are also eligible for protection under the Archaeological Resources Protection Act of 1979 (ARPA). Three previously recorded sites are recommended not eligible for inclusion in the NRHP. However, one of these sites, AZ I:3:7(ASM), is determined to be over 100 years old and of archaeological interest, warranting protection under ARPA.

Of the three newly recorded sites, two are recommended eligible for inclusion in the NRHP as they possess the potential to yield significant information related to the prehistoric occupation of the region and these sites also warrant protection under ARPA. The remaining newly recorded site, AZ K-44-56, is recommended not eligible for inclusion in the NRHP and also does not warrant protection under ARPA.

Of the six previously or newly recorded sites recommended or determined eligible to the NRHP and/or that warrant protection under ARPA, five would potentially be impacted by the FOL

construction if the originally proposed alignment were followed; however, the documented segments of AZ I:3:10(ASM) are recommended as noncontributing elements to the overall eligibility of the site, and no further cultural resources work is recommended for that site. Additionally, construction activities associated with the fiber optic line shall adhere to the avoidance recommendations and procedures set forth within *A Historic Properties Treatment Plan for Sites on the Navajo Nation in Coconino, Navajo, and Apache Counties, Arizona, and San Juan County, New Mexico* (Charest 2021) for the five NRHP and ARPA-eligible sites (AZ I:3:7(ASM), AZ-K-21-81, AZ-K-21-142, AZ-K-28-14, and AZ-N-12-119). Accordingly, options to mitigate the potential impacts to the sites have been proposed, including rerouting the FOL to avoid sites, the use of directional boring or overhead/aerial spanning, or, if a site cannot be avoided, implementation of Phase I data recovery per the HPTP. The decision to conduct data recovery as a mitigation measure will be done in consultation with the NNHPD. The 14 isolated occurrences are all recommended not eligible for inclusion in the NRHP or ARPA since their research potential was exhausted during the survey-level recording.

Traditional Cultural Properties (TCP) do not occur within the Project area within the existing highway ROWs.

3.6. SOCIOECONOMIC CONDITIONS

Major employment is found with Navajo Tribal offices, federal and state agencies, schools, and businesses situated locally or within principal towns of the Navajo Nation.

The Project is located within four Chapters: Cameron, Bodaway-Gap, Coppermine and LeChee. Cameron Chapter's population is estimated to be 1,256, Bodaway-Gap Chapter's population is estimated to be 1,609, Coppermine Chapter's population is estimated to be 869 and LeChee Chapter's population is estimated to be 1,732. These population estimates are from 2016 (Navajo Nation Wind 2021, accessed online April 26, 2021)².

3.7. RESOURCES/LAND USE PATTERNS

Natural resources within the vicinity of the Project area include scenic attractions, copper, limestone, and agriculture. These resources are not within the Project area.

The Project is located along within the US 89 right-of-way from Gray Mountain, Arizona north to the turn-off for NR 20, then following NR 20 (Coppermine Rd.) to LeChee, Arizona. The fiber located within these areas will provide broadband fiber optic support to the surrounding communities.

The communities have Chapter houses, community and youth centers, medical centers, and elderly care and senior citizen centers. Additional recreational facilities include fairgrounds, equestrian

² Accessed online April 26, 2021.

centers, and outdoor facilities such as sport fields. Education facilities include pre-school, K-8th grade and high school within most of the Chapters.

The highways primarily pass through undeveloped areas with the exception of the Town of Cameron and sparsely inhabited areas. Land use consists primarily of grazing activities in the adjacent areas. US 89 is a popular highway for recreationists traveling to the Grand Canyon and to Lake Mead at Page, Arizona.

3.8. OTHER VALUES

The Project area is not located within or near federally designated wilderness areas. The proposed fiber line will not cross any major waterways.

The Proposed Action will not impact any flood plain.

The Project crosses several ephemeral drainages, and the Proposed Action involves boring the fiber line to avoid impacts to these ephemeral systems as necessary. This Project falls within Nationwide Permit 57 and is fully compliant with its requirements. It will not be necessary to obtain any additional permits from the Army Corp of Engineers, whether or not the exclusion for ephemeral streams in “The Navigable Waters Protection Rule: Definition of Waters of the United States,” 85 Fed. Reg. 22,250 (April 21, 2020) is ultimately upheld by the courts.

4. ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION AND NO ACTION ALTERNATIVE

The following impacts (adverse or non-adverse) may occur as a result of the construction of the proposed Project.

4.1. BIOLOGICAL RESOURCES

Under the No Action Alternative, the Project would not be constructed and there would be no impacts on biological resources.

Under the Proposed Action, the following effects could occur:

1. Vegetation removal will be minimal due to the location of the Project alignment within disturbed rights-of-way.
2. There may be a temporary avoidance of the Project area by certain wildlife species during construction.
3. Golden eagles are known to nest in the vicinity of portions of the Project area. No construction activities will occur within the vicinity of golden eagle habitat from March through June without coordination with NNDFW and pre-construction surveys.

4.2. CULTURAL RESOURCES

Under the No Action Alternative, the Project would not be constructed and there would be no impacts on cultural resources.

Under the Proposed Action, cultural resources would be preserved in place wherever possible as described below:

1. This would be accomplished by building avoidance measures into the Project design for any cultural resource recommended eligible for inclusion in the NRHP and/or eligible for protection under the ARPA. If avoidance of Project activities is not possible, the Project shall adhere to the procedures set forth within *A Historic Properties Treatment Plan for Sites on the Navajo Nation in Coconino, Navajo, and Apache Counties, Arizona, and San Juan County, New Mexico* (Charest 2021).
2. The Class II site assessment and Class III cultural resource inventory (which includes results of the Class I literature survey) of the Project resulted in the documentation of six NRHP-eligible and/or ARPA-protected sites. Of these six sites, the portions of one site consisting of several segments of the old US 89 highway were not found to be significant to the overall eligibility of the site, and no further cultural resources work was recommended for that site. Five sites would potentially be impacted by Project activities if the originally proposed alignment of the Project were followed. During the cultural resource inventory, alternative corridors for Project activities were cleared for cultural resources to avoid four of these sites. One site could not be avoided and the implementation of Phase I data recovery as outlined in the approved HPTP was recommended. The decision to conduct data recovery as a mitigation measure will be done in consultation with the NNHPD.

4.3. PHYSICAL RESOURCES

Under the No Action Alternative, the Project would not be constructed and there would be no impacts on physical resources.

Under the Proposed Action, the following effects could occur:

1. Temporary excavation of land to install the fiber and minimal clearing of vegetative land cover will be required during the construction period because the alignment is within the highway right-of-way.
2. Minimal changes to the landscape will occur during construction; no change after construction as fiber will be placed underground.
3. The construction will be temporary and the Project will have no lasting effect on local residents. Construction activities will occur during the daylight hours only and result in a temporary negligible increase of noise over existing traffic noise.
4. Material storage, handling, and assembly will be conducted at existing storage sites.

5. Existing public roads will be used for access during the construction period.
6. Fugitive dust generated by vehicular and equipment traffic, and wind erosion associated with construction activities, is expected to impact air quality on a minor, short-term basis.

5. MITIGATION MEASURES OF THE PROPOSED ACTION

5.1. BIOLOGICAL MEASURES

The following mitigation measures are provided to alleviate or minimize negative impacts.

1. Unnecessary ground disturbance and removal of vegetation will be avoided within and adjacent to the right-of-way corridor during the construction period and maintenance of the waterline and fiber by use of vehicle, construction equipment and machinery.
2. A pre-construction biological survey has been conducted prior to the start of construction.
3. Golden eagles are known to nest in the vicinity of portions of the Project area. No construction activities will occur within the vicinity of golden eagle habitat from March through June without coordination with NNDFW and pre-construction surveys.
4. The Applicant will comply with the Biological Resources Compliance Form (BRCF) issued by the NNDFW (**Appendix B**).

5.2. PHYSICAL MEASURES

Arcadian will use existing right-of-way, and construction of the Project will be in compliance with Navajo Nation laws and regulations regarding wildlife protection.

Existing roads will be used during the construction and maintenance of the fiber lines and disturbed sites will be used for parking and staging areas.

5.3. SOLID WASTE MANAGEMENT

Arcadian and construction contractors will practice the general procedure with regard to solid waste management as follows:

1. Solid waste such as trash/garbage generated by construction activities will be collected and transported by Arcadian and construction contractors to the nearest designated trash bin.
2. Arcadian and contractors will not generate any hazardous waste.

5.4. CULTURAL RESOURCES

In Consultation with the Navajo Nation Historic Preservation Department, A Historic Preservation Treatment Plan entitled *A Historic Properties Treatment Plan for Sites on the Navajo Nation in Coconino, Navajo, and Apache Counties, Arizona, and San Juan County, New Mexico* has been developed for the Project and all Project activities should adhere to the protocols detailed in this plan. Alternative corridors have been established as avoidance measures for Project activities at

four NRHP-eligible and/or ARPA-protected sites. One NRHP-eligible and/or ARPA-protected site could not be avoided and Phase I data recovery efforts are recommended to mitigate the potential impacts to this site. The decision to conduct data recovery as a mitigation measure will be done in consultation with the NNHPD.

The Navajo Nation Historic Preservation Officer submitted the cultural resources inventory survey to the BIA on September 7, 2021 for concurrence with the Tribal Historic Preservation Office (THPO) office determination of eligibility and effect. The BIA concurred with the THPO determinations and the NNHPD issued a Cultural Resources Compliance Form (CRCF) for the Project (**Appendix C**). The CRCF documents the determination of no adverse effects to historic properties with the implementation of the HPTP.

5.5. SOCIOECONOMIC RESOURCES

It is at the request of the local government and residents that Arcadian proposes to provide broadband services to Navajo Nation. Impact of the Proposed Action will improve the overall quality of life of local residents by providing increased electrical and broadband support to the area.

The Project will provide an overall positive impact on socioeconomic resources within the surrounding Project area.

5.6. POLLUTION PREVENTION

To minimize dust and vehicle emissions, Arcadian vehicles are equipped with regular exhaust mufflers will be used during construction, maintenance, and operation of the fiber line.

6. CONCLUSIONS REGARDING THE SIGNIFICANCE

No plant species of concern were identified within the Project area. No wildlife species of concern were identified within the Project area. Golden eagles are known to occur in suitable habitats adjacent to the Project; however, the proposed time of year for construction would not result in impacts to nesting golden eagles. Conditions set forth in the BRCF would be followed.

No impacts to forestry resources/trust assets will result from the Project activities.

WestLand's cultural resources inventory along the proposed right-of-way corridor and outlined stipulations for mitigation will meet Section 106 compliance. Conditions set forth in the CFCR and the HPTP would be followed.

The proposed activities associated with the Project will be temporary and no significant adverse impacts on the human environment are expected as result of the Proposed Action.

The Project will provide needed broadband fiber optic services to Navajo Nation homes and businesses to improve the overall quality of life of local residents.

7. CONSULTATION/COORDINATION

7.1. PERSONNEL

Arcadian Infracom

Mike Hazel

Sonoran Land Resources, LLC

Cheryl Eamick, ROW Services

WestLand Resources, Inc.

Fred Huntington – Cultural Resources

Chris Taylor – Cultural Resources

Ron Maldonado – Cultural Resources, Tribal Liaison

Matt Reynolds – GIS Services and Database Management

Kimberly Otero – Senior NEPA Planner

Sammi Blonder – Environmental Specialist

Joel Diamond – Senior Biologist

7.2. AGENCY CONSULTATION/COORDINATION

Navajo Nation Heritage/Historic Preservation Department

P.O. Box 4950

Window Rock, Arizona 86515

Navajo Nation Fish and Wildlife Department

P.O. Box 1480

Window Rock, Arizona 86515

BIA Branch of Environmental Services

P.O. Box 1060

Gallup, New Mexico 87305

7.3. PUBLIC INVOLVEMENT PENDING

Upon its approval of this EA, the BIA would issue a FONSI which would be published with this document for a 30-day public appeal period. BIA would advertise the EA and the FONSI and public appeal period by posting notices in public locations on the NN. No construction activities may commence until the 30-day public appeal period has expired.

8. BIBLIOGRAPHY/REFERENCES

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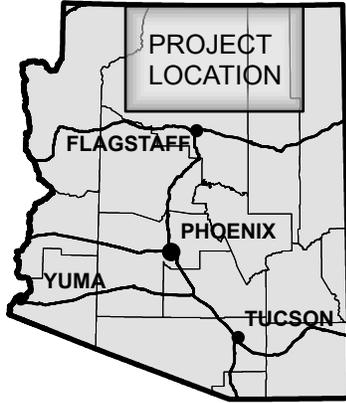
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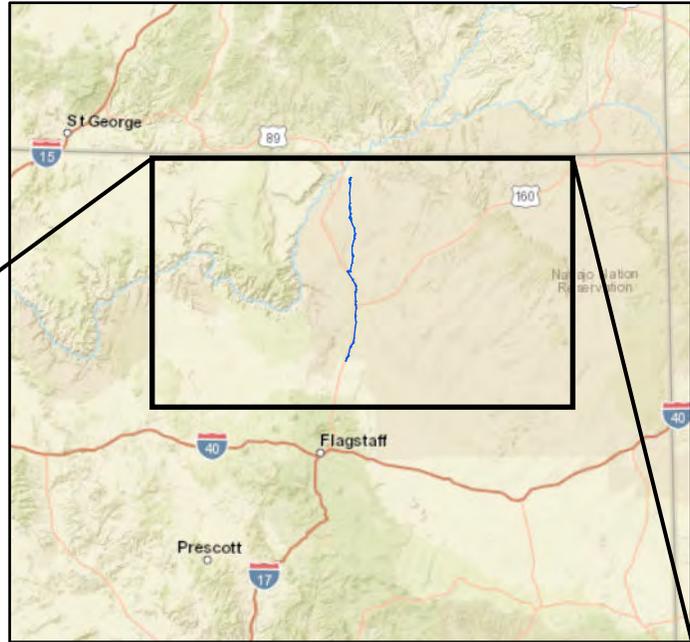
WestLand Resources, Inc. 2021. Arcadian Infracom Broadband Fiber Project NESL Potential to Occur and Management Considerations for the North-South Route. *Prepared for Navajo Nation Department of Fish and Wildlife*. Tucson, Arizona: WestLand Resources, Inc. June 22, 2021.

FIGURES

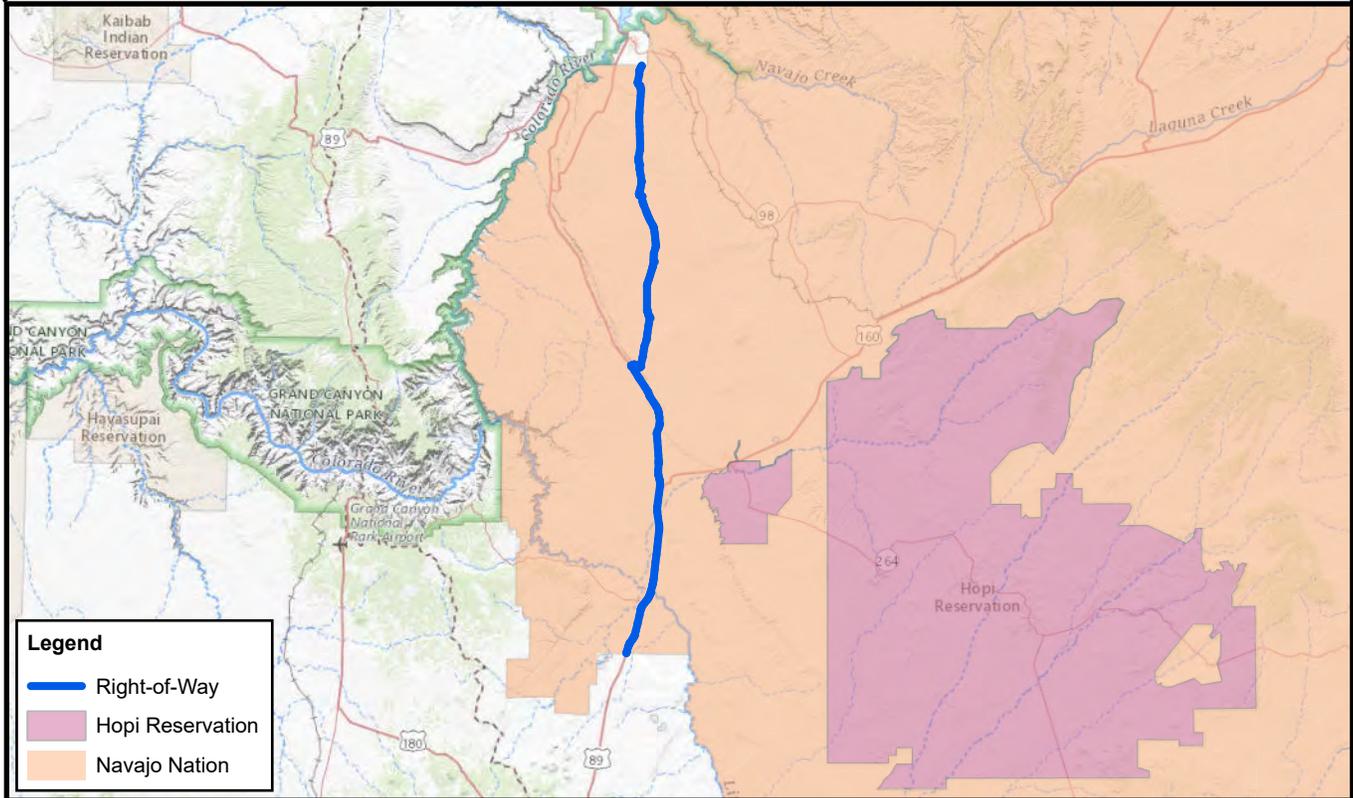
ARIZONA



PROJECT VICINITY



Approximate Scale 1 Inch = 80 Miles



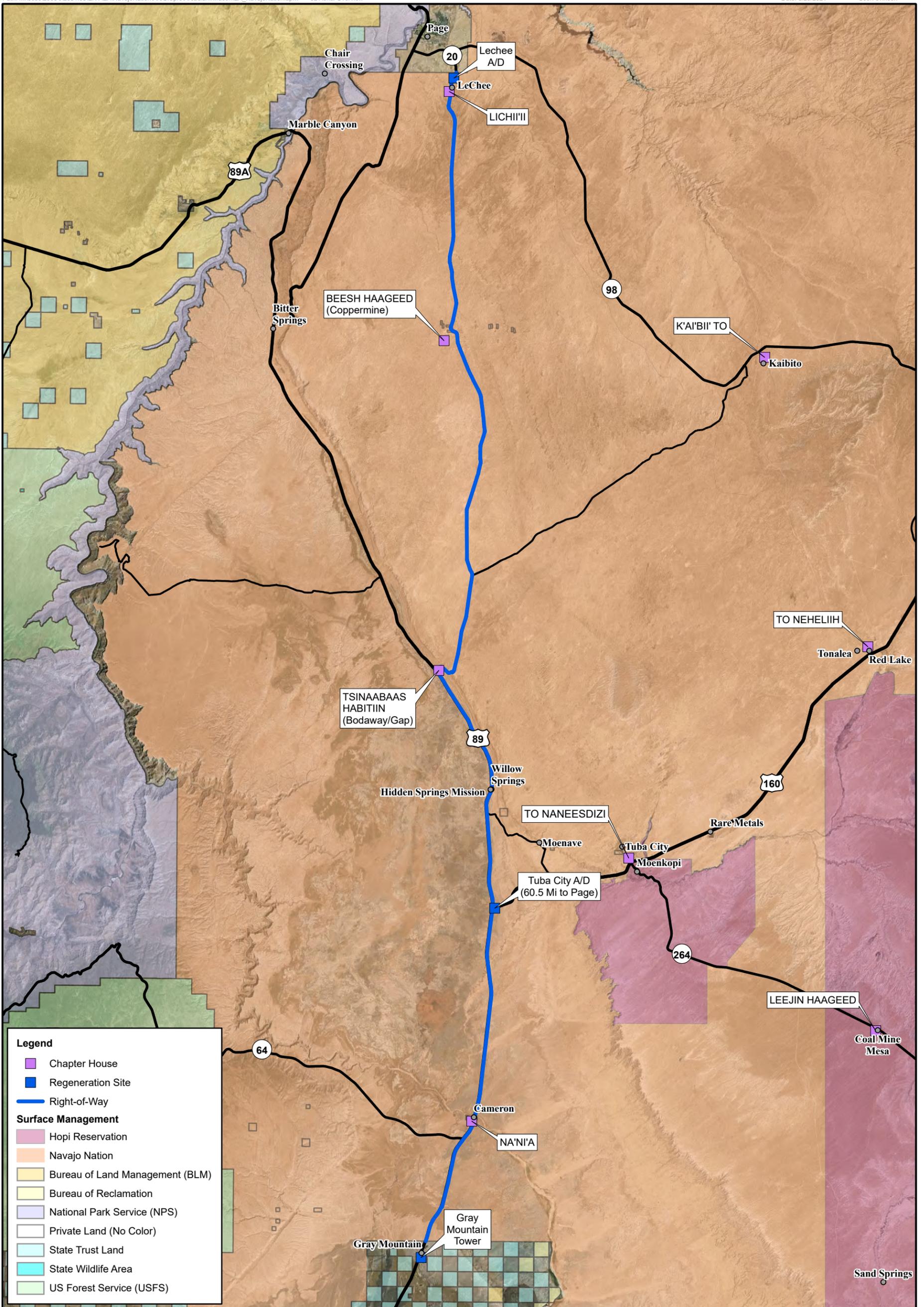
Portions of T28N-T40N, R9E,
 Coconino County, Arizona,
 Data Source: Arcadian Infracom
 Image Source: ArcGIS Online, USGS National Map,
 and World Street Map

ARCADIAN INFRACOM, INC.
 Broadband Fiber Project North-South
 Environmental Assessment

VICINITY MAP

Figure 1

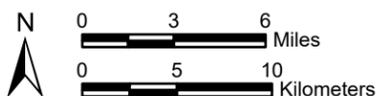




Portions of T28N-T40N, R9E,
 Coconino County, Arizona,
 Data Source: Arcadian Infracom
 Surface Management: BLM 2019, WRI modified 2019
 Image Source: ArcGIS Online, World Imagery Clarity

ARCADIAN INFRACOM, INC.
 Broadband Fiber Project North-South
 Environmental Assessment

AERIAL OVERVIEW
 Figure 2



APPENDIX A

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- Second Year, 2020

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; RESCINDING
RESOLUTION NO. RDCD-105-18; AND APPROVING THE GRANT OF RIGHT-OF-
WAY AND LEASES TO ARCADIAN INFRACOM, LOCATED ON NAVAJO NATION
TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA AND NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. Arcadian Infracom ("Arcadian") is a privately funded company developing a large scale long-haul fiber optic communications route through the Navajo Nation connecting Phoenix to Salt Lake City, Phoenix to Denver and Los Angeles to Dallas ("Fiber Project").
- B. The Navajo Nation is in the midst of an unprecedented health, safety and economic emergency due to the COVID-19 pandemic.
- C. The Fiber Project will provide bandwidth sufficient to support data-intensive applications such as high-quality video transmission access to benefit K-12 public education, higher education and life-long learning opportunities, telemedicine and remove working arrangements, which can help mitigate the health, safety and economic effects of the COVID-19 pandemic.
- D. This Fiber Project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Fiber Project revenues and services as compensation for use of Navajo Rights-of-Way, 3) generate new

tax revenues through the construction and operation of infrastructure built on the Navajo Nation, and 4) assist Navajo Nation in providing high speed internet to remote Navajo and surrounding communities.

- E. The original Arcadian network design in 2018 was based on the use of NTUA poles for the aerial installation of the Arcadian fiber network. Based on Arcadian customer requirements for an underground fiber optic network to ensure the security and resiliency of their fiber network, the Arcadian network design has changed to an underground installation method which will no longer require the utilization of NTUA poles. As a result, RDCD-105-18 will be rescinded and this new legislation will be enacted to reflect the revised partnership structure between the Navajo Nation and Arcadian. RDCD-105-18 is attached as **Exhibit C**.
- F. Arcadian will install its fiber optic cable along the routes of the Fiber Project ("Routes") underground for approximately 343 miles within the Navajo Nation largely along public roadways within the Navajo Nation as described on **Exhibit A** ("Rights-of-Ways"). Arcadian will also install its electronic equipment buildings ("Huts") along the Route, placing the buildings approximately 50 miles apart on the Navajo Nation lands.
- G. Arcadian may grant long term rights to use dark fiber, conduits and sell other communications services on the Routes to its customers.
- H. As consideration for the grant of the Rights-of-way for this Fiber Project:
- (1) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of all collected gross fiber IRU, fiber lease, operations and maintenance ("O&M"), colocation and wavelength service revenue generated from the portions of the Fiber Project installed on the Navajo Nation on a pro-rata basis based on the miles of the Fiber Project located on Navajo Nation that are used to provide those services.
 - (2) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber strands and associated O&M and colocation services on the portion of the Routes located on Navajo Nation lands.

- (3) Arcadian will provide to the Navajo Nation 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
- (4) Arcadian will provide to NTUA 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
- I. For a period of five (5) years from the effective dates of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation lands to install new fiber optic cables from points within the Navajo Nation that are connected to any facilities outside of the Navajo Nation ("Development Rights").
- J. The Rights-of-Way will be granted for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods, in Arcadian's name, with the right to assign, pledge or mortgage, all or any portion of the right of way or hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project, without any further approval by the Resources and Development Committee.
- K. The proposed Rights-of-Way (including Arcadian Hut locations) are set forth in **Exhibit A**.
- L. In light of the immediate and emergency need for completion of the Fiber Project to mitigate the health, safety and economic effects of the COVID-19 pandemic, Arcadian may immediately commence construction of the Fiber Project and during such construction Arcadian will commence all required environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance Letter, Cultural Resources Compliance Form and Cultural Resources Inventory Report. During construction of the Fiber Project, Arcadian will also commence the required processes for surface disturbing activities, including but not limited to the Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment. Arcadian may commence construction prior to the completion of such approvals and prior to delivery of the consent application for the Rights-of-Way to the Bureau of Indian Affairs ("BIA") for the grant thereof. Due to the unprecedented emergency facing the Navajo people due to the COVID-19 pandemic, any such approvals may occur

after the completion of the Fiber Project. In the event of a discovery ("discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices) all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation must be notified at (928)871-7148.

- M. The Resources and Development Committee finds that given the public health challenge resulting from COVID-19, and because the Rights-of-Way to be granted are limited to previously developed corridors, it is in the best interests of the Navajo Nation to expedite the project review process pursuant to the Navajo Nation Environmental Policy Act and the Navajo Nation Cultural Resources Protection Act. The Resources and Development Committee hereby directs the Navajo Nation Division of Natural Resources, the Navajo Land Department, the Navajo Nation Environmental Protection Administration, Navajo Nation Heritage and Historic Preservation Department, Navajo Fish and Wildlife Department, and any other agency or department of Navajo Nation government, as well as NTUA as a Navajo Nation owned and operated enterprise, to prioritize the Fiber Project and cooperate with the Navajo Nation Department of Justice and the Office of the President and Vice-President to accelerate its immediate construction. Chapters along the Rights-of-Way shall be immediately notified by the Navajo Land Department of the Fiber Project and, should any additional land need to be leased by Arcadian outside of the developed corridors in order to facilitate construction of facilities related to the Fiber Project, the review and approval of such leases shall likewise be expedited.
- N. The Rights-of-Way to be granted, and any leases appurtenant to those Rights-of-Way, are subject to the Nation's standard terms and conditions for Rights-of-Way attached and incorporated herein as **Exhibit B**.

SECTION THREE. RESCINDING RDCD-105-18

The Resources and Development Committee hereby rescinds RDCD-105-18 AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO NAVAJO TRIBAL UTILITY AUTHORITY, LOCATED ON NAVAJO NATION TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA AND NEW MEXICO) attached as **Exhibit C**.

SECTION FOUR. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves, as more specifically described in the above findings:
1. The grant of the Development Rights as described above;
 2. And grant of the Rights-of-Way and Hut location leases for all communications purposes, for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods;
 3. The combined cash and in-kind compensation mechanism described in Section 2.G above as consideration paid to the Navajo Nation for use of the Rights-of-Way, Hut location leases and grant of the Development Rights; and
 4. Arcadian providing to third parties rights to use dark fiber and conduit related services including O&M and colocation as well as other communications services along the Routes installed on the Rights-of-Way.
- B. The Resources and Development Committee of the Navajo Nation Council recognizes the unprecedented health, safety and economic emergency facing the Navajo people due to the COVID-19 pandemic and makes such grant recognizing that permitting process approvals described above may be completed following commencement or following completion of construction of the Fiber Project.
- C. The Resources and Development Committee of the Navajo Nation Council further grants to Arcadian approval to assign, with the right to mortgage, all or any portion of the Rights-of-Way or Hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project.
- D. The Resources and Development Committee of the Navajo Nation Council finds that pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):
1. The cash and in-kind compensation agreed in the form of free use of Arcadian dark fibers and wavelength services described in Section 2(H) above that will be provided to the Navajo Nation in exchange for the grant of the

Rights-of-Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best interest.

2. Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs pursuant to 25 C.F.R. § 169.110(b) is in the best interests of the Navajo Nation.
 3. Accepting the agreed upon cash and in-kind compensation described in Section 2(H) above for the grant of the Rights-of-Way is in the Navajo Nation's best interest.
- E. Arcadian is required to commence, but not complete prior to either commencement or completion of construction, all required studies and requests for permissions, including but not limited to the Navajo Nation Historic Preservation Department Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA.
- F. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 28th day of August 2020.

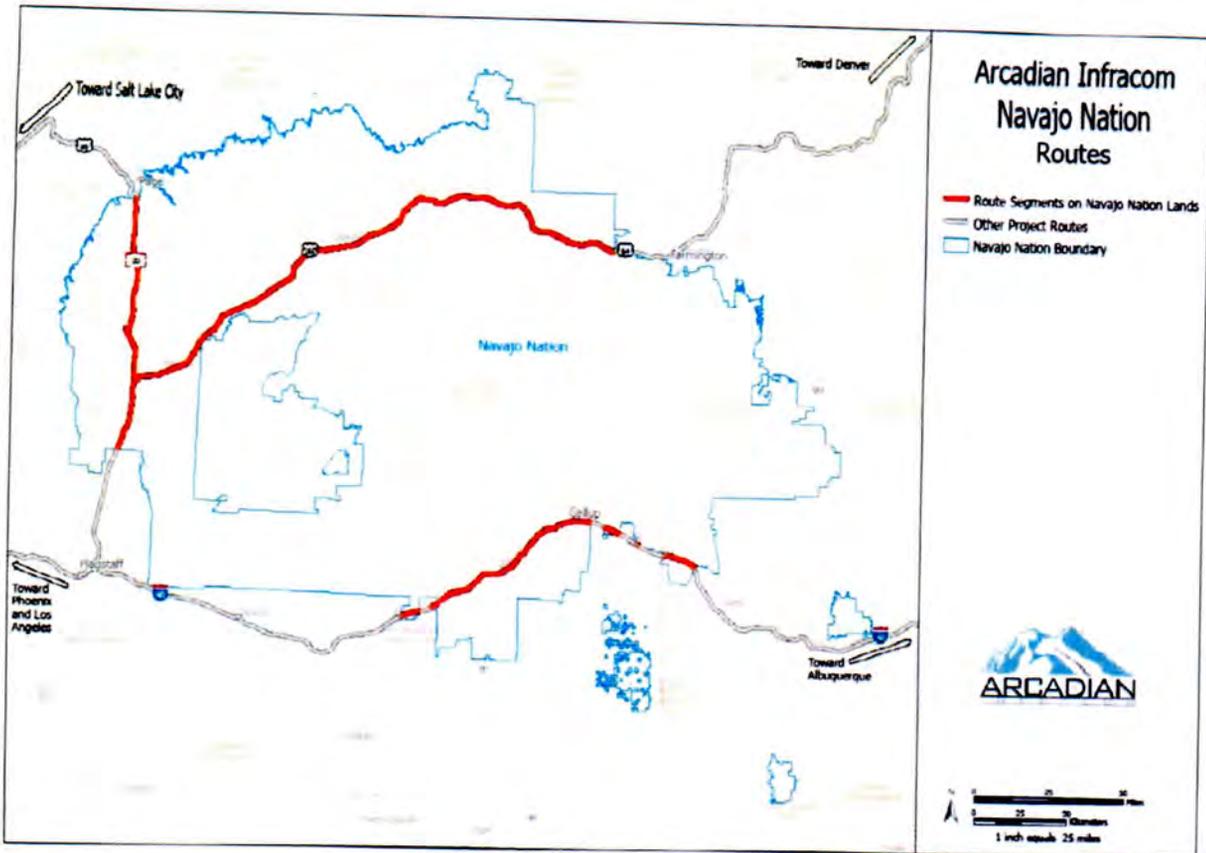

Thomas Walker, Jr., Vice Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Kee Allen Begay, Jr.
Second: Honorable Mark A. Freeland

Vice Chairperson Thomas Walker, Jr. not voting.

Attachment A

Rights-of-Way and Leases for Fiber Project with Regeneration Huts



Highway 89/Indian Route 20

The easement will be 10 feet wide with the edge offset approximately 5 feet from the western ADOT fence or as construction requires on US89 starting at the intersection of the section line at approximately the midpoint of ¼SE ¼SE Section 31 T28N R9E

Proceeding north for approximately 23 miles to the intersection of US160 at ¼SE ¼SE Section 11 T31N R9E then continuing north for approximately 16.9 miles to the intersection of Navajo Route 20 at about the middle of ¼SE ¼NE Section 31 T34N R9E.

Then crossing beneath US89 to the north side of N20 aligned approximately 5 feet from the fence and proceeding along the fence line or as construction requires for approximately 42.2 miles to the endpoint located at about the middle of ¼NW Section 16 T40N R9E on the section line.

US160/US64

An easement 10 feet wide beginning on the US89 easement at the intersection of US89 and US160 on ¼SE ¼SE Section 11 T31N R9E proceeding eastward under US89 and continuing approximately 5 feet from the fence line or as construction requires along US160 for 154 miles to the intersection of US64 in Teec Nos Pos ¼NE ¼NE Section 35 T41N R30E and continuing 5

feet from the fence line of US64 for approximately 35.6 miles to the endpoint located on the section line at $\frac{1}{4}$ NW $\frac{1}{4}$ NW Section 9 T29N R16W.

I-40 segment 1

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the section line of Section 5 T19N R25E at about the middle of $\frac{1}{4}$ NE $\frac{1}{4}$ NE Section 5 T19N R25E and continuing eastward approximately 5.25 miles to the endpoint at the section line on $\frac{1}{4}$ NE $\frac{1}{4}$ SE Section 25 T20N R25E.

I-40 segment 2

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the SW corner of $\frac{1}{4}$ NW $\frac{1}{4}$ NW Section 23 T20N R26E and continuing easterly approximately 8 miles to the endpoint at the section line on $\frac{1}{4}$ NW $\frac{1}{4}$ SE Section 25 T21N R27E.

I-40 segment 3

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the western section line and $\frac{1}{4}$ SW $\frac{1}{4}$ NW Section 30 T21N R28E and continuing northeast approximately 1.5 miles to the endpoint at the southern section line in the middle of Section 20 T21N R28E.

I-40 segment 4

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about 400 feet north of the SW corner of $\frac{1}{4}$ NW $\frac{1}{4}$ NW Section 23 T21N R28E and continuing easterly approximately 35 miles to the endpoint at the section line on $\frac{1}{4}$ NW $\frac{1}{4}$ SE Section 25 T21N R19W

I-40 segment 5

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at the section line near the midpoint of $\frac{1}{4}$ SW $\frac{1}{4}$ NW Section 15 T15N R17W and continuing easterly approximately .5 miles to the endpoint at the section line on $\frac{1}{4}$ SE $\frac{1}{4}$ NW Section 15 T15N R17W.

I-40 segment 6

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of $\frac{1}{4}$ SE $\frac{1}{4}$ SE Section 21 T15N R16W and continuing southeast approximately 6 miles to the endpoint at the section line on SE corner of Section 32 T15N R15W.

I-40 segment 7

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the SW corner of $\frac{1}{4}$ SW $\frac{1}{4}$ NE Section 18 T14N R14W and continuing southeast approximately 3.5 miles to the endpoint at the section line on $\frac{1}{4}$ SW $\frac{1}{4}$ NE Section 26 T14N R14W.

I-40 segment 8

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning on the westside of $\frac{1}{4}$ SE $\frac{1}{4}$ NE Section 31 T14N R13E and crossing to the east side approximately .25 miles to the endpoint at the section line on $\frac{1}{4}$ SE $\frac{1}{4}$ NE Section 31 T14N R13W.

I-40 segment 9

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of $\frac{1}{4}$ SW $\frac{1}{4}$ NE Section 2 T13N R13E and continuing east approximately 11.5 miles to the endpoint at the section line on $\frac{1}{4}$ SE $\frac{1}{4}$ NE Section 28 T13N R11W.

Equipment Building Locations

Leases of land approximately 100 by 100 feet each and other necessary Rights-of-Way, on or near the Arcadian fiber cable running line, for the construction of up to four (4) 12 foot by 40 foot buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical connections, fiber connections and other necessary appurtenances, at or near the following locations:

- Site 1: At intersection of Hwy 89 and Hwy 160, before mile marker 481 on Hwy 89
- Site 2: Near mile marker 42 on Navajo Route 20
- Site 3: Near mile marker 361 on Hwy 160
- Site 4: Near mile marker 417 on Hwy 160
- Site 5: Near mile marker 465.4 on Hwy 160
- Site 6: Near ADOT mile marker 333 on I-40
- Site 7: Near NMDOT mile marker 53 on I-40

I-40 segment 9

An easement 10 feet wide set 5 feet from the fence line or as construction requires within the ADOT I-40 easement beginning at about the NW corner of $\frac{1}{4}$ SW $\frac{1}{4}$ NE Section 2 T13N R13E and continuing east approximately 11.5 miles to the endpoint at the section line on $\frac{1}{4}$ SE $\frac{1}{4}$ NE Section 28 T13N R11W.

Equipment Building Locations

Leases of land approximately 100 by 100 feet each and other necessary Rights-of-Way, on or near the Arcadian fiber cable running line, for the construction of up to four (4) 12 foot by 40 foot buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical connections, fiber connections and other necessary appurtenances, at or near the following locations:

- Site 1: At intersection of Hwy 89 and Hwy 160, before mile marker 481 on Hwy 89
- Site 2: Near mile marker 42 on Navajo Route 20
- Site 3: Near mile marker 361 on Hwy 160
- Site 4: Near mile marker 417 on Hwy 160
- Site 5: Near mile marker 465.4 on Hwy 160
- Site 6: Near ADOT mile marker 333 on I-40
- Site 7: Near NMDOT mile marker 53 on I-40



Attachment B

NAVAJO NATION RIGHTS-OF-WAY ("ROW") TERMS AND CONDITIONS

ARCADIAN INFRACOM, INC. ("Arcadian" or "Grantee") FOR FIBER PROJECT ROW

1. The term of the ROW shall be fifty (50) years with two (2) successive twenty (20) year renewal periods, in Arcadian's name, with the right to assign once and/or mortgage to secure Arcadian financing for the Fiber Project (as defined in the Resolution to which these Terms and Conditions are attached) without any further approval.
2. The ROW shall be used only for the purpose of the installation, operation, maintenance, repair, fiber upgrade/expansion and removal of fiber optic communications systems and components thereof including multiple conduits, fiber, handholes, manholes, marker posts, communication equipment huts (including at each equipment hut location up to three (3) 12 foot by 24 foot (or smaller) buildings, concrete pads, wireless communications facilities, vehicle access paths, generators, fuel tanks, electrical and fiber connections) and other necessary appurtenances for the same ("Fiber Project Facilities"), and including the use of dark fiber and lit services within the Fiber Project Facilities by Arcadian customers and their end users.
3. Consideration for the ROW shall be paid as follows:
 - (a) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of all collected gross fiber IRU, fiber lease, O&M, colocation and wavelength service revenue generated from the portions of the Fiber Project installed on the Navajo Nation on a pro-rata basis based on the miles of the Fiber Project located on Navajo Nation that are used to provide those services compared to the total miles of the Fiber Project that are used to provide those services,
 - (b) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber strands and associated operations, maintenance and space/power services on the portions of the Routes located on Navajo Nation (as defined in the Resolution to which these Terms and Conditions are attached), and
 - (c) Arcadian will provide to Navajo Nation 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those routes are complete.
4. The Grantee may develop, use and occupy the ROW for the purpose(s) described in Paragraph 2 above. The Grantee may not develop, use or occupy the ROW for any other purpose, nor allow others to use or occupy the ROW for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW for any unlawful purpose.
5. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the

following:

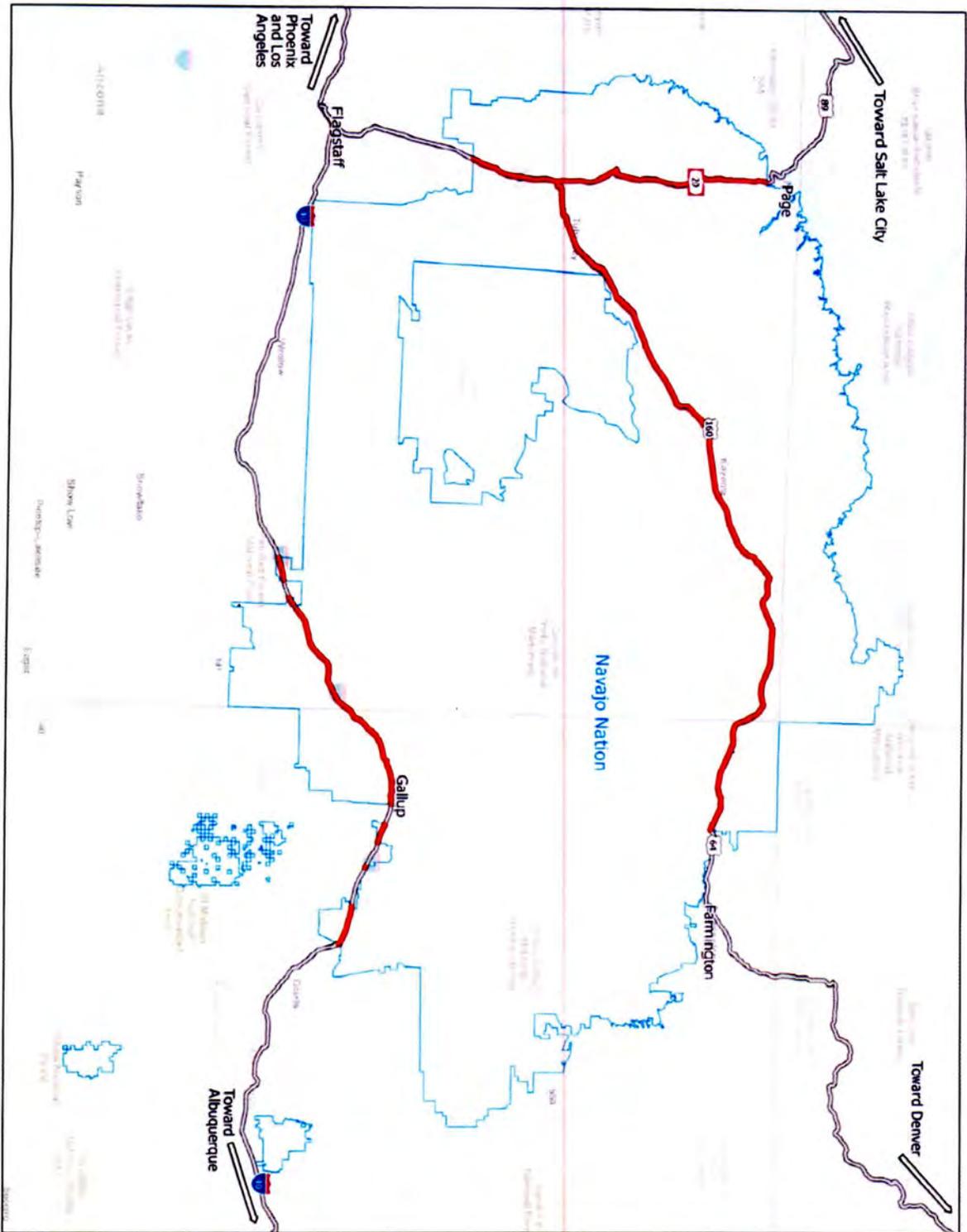
- a. Title 25. Code of Federal Regulations, Part 169; subject to the terms of this ROW; and
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
 - c. The Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. (the "Act"); and
 - e. The Navajo Nation Water Code. 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
6. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the ROW.
 7. The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
 8. The Grantee shall reclaim all surface lands disturbed related to the ROW, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
 9. The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW and all improvements located thereon and make all necessary and reasonable repairs.
 10. The Grantee shall obtain prior written permission to cross existing ROWs, if any, from the appropriate parties.
 11. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
 12. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of ROW by the Grantee.
 13. Except as otherwise expressly permitted by the Resolution to which these Terms and Conditions are attached, the Grantee shall not assign, convey, transfer or sublet in any manner whatsoever, the ROW or any interest therein, or in or to any of the improvements

on the land subject to the ROW, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

14. The Navajo Nation may terminate the ROW for violation of any of the terms and conditions stated herein. In addition, the ROW shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations; and
 - b. A non-use of the ROW for the purpose for which it is granted for a consecutive two-year period; and
 - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted; and
 - d. An abandonment of the ROW.
15. At the termination of this ROW, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
16. Holding over by the Grantee after the termination of the ROW shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the ROW or to any improvements located thereon.
17. The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the ROW, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
18. By acceptance of the grant of ROW, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation
19. By acceptance of the grant of ROW, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the

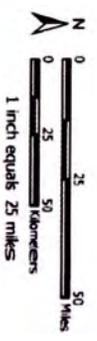
land subject to the ROW or to the Navajo Nation.

20. Any action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the ROW shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
21. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
22. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
23. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include any such successors, heirs, assigns, executors, administrators, employees and agents.
24. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the ROW and all lands burdened by the ROW, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
25. The Navajo Nation reserves the right to grant ROWs within the ROW referenced herein for electrical and water utilities, provided that such ROWs do not unreasonably interfere with the Grantee's use of the ROW.



Arcadian Infracom Navajo Nation Routes

- Route Segments on Navajo Nation Lands
- Other Project Routes
- Navajo Nation Boundary





RDCD-105-18

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

AN ACTION

**RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE
GRANT OF RIGHT-OF-WAY TO NAVAJO TRIBAL UTILITY AUTHORITY,
LOCATED ON NAVAJO NATION TRUST LANDS ON THE NAVAJO NATION (UTAH,
ARIZONA AND NEW MEXICO)**

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. The Navajo Nation Council created the Navajo Tribal Utility Authority (hereinafter "NTUA") on January 22, 1959, pursuant to Resolution No. CJA-14-59, by which NTUA was authorized to construct, operate and maintain utility systems throughout the Navajo Nation. NTUA is further authorized to "expand and execute such extensions of existing systems as are efficient and feasible." See 21 N.N.C. § 5(A) (2).

- B. NTUA has been working with MDCMD, Inc. (to be later renamed Arcadian Infracom) to build a large-scale long-haul communications route through the Navajo Nation. This project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Fiber Project revenues and services as compensation for the Rights-of-Way, 3) generate new tax revenues through the construction and operation of over \$500 million of infrastructure built on the Navajo Nation, 4) assist NTUA in providing high speed internet to remote Navajo and surrounding communities, and 5) add value to existing NTUA fiber routes by providing NTUA additional communications capacity and redundancy.

- C. MDCMD intends to construct new fiber cables through the Navajo Nation, from Salt Lake City to Phoenix and Denver to Phoenix. The currently proposed route has not been finalized. The intent of identifying a route through the Navajo Nation is to provide a fiber path that crosses through communities in need of access to communications services.
- D. NTUA will have exclusive rights to use the Fiber Route to provide local telecom and data services on Navajo lands. MDCMD, Inc. will sell dark fiber and wavelengths on the Fiber Route from points within Navajo Nation to points outside of the Navajo Nation.
- E. MDCMD will have exclusive rights to develop these Rights-of-Way to provide fiber connectivity from points within Navajo Nation to points outside of the Navajo Nation.
- F. The Rights-of-Way will be granted for an initial term of twenty (20) years with two (2) successive twenty (20) year renewal periods, in NTUA's name, which NTUA will immediately assign once and/or mortgage, solely to MDCMD, to secure MDCMD financing for the proposed large-scale fiber project without any further approval by the Resources and Development Committee.
- G. As consideration for the Rights-of-Way for this project (1) MDCMD will pay to the Navajo Nation an amount equal to a 3% share of all gross fiber IRU, fiber lease, O&M, collocation and wavelength service revenue generated from the portions of the fiber project installed on the Navajo Nation. (2) MDCMD will provide to NTUA use of twelve (12) dark fiber strands and associated operations, maintenance and space/power services on the fiber routes and 400 gigabits of separate lit capacity on the fiber routes, a portion of which capacity will be used by NTUA to provide services to Navajo Nation. (3) NTUA will deliver up to 2.5 Gb at the 1 Gb price or \$480,000 plus NN tax, to the Navajo Nation within sixty (60) days after services are available to the Nation and the construction and fiber build-out is complete. This results in annual savings to the Navajo Nation of \$720,000. This expands upon an NTUA and Navajo Nation Telecommunications and Utilities Department, Division of General Services contract whereby NTUA agreed to provide redundant direct internet access (DIA) and circuit connection on existing or new building connections at \$40,000 per month for a total of \$480,000 per year for 1 Gb of service.

- H. The Navajo Nation reserves the right to regulate the computation of the compensation proposed under this legislation consistent with the terms contained herein. Further, the Navajo Nation recognizes that Federal law governs the interstate nature of the fiber facilities to be installed on the Rights-of-Way by MDCMD.
- I. The Navajo Tribal Utility Authority's proposed right-of-way has not been finalized. The legal description is not included. The Grazing Committee or Land Board Member of any proposed route has not certified that there are no grazing permittees in the area.
- J. The environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance Letter, Cultural Resources Compliance Form, and Cultural Resources Inventory Report have not been completed. NTUA and MDCMD will complete the required surface disturbing activities, including but not limited to the Navajo Nation Historic Preservation Department Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA for the grant thereof.
- K. There has been no review by the Navajo Land Department; Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division of Natural Resources, and Office of the President and Vice-President.
- L. The Resources and Development Committee is providing its consent and approval for a Right-of-way that will be governed by the framework attached and incorporated herein as **Exhibit A** and the Nation's standard terms and conditions for Right-of way attached and incorporated herein as **Exhibit B**.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves, as more specifically described in the above findings and only after MDCMD completes all required permitting processes for the grant of the Rights-of-Way:

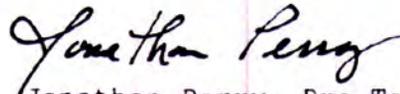
- I. the development of the large-scale fiber route along the Rights-of-Way,
 - II. the combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of Rights-of-Way,
 - III. the grant of the easement to the Rights-of-Way (for an initial term of twenty (20) years with two (2) successive twenty (20) year renewal periods) and, after assignment to MDCMD, the exclusive rights to develop the Rights-of-Way for communications purposes, and
 - IV. The right to sell to third parties rights to use dark fiber in the fiber facilities installed on the Rights-of-Way.
- B. The Resources and Development Committee of the Navajo Nation Council further grants to the Navajo Tribal Utility Authority approval to assign once, and only to MDCMD with the right to mortgage, all or any portion of the Right-of-Way route to the extent necessary for MDCMD to secure financing for the proposed large-scale fiber project.
- C. The Resources and Development Committee of the Navajo Nation Council finds that pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):
- I. The cash and in-kind compensation agreed to be provided for the grant of the Right-of-Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best interest,
 - II. Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs pursuant to 25 C.F.R. 169.110(b) is in the best interests of the Navajo Nation,
 - III. Accepting the agreed upon cash and in-kind compensation for the grant of the Rights-of-Way is in the Navajo Nation's best interest.
- D. NTUA and MDCMD are required to complete all required studies and obtain all required permissions, including but not limited to the Navajo Nation Historic Preservation Department

Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA for the grant thereof.

- E. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 3 in favor, and 2 opposed, on this 26th day of December 2018.



Jonathan Perry, Pro Tempore Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Alton Joe Shepherd

Pro Tempore Chairperson Jonathan Perry not voting.

**NTUA / MDCMD / RP Infrastructure
Economic Development Through Technology Term Sheet**



This business arrangement is among MDCMD, Inc., a WY corporation ("Company"), RP Infrastructure, LLC, a Missouri LLC and NTUA. It is intended to create new jobs, provide new revenue sources and provide high speed internet capacity to Navajo Nation and surrounding communities. NTUA, Company and RP Infrastructure will accomplish this by partnering to build:

- Fiber optic cables connecting Navajo Nation lands to Salt Lake City, Phoenix and Denver.

DUTIES OF THE PARTIES

- Company will install a high capacity fiber optic cable system with an estimated 288 strand capacity with associated equipment huts, handholes and other necessary ancillary facilities on two (2) routes through Navajo Nation lands, Phoenix to Salt Lake City and Phoenix to Denver, as depicted on Attachment A ("Fiber Project").
- NTUA will work to receive approval from the Navajo Nation Resource and Development Committee for the following: 1) the development of the large-scale fiber route along the Rights-of-Way; 2) the combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of the Rights-of-Way; 3) the grant to MDCMD of exclusive rights to develop the Rights-of-Way for communications purposes, and 4) the right of MDCMD to sell to third parties rights to use dark fiber in the fiber facilities installed on the Rights-of-Way. NTUA will also work to receive a grant of all rights-of-way ("ROW") necessary to build the Fiber Project on the Navajo nation from the Bureau of Indian Affairs (BIA).
- Company will complete all engineering and other necessary route development activities (archeological, environmental, surface disturbing activities and other studies required under Navajo rules and regulations) ("Route Development"), which is anticipated to take up to eighteen (18) months. Upon completion of Route Development and after formal ROW is granted by Bureau of Indian Affairs (BIA) to NTUA and to the extent necessary to secure financing for the Fiber Project, NTUA will assign to Company and/or mortgage to Company all required ROW on Navajo Nation lands along the finalized route of the Fiber Project.
- As consideration for the rights-of-way:
 - 1) Company will pay to Navajo Nation three percent (3%) of all gross fiber IRU, fiber lease, O&M, collocation and wavelength service revenue paid to Company for portions of the Fiber Project installed on Navajo Nation lands as ROW use fees for the Fiber Project. The manner of payment to the Navajo Nation will be identified within the standard Navajo Nation ROW Terms and Conditions.
 - 2) For each Fiber Project route NTUA will have exclusive use through IRU to twelve (12) fiber strands and will receive free associated space/power and fiber O&M services for those strands to provide high speed internet and other communications services to Navajo Nation and surrounding communities. Company will provide breakout points along routes installed on Navajo Nation lands to enable NTUA to provide services to Navajo Nation communities and surrounding communities; and

- 3) NTUA will deliver up to 2.5 Gb at the 1 Gb price or \$480,000 plus NN tax, to the Navajo Nation within sixty (60) days after services are available to the Nation and the construction and fiber build-out is complete. This results in annual savings to the Navajo Nation of \$720,000. This expands upon an NTUA and Navajo Nation Telecommunications and Utilities Department, Division of General Services contract whereby NTUA agreed to provide redundant direct internet access (DIA) and circuit connection on existing or new building connections at \$40,000 per month for a total of \$480,000 per year for 1 Gb of service.
- Company will own all Fiber Project assets installed by the Company.
 - For each Fiber Project route Company will provide to NTUA a 400G lit wavelength from the far end major market location (Salt Lake City, Phoenix and Denver) to a point within the Navajo Nation where NTUA builds its network to connect each Fiber Project route.
 - NTUA, Company and RP Infrastructure will closely partner to manage the contracting of all construction services on Navajo Nation lands to utilize Navajo people as the preferred labor force. All required Navajo Sales Taxes will be remitted on these services.
 - NTUA will be the exclusive contractor to Company, with a right of first refusal for work before the use of any third parties, and paid a market rate fee for all fiber operations and maintenance services for the portions of the Fiber Project installed on Navajo Nation lands. All required Navajo Sales Taxes will be remitted on these services. Company will manage all operational aspects of the O&M services provided.
 - All purchase, installation, maintenance, repair and upgrade costs associated with the Fiber Project will be paid for by Company or its partners.
 - As part of the ROW legislation, Company will have the right to grant to any third party any form of IRU, lease or other use rights to its fiber, conduits, lit bandwidth and other facilities installed as a part of the Fiber Project.
 - Subject to Company receiving by December 31, 2019 financing to complete the Route Development and construction ("Financing"), NTUA will work exclusively with MDCMD and/or RP Infrastructure (each as detailed below), for a period of six (6) years as the developer of Navajo Nation owned or controlled rights of way, real estate rights, utility pole rights and similar matters for the installation, operation, maintenance, upgrade and removal of:
 - For MDCMD: All new installations of fiber optic cable facilities to either (a) connect points within Navajo Nation to any point outside of the Navajo Nation, or (b) traverse Navajo Nation to connect any two or more points outside of the Navajo Nation,
 - For RPI: Newly constructed commercial data center business opportunities on Navajo Nation lands of one (1) megawatt or more in initially installed or planned capacity, and
 - For RPI: Solar and other renewable energy generation, distribution or other renewable energy ecosystem opportunities on Navajo lands serving the Data Center Project.

- If Company does not receive commitments for the Financing by December 31, 2019, then any agreement between NTUA and Company will expire and no longer be of any force and effect.

Attachment A

Fiber Project

Red Lines: Fiber Project Route

Blue Lines: Existing NTUA Fiber Routes

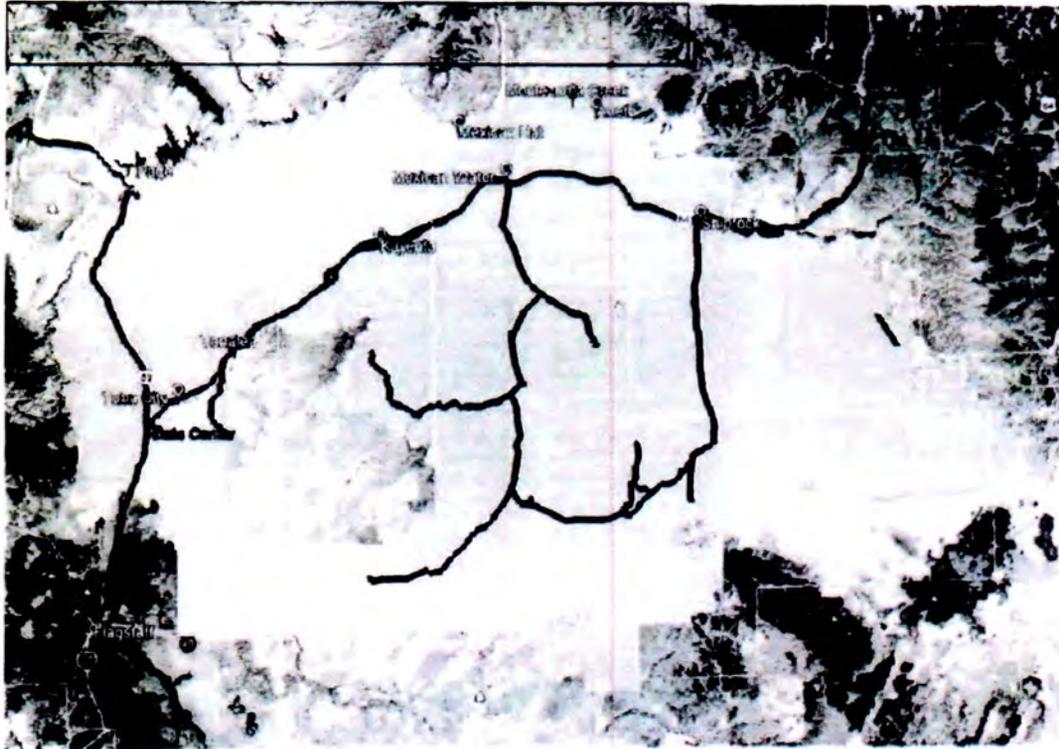




EXHIBIT [insert]
NAVAJO NATION (GRANTOR) RIGHTS-OF-WAY TERMS AND CONDITIONS

[insert] (GRANTEE)
FOR [insert] (ROWS)

1. The term of the ROWs shall be [insert].
2. The ROWs shall be used only for the purpose of [insert]
3. Consideration for the ROWs shall be paid as follows:

[insert]
4. The Grantee may develop use and occupy the ROW for the purpose(s) of [insert]. The Grantee may not develop, use or occupy the ROW for any other purpose, nor allow others to use or occupy the ROW for any other purpose, without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW for any unlawful purpose.
5. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25. Code of Federal Regulations, Part 169; subject to the terms of this ROW; and
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and
 - c. The Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq. (the "Act"); and
 - e. The Navajo Nation Water Code. 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
6. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the ROW.
7. The Grantee shall clear and keep clear the lands within the ROW to the extent compatible with the purpose of the ROW, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
8. The Grantee shall reclaim all surface lands disturbed related to the ROW, as outlined in a restoration and revegetation plan, which shall be approved by the Navajo Nation Environmental Protection Agency

- (NNEPA) prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
9. The Grantee shall at all times during the term of the ROW and at the Grantee's sole cost and expense, maintain the land subject to the ROW and all improvements located thereon and make all necessary and reasonable repairs.
 10. The Grantee shall obtain prior written permission to cross existing ROWs, if any, from the appropriate parties.
 11. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
 12. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of ROW by the Grantee.
 13. The Grantee shall not assign, convey, transfer or sublet in any manner whatsoever, the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROW, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
 14. The Navajo Nation may terminate the ROW for violation of any of the terms and conditions stated herein. In addition, the ROW shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations; and
 - b. A non-use of the ROW for the purpose for which it is granted for a consecutive two-year period; and
 - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted; and
 - d. An abandonment of the ROW.
 15. At the termination of this ROW, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
 16. Holding over by the Grantee after the termination of the ROW shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the ROW or to any improvements located thereon.
 17. The Navajo Nation and the Secretary of the Interior shall have the right, at any reasonable time during the term of the ROW, to enter upon the premises, or any part thereof, to inspect the same and any

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



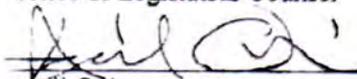
NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

CHERIE ESPINOSA
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Mariana Kahn, Attorney
Office of Legislative Counsel

FROM: 
April Quinn, Attorney
Natural Resources Unit, Department of Justice

DATE: December 20, 2018

SUBJECT: Navajo Tribal Utility Authority (NTUA) Draft Legislation regarding Project to Develop Fiber Optic Route Right-of-Way within the Navajo Nation

Per your request, the Department of Justice (DOJ) has reviewed the draft legislation referenced above. DOJ made edits to the draft legislation in consultation with NTUA, which is being emailed to you with this memorandum. With the inclusion of these edits, DOJ deems the document to be legally sufficient.

As this draft legislation does not follow the Navajo Nation's typical approach with respect to the issuance of rights-of-way, it is possible that DOJ may have additional edits to the legislation as it moves through the Nation's legislative process. But for now, DOJ believes this legislation is adequate to be dropped into the legislative process.

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

FOURTH YEAR 2018

COMMITTEE REPORT

Mr. Speaker,

The RESOURCES AND DEVELOPMENT COMMITTEE to whom has been assigned:

Legislation # 0441-18: An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to Navajo Tribal Utility Authority, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Sponsor: Honorable Alton Joe Shepherd*

Has had it under consideration and reports a **DO PASS** with the following amendment;

On Page 4 of 5, Lines 8, 9 and 10, Delete Paragraph M in its entirety "~~M. The Navajo Nation Executive Branch shall be delegated the authority to negotiate and approved the actual Right-of-Way. No further approval by the Resources and Development shall be necessary.~~"

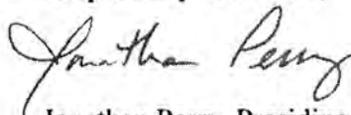
Page 4 of 5, Line 26 and 27, delete Paragraph A(v) in its entirety: "~~(v) A delegation to the Navajo Nation Executive Branch to negotiate the complete terms of the Right-of-Way consistent with Exhibits A and B.~~"

Amendment # 2: Exhibit A, Page 3, delete second and third bullet points in its entirety, as follow:

- ~~• The parties will work together diligently to obtain, by December 31, 2018, all Navajo Nation tribal or other approvals, permits, agreements and authorities to grant to Company the rights of way on Navajo Nation to build the Fiber Project.~~
- ~~• The parties will work together diligently to complete definitive, binding agreements to embody the terms in this Term Sheet b January 31, 2019.~~

Thereafter, approved the legislation.

Respectfully submitted,



Jonathan Perry, Presiding Pro Tem Chairperson
Resource and Development Committee of
the 23rd Navajo Nation Council

Date: December 26, 2018 - Regular Meeting

Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona

MAIN MOTION:

M: Benjamin Bennett S: Walter Phelps Vote: 3-2-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete

Amendment # 1:

M: Walter Phelps S: Benjamin Bennett Vote: 3-2-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete

Amendment # 2:

M: Benjamin Bennett S: Walter Phelps Vote: 4-0-1 (ProTemCNV)

YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps

NAYS:

EXCUSED: Leonard Pete

RESOURCES AND DEVELOPMENT COMMITTEE
Regular Meeting

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0441-18: An Action Relating to Resources and Development Committee; Approving the Grant of Right-of-Way to Navajo Tribal Utility Authority, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Sponsor: Honorable Alton Joe Shepherd*

MAIN MOTION:

M: Benjamin Bennett S: Walter Phelps Vote: 3-2-1 (ProTemCNV)
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps
NAYS:
EXCUSED: Leonard Pete

Amendment # 1:

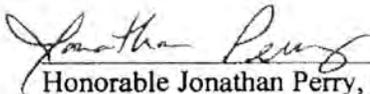
M: Walter Phelps S: Benjamin Bennett Vote: 3-2-1 (ProTemCNV)
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps
NAYS:
EXCUSED: Leonard Pete

Amendment # 2:

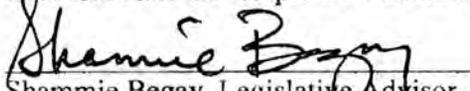
M: Benjamin Bennett S: Walter Phelps Vote: 4-0-1 (ProTemCNV)
YEAS: Alton Joe Shepherd; Davis Filfred, Benjamin Bennett and Walter Phelps
NAYS:
EXCUSED: Leonard Pete

December 26, 2018 – Regular Meeting

Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona



Honorable Jonathan Perry, Presiding Pro Tem Chairman
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services

Document No. 014541

Date Issued: 06/04/2020

SECTION 164 REVIEW FORM

Title of Document: Arcadian Infracom ROW for Fiber Prjt/Ren Contact Name: YAZZIE, ELERINA B

Program/Division: DIVISION OF NATURAL RESOURCES

Email: e_yazzie@navajo-nsn.gov Phone Number: 9285716447

Division Director Approval for 164A: _____

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

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

- | | | | | | |
|--------------------------|--|-------------|--|--------------------------|--------------------------|
| <input type="checkbox"/> | Statement of Policy or Positive Law: | | | Sufficient | Insufficient |
| | 1. OAG: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds) | | | | |
| | 1. OMB: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 2. OOC: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 3. OAG: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |

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

- | | | | | | |
|-------------------------------------|--|----------------------|--|-------------------------------------|--------------------------|
| <input type="checkbox"/> | Grant/Funding Agreement or amendment: | | | | |
| | 1. Division: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 2. OMB: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 3. OOC: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 4. OAG: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | Subcontract/Contract expending or receiving funds or amendment: | | | | |
| | 1. Division: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 2. BRD: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 3. OMB: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 4. OOC: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 5. OAG: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment: | | | | |
| | 1. Division: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 2. OAG: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | M.O.A. or Letter of Assurance expending or receiving funds or amendment: | | | | |
| | 1. Division: <u>Public Safety</u> | Date: <u>6-17-20</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | 2. OMB: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 3. OOC: _____ | Date: _____ | | <input type="checkbox"/> | <input type="checkbox"/> |
| | 4. OAG: _____ | Date: <u>6/18/20</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | 5. OPVP: _____ | Date: <u>6-22-20</u> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ
6/17/2020 5:30pm
DATE / TIME
 7 Day Deadline
DOC #: 014541
SAS #:
UNIT: NRY

RESUBMITTAL

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

CLIENT TO COMPLETE

DATE OF REQUEST: 6/17/2020 DIVISION: NATURAL RESOURCES
 CONTACT NAME: Michelle Hoskie or Elerina Yazzie DEPARTMENT: GENERAL LAND DEVELOPMENT DEPARTMENT
 PHONE NUMBER: x 6447 or x 6423 E-MAIL: e_yazzie@navajo-nsn.gov
 TITLE OF DOCUMENT: EOR#14541 Arcadian Infracom ROW for Fiber Project *Ren michellencoskie@navajo-nsn.gov*

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 6/18/20 REVIEWING ATTORNEY/ADVOCATE: Michael D.
 DATE TIME OUT OF UNIT:

DOJ ATTORNEY / ADVOCATE COMMENTS

legally sufficient

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
M. Daugherty	6/15/20 3:43pm	Blackbit	6/18/20 12:09PM

DOJ Secretary Called: _____ for Document Pick Up on _____ at _____ By: _____

PICKED UP BY: (Print) _____ DATE / TIME: _____

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

SECOND YEAR 2020

ROLL CALL
VOTE TALLY SHEET:

Legislation 0185-20: An Action Relating to the Resources and Development; Rescinding Resolution No. RDCD-105-18; and Approving the Grant of Right-of-Way and Leases to Arcadian Infracom, Located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico). *Presenter: Honorable Rickie Nez*

Date: August 28, 2020 - Special Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

Motion: Kee Allen Begay, Jr. S: Mark A. Freeland Vote: 5-0-1 (VCNV)

In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay, Jr., Herman M. Daniels and Rickie Nez

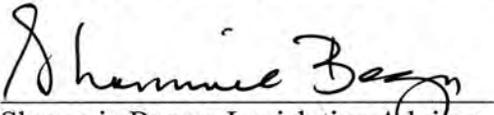
Oppose: NONE

Excuse: NONE

Not Voting: Presiding Vice-Chairperson Thomas Walker, Jr.,



Honorable Thomas Walker, Jr., Presiding Vice-Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services

APPENDIX B

**BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480**

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: Arcadian Infracom Broadband Fiber Project: North-South Alignment

DESCRIPTION: Proposed 1,300 miles of fiber optic line (utility corridor) connecting Salt Lake City to Cameron AZ to Phoenix; and Cameron to Denver with several add/drop locations. This BRCF pertains to the North-South Alignment of the corridor located along the western edge of the Navajo Nation from the northern border at LeChee to the southern border at Gray Mountain.

LOCATION: Within easements of US Hwy 89 and Navajo Route (NR) 20 starting at the intersection of the section line at approximately the midpoint of 1/4SE 1/4SE Section 31 T28N R9E to to the endpoint located at about the middle of 1/4NW Section 16 T40N R9E on the section line.

REPRESENTATIVE: Sammi Blonder, Environmental Specialist, Westland Resources, Inc.

ACTION AGENCY: Arcadian Infracom

B.R. REPORT TITLE / DATE / PREPARER: Arcadian Infracom Plant Surveys on Tribal Lands/22 JUN 2021/Arcadian Infracom

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: Areas 1, 2, 3 & 4. Raptor Sensitive Areas (RSA) onsite at 1) From 36°08'56.04" N, -111°23'48.38 W to 36°20'30.31" N, -111°25'46.28" W NAD 83; 2) From 36°47'40.72" N, -111°26'35.34 W to 36°52'17.75" N, -111°26'24.14" W NAD 28. Timing of construction within these areas will avoid noise impacts to Golden Eagles, therefore no surveys are needed prior to work. However, if the proposed construction schedule changes and has to occur from Feb - June of any year, an eagle nesting survey shall be performed prior to construction.

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: Golden Eagle (*Aquila chrysaetos*), G3

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: NA

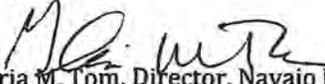
CONDITIONS OF COMPLIANCE*: Timing of construction activities within Raptor Sensitive Areas (RSAs) defined above shall not occur between Feb-June of any year to avoid noise impacts to Golden Eagles. If the proposed

construction schedule changes to occur between Feb-June, an eagle nesting survey shall be performed and a report shall be sent to NNHP for their approval prior to construction.

FORM PREPARED BY / DATE: Nora E. Talkington/3 AUG 2021

COPIES TO: (add categories as necessary)

_____ _____

2 NTC § 164 Recommendation:	Signature	Date
<input type="checkbox"/> Approval	 Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	8/27/21
<input checked="" type="checkbox"/> Conditional Approval (with memo)		
<input type="checkbox"/> Disapproval (with memo)		
<input type="checkbox"/> Categorical Exclusion (with request letter)		
<input type="checkbox"/> None (with memo)		

*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature  Date 30 AUG 21

MIKE HAZEL DIRECTOR ROW

APPENDIX C



**THE NAVAJO NATION
HERITAGE & HISTORIC PRESERVATION DEPARTMENT**

PO Box 4950, Window Rock, Arizona 86515
TEL: (928) 871-7198 FAX: (928) 871-7886

CULTURAL RESOURCES COMPLIANCE FORM

ROUTE COPIES TO:	NNHPD NO.: <u>HPD-21-1080</u>
<input checked="" type="checkbox"/> WLR	OTHER PROJECT NO.: <u>WLR 2081.05</u>

PROJECT TITLE:

Arcadian Infracom (North-South) Navajo Nation Survey: Class II and Class III Cultural Resources Inventory for the Arcadian Fiber Optic Line Project on the Navajo Nation from Gray Mountain to LeChee, Coconino County, Arizona

LEAD AGENCY:	BIA/NRO
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SPONSOR:	Mike Hazel, Director-ROW, Arcadian Infracom, Inc., 4579 Laclede Avenue#341, St. Louise, Missouri 63108
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PROJECT DESCRIPTION:

The Arcadian Fiber Optic Line (FOL) project on the Navajo Nation will cover a total of 492.56 acres or 83 miles within the U.S. 89 Arizona Department of Transportation and N20 Navajo Department of Transportation (NDOT) rights-of-way (ROWs) from Gray Mountain to LeChee, Coconino County, Arizona. In addition, two regen stations (0.23 acre each) will be constructed near the intersection of U.S. 89 and U.S. 160 and near the FOL termination point at LeChee. A Class III cultural resources inventory of the unsurveyed portions of the proposed 83-mile-long FOL project area (the survey area) extends across the Navajo Nation from Gray Mountain to LeChee. The FOL will be installed within a 1-to-2-foot-wide-by-3-foot-deep trench within highway right-of-way (ROW) along U.S. 89 from Gray Mountain to the community of Gap/Bodaway, approximately 5 feet from the ROW fence. At Gap/Bodaway, the FOL will cross beneath U.S. 89 to the north side of Indian Route 20 (N20) and proceed along N20, 5 feet from the ROW fence, to the endpoint at the community of LeChee. In addition, the proposed locations of two 100-foot-by-100-foot electronic regenerating stations (regens) were surveyed near the intersection of U.S. 89 and U.S. Highway 160 (U.S. 160) and near the FOL termination point at LeChee. The survey area consisted of a 50-foot-wide corridor within the highway ROW. The area of effect is 339.71-acres.

LAND STATUS:	Navajo Tribal Trust Land
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CHAPTER:	LeChee, Gray Mountain, Bodaway/Gap
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LOCATION:	The project is located on the Cameron South; Cameron North; Shadow Mountain Well; Willow Springs; Moenave SE; The Gap; Toh Bih Nosteny; Dove Spring; Dead Monkey Ridge; and White Dome, Arizona, Coconino County, Arizona G&SRPM
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UTM COORDINATES:	See Report
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T. <u>28</u>	N.,	R. <u>9</u>	E-	Sec. <u>4, 9, 16, 20, 21, 29, 31, 32;</u>
T. <u>29</u>	N.,	R. <u>9</u>	E-	Sec. <u>2, 11, 14, 22, 23, 27, 33, 34</u>
T. <u>30</u>	N.,	R. <u>9</u>	E-	Sec. <u>2, 11, 14, 23, 26, 35;</u>
T. <u>31</u>	N.,	R. <u>9</u>	E-	Sec. <u>2, 11, 12, 14, 23, 26, 35</u>
T. <u>31</u>	N.,	R. <u>10</u>	E-	Sec. <u>6, 7</u>
T. <u>32</u>	N.,	R. <u>9</u>	E-	Sec. <u>2, 11, 14, 23, 26, 35</u>
T. <u>33</u>	N.,	R. <u>9</u>	E-	Sec. <u>4, 5, 9, 10, 15, 22, 23, 26, 29, 32, 35</u>

-DOCUMENT IS VOID IF ALTERED-

T.	<u>33.5</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>29, 32, 33</u>
T.	<u>34</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>3, 4, 9, 16, 21, 28, 31-33</u>
T.	<u>35</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>3, 4, 9, 16, 21, 27, 28, 34</u>
T.	<u>36</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>3, 10, 11, 15, 22, 27, 34</u>
T.	<u>37</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>4, 5, 9, 16, 21, 22, 27, 34</u>
T.	<u>38</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>4, 8, 9, 17, 20, 21, 28, 33</u>
T.	<u>39</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>4, 8, 9, 17, 20, 28, 29, 33</u>
T.	<u>40</u>	N.,	R.	<u>9</u>	E-	Sec.	<u>9, 16, 17, 20, 28, 29, 33</u>

PROJECT ARCHAEOLOGIST:	Lanell T. Poseyesva, Ronald Maldonado, Jayson Gray, Chris Yazzie
NAVAJO ANTIQUITIES PERMIT NO.:	B21209
DATE INSPECTED:	04/19/21 – 05/06/21
DATE OF REPORT:	06/30/21
TOTAL ACREAGE INSPECTED:	492.56– ac total
METHOD OF INVESTIGATION:	Class III pedestrian inventory with transects spaced <u>15</u> m apart.
LIST OF CULTURAL RESOURCES FOUND:	<p>(10) SITES AZ I:3:7, AZ I:3:10, AZ I:14:424, AZ-K-21-13, AZ-K-21-81, AZ-K-21-142, AZ-K-28-14, AZ-K-44-56, AZ-K-53-7, AZ-N-12-119</p> <p>(14) ISOLATED OCCURRENCES (IO)</p>
LIST OF ELIGIBLE PROPERTIES:	<p>(6) SITES AZ I:3:10, AZ I:14:424, AZ-K-21-81, AZ-K-21-142, AZ-K-28-14, AZ-N-12-119</p>
LIST OF NON-ELIGIBLE PROPERTIES:	<p>(4) SITES AZ I:3:7, AZ-K-21-13, AZ-K-44-56, AZ-K-53-7</p> <p>(14) ISOLATED OCCURRENCES (IO)</p>
LIST OF ARCHAEOLOGICAL RESOURCES:	

EFFECT/CONDITIONS OF COMPLIANCE: No Adverse Effect.

Site Protections & Employee Education: The Sponsor will educate all employees of the project, and its contractors/subcontractors on archaeological site locations, sensitive areas, and archaeological stipulations before construction activities begin. Company equipment, vehicles will avoid all cultural sites NOTE: It is illegal to collect, damage, or disturb cultural resources, and that such activities are punishable by criminal and administrative penalties under the provision of the Archaeological Resources Protection Act (ARPA), the Navajo Nation Cultural Resources Protection Act (CRPA).

-DOCUMENT IS VOID IF ALTERED-

SITES AZ I:3:7, AZ-K-21-81, AZ-K-21-142, AZ-K-28-14, AZ-N-12-119:

1. Construction will avoid all of the sites.
2. If avoidance is not feasible, implement the Historic Preservation Treatment Plan (HPTP) in collaboration with the NNHHPD.

SITE AZ I:14:424:

1. The FOL spans the site aerially, avoiding the site; therefore, no further work is required.

SITES AZ I:3:10, AZ-K-21-13, AZ-K-44-56, AZ-K-53-7:

No further work is required.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations near the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7198.

FORM PREPARED BY: **Tamara Billie**

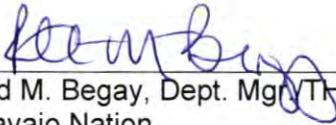
FINALIZED: September 2, 2021

Notification to Proceed Recommended

Yes No

Conditions:

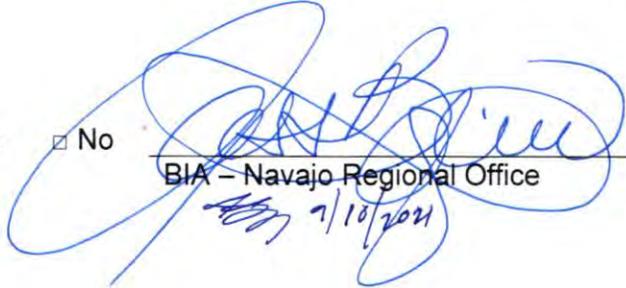
Yes No


 Richard M. Begay, Dept. Mgr./THPO
 The Navajo Nation
 Heritage & Historic Preservation Department

09/23/2021
Date

Navajo Region Approval

Yes No


 BIA - Navajo Regional Office

14 SEP 21
Date

9/10/2021

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