

Dear Hualapai Tribal Members:

It is with deep sorrow that I need to share information with my fellow Tribal Members. When I was sworn into office; I took an oath to uphold the US and Hualapai Constitution which includes the laws of the Hualapai Tribe. I understand there is a recall being conducted on me at this time. My term is up in June so it really isn't necessary. I will no longer be in office and seems my services are not wanted nor required. It is bothering me that a lot of information is not being shared with the membership. Everything that is shared is based on opinion and not fact. There is talk of being on one side or another. That concept does not sit well with me. I thought we were supposed to be working toward one purpose: To serve the Hualapai People.

I read all the legal documents, some more than 200 pages in length. There are shocking discoveries from both sides. In trying to keep an open mind, I look at both sides and what can actually be proven. I have asked where the various amounts that are supposedly owed to us come from and where I can see the figures. I am told they are estimations and summations. That will not hold up in court. This scares me as a Tribal Council Member because we should be very sure of ourselves before we assert wrong doing. I am very logical and analytical when it comes to the law. I want proof and documentation not just opinion and emotion.

I think it is time that the Hualapai Tribal Membership actually is aware of what the Tribal Council does behind closed doors. I read on face book a comment from a child who observed our community meeting that we looked like we are hiding things. We are hiding things. I was disciplined as a child for not telling the truth. What are we teaching our future leaders? To be sneaky and lie?

I stated at the community meeting that this Eminent Domain Ordinance was Ex Parte. Meaning that it was created after the fact to address a specific issue, namely the Skywalk. However, this ordinance is lasting and can affect anyone on the reservation either privately or doing business. According to our constitution, this is not legal nor is it legal anywhere else in the US to adopt a law to enforce a specific issue. I voiced this very clearly and was scrutinized for my opinion which I can back up with facts. Now my job and family are in jeopardy.

I continue to hear at the council and public meetings that Hualapai's are first and foremost. That is not what I see. My own job has been threatened and I am a Hualapai that has lived here 27 years. My family is buried here and this is where I call home. I raised my children here and they know who they are. I have close connections to my family and know who I am related to in the community. How many more Hualapai people will this issue continue to effect?

In closing, please continue to ask questions based on facts and documentation, not emotion and hidden motives. People should not be hurting people on purpose. Our elders did not teach us to do that. My grandmother Lois Willets Irwin would not have approved of people being so mean. Thank you for your time and energy in reading my words.

Respectfully Submitted,

 2/29/12

Sheri K YellowHawk, Tribal Member

**GALLAGHER & KENNEDY**  
P.A.  
LAW OFFICES

**MEMORANDUM**

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**TO:** Hualapai Tribal Council  
**FROM:** Paul Charlton, Terence W. Thompson and Glen Hallman  
**SUBJECT:** Memorandum No. 3 to Hualapai Tribal Council re Skywalk Matters<sup>1</sup>  
**DATE:** February 8, 2011

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Pursuant to the Council's meeting (in executive session) in our offices on Thursday, January 27, 2011, we are preparing a detailed memorandum on the proposed course of action discussed at that meeting. As contemplated, we anticipate delivering the memorandum to the Council within approximately two weeks after that meeting.

In the meantime, we have received several communications from the two law firms representing Mr. Jin's organizations. One of those communications purported to be a demand to SNW for arbitration of amounts alleged to be owed to Y-Travel, one of Mr. Jin's affiliates. As you will recall, neither the Tribe nor SNW has any contract with Y-Travel. In addition, as instructed by the Council in early 2010, Y-Travel was demanded to cease and desist from operating on the reservation without the permission of the Tribe. Accordingly, a response has been sent to Mr. Jin's attorneys taking the position that that the arbitration demand was "void and of no effect" (see attached). The response also reaffirms the Council's cease-and-desist letter.

We subsequently received a second arbitration demand from Mr. Jin's attorney. We will respond to it and take the position it is deficient and defective as well. However, at some point we expect Mr. Jin's attorneys to initiate a lawsuit in the United States Federal Court seeking a court order compelling arbitration.

We anticipate that Mr. Jin's attorneys will continue to take this adversarial and litigious approach, which is clearly an abandonment of Mr. Jin's historical approach of conciliation and amicable discussion. However, these actions by his attorneys do not interfere or interrupt the proposed strategy discussed at our January meeting and which is the topic of the detailed memorandum we will soon be providing the Council.

As always, please let us know if you have any questions or comments.

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<sup>1</sup> Memo No. 1 was our prior "Recent Developments" memo and Memo No. 2 was the "Alternative Legal Strategies" memo.



**GALLAGHER & KENNEDY**

P.A.  
LAW OFFICES

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February 7, 2011

VIA FACSIMILE 702.792.9002  
AND US MAIL

Mark G. Tratos  
GREENBERG TRAURIG  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, NV 89169

Re: Hualapai Indian Nation: 'Sa' Nyu Wa, Inc. – Skywalk

Dear Mr. Tratos:

This letter responds to your January 31, 2011 letter to my partner Terry Thompson, purporting to serve a "Notice of Arbitration."

As your co-counsel Teddy Parker has surely informed you, he was informed almost a year ago, on March 24, 2010, that it had come to the attention of the Hualapai Tribal Council that a company known as Y-Travel, an affiliate of Mr. David Jin, was unlawfully operating a shuttle service on the Hualapai Reservation without having obtained prior permission to do so. The Council therefore immediately demanded that Y-Travel cease and desist from such activities. Attached are Mr. Thompson's emails of March 24, 2010 so informing Mr. Jin.

When you first introduced yourself via your January 11, 2011 letter, you indicated that you were "representing Mr. Jin" as to the "Y-Travel matter." Given the prior cease-and-desist letter, we assumed that Y-Travel was finally contemplating petitioning the Tribe for permission to operate on the Reservation. However, if we understand your letter of January 31, 2011 correctly, you are claiming that YTI wants to be rewarded for unlawfully operating on the Reservation in violation of the Council's order.

Your purported "Notice of Arbitration" is in fact an attempt by Y-Travel – which has no contract with the Tribe or any of its affiliates – to invoke the arbitration clause of a contract with one of its affiliates, Grand Canyon Skywalk Development, LLC. As you

know, the only current agreements pertaining to shuttle service on the Reservation are the Diamond Bar and GCW shuttle agreements (the "2010 Shuttle Agreements"). Y-Travel is not a party to the 2010 Shuttle Agreements. Also, of course, neither was Y-Travel a party to the original 2003 Agreement. In any event, to the extent the 2003 Agreement addressed employee shuttles, it was superseded by the 2010 Shuttle Agreements.

Accordingly, the Tribe's prior demand that Y-Travel cease and desist operations on the Reservation is hereby reiterated. Any further unauthorized conducting of such activities constitutes, among other things, trespass on the Reservation, and the Tribe will exercise all rights and remedies with regard thereto.

Furthermore, your attempt to boot-strap Y-Travel into the 2003 Agreement and then to use YTI as a pretext for invoking arbitration under the Agreement is misplaced.

Therefore, we consider the "Notice of Arbitration" to be void and of no effect.

We also assume that your January 31, 2011 letter refutes your previously professed desire to re-open negotiation of the remaining agreements, which had been the subject of extensive negotiation for over a year. Accordingly, any future correspondence regarding this matter should be directed to my partner Paul Charlton or me.

Sincerely yours,

GALLAGHER & KENNEDY, P.A.

By:

  
Glen Hallman

GH:kjh  
2663410 / 14434-15  
cc: Teddy Parker

Hallman, Glen

**From:** Thompson, Terence W.  
**Sent:** Wednesday, March 24, 2010 10:07 AM  
**To:** 'Teddy Parker'; Teddy Parker (tparkerthird@gmail.com)  
**Subject:** Hualapai - Y-Travel shuttle on reservation

Teddy,

Per my voicemail late yesterday, it has come to the Tribal Council's attention that a company known as Y-Travel (which is understood to be an affiliate of Mr. Jin) has been, or has commenced, operating a shuttle service on the Hualapai Indian Reservation. As I'm sure you can appreciate, operations such as this on a reservation require the prior approval of a tribe's governing body.

As such, the Council has asked that the Y-Travel shuttle operation cease as of today. Of course, Mr. Jin should feel free to discuss this matter with the Council at the meeting next Tuesday.

Thank you for your courtesy and attention to this matter.

Best regards! --

Terry

**GALLAGHER & KENNEDY**  
P.A.  
ATTORNEYS AT LAW

**Terence W. Thompson**  
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[Attorney Profile](#)

This message and any of the attached documents contain information from the law firm of Gallagher & Kennedy, P.A. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you have received this transmission in error, please notify the sender by reply e-mail and then delete this message. Thank you.

Hallman, Glen

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**From:** Thompson, Terence W.  
**Sent:** Wednesday, March 24, 2010 12:03 PM  
**To:** 'Teddy Parker'; Teddy Parker (tparkerthird@gmail.com)  
**Subject:** Hualapai Tribe - Y-Travel

**Attachments:** skywalk transportation.pdf



skywalk  
ansportation.pdf (20

Teddy,

Following up on our telephone conversation just now, attached is the Y-Travel notice that came to the attention of the Hualapai Tribe.

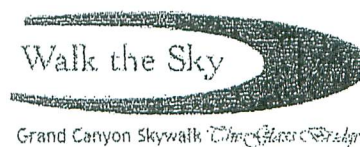
Pursuant to the direction of the Tribal Council, your letting GCSD or Y-Travel know that the Y-Travel operation should cease immediately will be much appreciated.

Thank you! --

Terry



# Memo



**To:** All Employees  
**From:** Skywalk Management  
**Date:** March 6, 2010  
**Re:** Peach Springs & Kingman Transportation

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Effective Tuesday, March 9<sup>th</sup> 2010, Y-Travel will assume the responsibility for providing transportation (including a van and a driver) for the Peach Springs and Kingman employees. Please note the following daily schedule from Y-Travel:

05:50 AM arrive at the Lodge, Peach Springs AZ  
06:00 AM depart from the Lodge, Peach Springs AZ  
06:45 AM arrive at the Wal-Mart parking lot near Auto-Zone  
06:55 AM depart from the Wal-Mart parking lot  
07:55 AM arrive at Sky Station switch into dirt road van  
08:00 AM depart Sky Station  
08:45 AM arrive at the Skywalk  
17:00 (5:00 PM) depart the Skywalk  
17:45 (5:45 PM) change vans at Sky Station  
17:50 (5:50 PM) depart Sky Station

This time line is proposed and will be adjusted as needed.

\*Note – Please see the following one-time procedure from Y-Travel for Monday, March 8<sup>th</sup> 2010:

- \*Peach Springs employees drive van to Sky Station in the morning
- \*Kingman employees drive van to Sky Station in the morning
- \*Once at Sky Station, our driver will drive Peach Springs and Kingman employees to the Skywalk
- \*5:00 pm depart Skywalk, switch from dirt road van to Kingman van

We would like to sincerely thank each driver who has been able to help with the transportation needs in the past! Going forward, the new process will help each employee, supervisor, manager, and director focus more on the business and have less worry about transportation needs!

M\_Peach Springs & Kingman Transportation

**GALLAGHER & KENNEDY**  
P.A.  
LAW OFFICES

**MEMORANDUM**

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**TO:** Hualapai Tribal Council  
**FROM:** Glen Hallman, Paul Charlton and Terence W. Thompson  
**SUBJECT:** Memorandum No. 4 - Exercise of Eminent Domain over Skywalk Agreement  
**DATE:** February 11, 2011

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**BACKGROUND**

The Tribal Council has proposed to exercise its power of eminent domain<sup>1</sup> with regard to the 2003 Development and Management Agreement between 'Sa' Nyu Wa, Inc. ("SNW") and Grand Canyon Skywalk Development, LLC ("GCSD") (the "Agreement"). More specifically, the Tribe proposes to condemn GCSD's interest in the Agreement.

This memorandum outlines the salient legal issues, analyzes strategic issues, and addresses financial considerations.

**A. THE TRIBE'S RIGHT TO EXERCISE THE POWER OF EMINENT DOMAIN.**

The power of eminent domain is inherent in any Sovereign entity, such as the Tribe. *E.g., In the Matter of Richard A. Hennessy, Jr. v. Dimmler*, 90 Misc.2d 523, 394 N.Y.S.2d 786 (N.Y. County Ct. 1977) (in a case dealing with a tribe's condemnation power, the court stated, "The power of eminent domain is an incident of sovereignty. . . .")

Article 9, Subsection (c) of the Constitution of the Hualapai Indian Tribe expressly states that the Tribe may "take any private property for a public use," but states that it may not do so "without just compensation."<sup>2</sup>

Also, there is an United States law which similarly recognizes the right of Indian tribes to exercise the power of eminent domain. 25 U.S.C. § 1302 provides, in pertinent part:

No Indian tribe in exercising powers of self-government shall -

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<sup>1</sup> A Sovereign's exercise of its inherent powers of eminent domain is often otherwise referred to as "condemnation" or "taking."

<sup>2</sup> Article 5, Subsection (i) also gives the Tribe the power "to purchase or accept any land or property for the Tribe." The disjunctive phrase "land or property" necessarily implies that "property" may be something other than "land," and GCSD's interest in the Agreement is a contract or property right.



5. Take any private property for a public use without just compensation. . . .<sup>3</sup>

The language in the Constitution of the Hualapai Indian Tribe and 25 U.S.C. § 1302 mirror the language of the Fifth Amendment of the United States Constitution: "private property (shall not) be taken for public use, without just compensation."

Thus we may reasonably expect both the Hualapai Tribal courts and the United States courts to apply established legal standards in addressing the Tribe's exercise of its powers of eminent domain.

In short, the Hualapai Constitution and other legal authority indicate that the Tribe may exercise the power of eminent domain.

**B. THE RIGHT TO EXERCISE THE POWER OF EMINENT DOMAIN OVER THE AGREEMENT.**

Normally, the exercise of eminent domain is to obtain land (also known as "real property"). Of course, the Tribe already owns the Skywalk, the Visitor Center and the underlying land. So, the true "property interest" at issue here is GCSD's interest in the Agreement, which is "intangible" property (that is, something which the human hand is not capable of perceiving through the sense of touch).

However, there is ample precedent for the exercise of eminent domain over contract rights such as GCSD's interest in the Agreement. Indeed, "many forms of corporate property are subject to the eminent domain power, including intangibles such as contracts, franchises, patents, trade routes, and other types of property as long as just compensation is paid for their acquisition." *Nichols on Eminent Domain*, Ch. 22, § G22.03[3] (Matthew Bender, 3rd Ed.). See also *Cincinnati v. Louisville*, 223 U.S. 390 (1912); *New Orleans Gaslight Co. v. Louisiana Light & MFG. Co.*, 115 U.S. 650 (1885); *West River Bridge v. Dix*, 47 U.S. 507 (1848). As stated in *M&C Council of Baltimore v. Baltimore Football Club*, 624 F.Supp. 278, 282 (D. Md. 1986), "it is now beyond dispute that intangible property is properly the subject of condemnation proceedings."

A particularly good example is *City of Oakland v. Oakland Raiders*, which upheld the right of the City of Oakland to exercise its eminent domain power to seize the Oakland Raiders' football franchise, which was essentially a contract between the Raiders and the NFL. 32 Cal.3d 60, 183 Cal.Rptr. 673, 646 P.2d 8335 (1982).

**C. THE REQUIREMENT THAT A TAKING BE "FOR A PUBLIC USE."**

A Sovereign's exercise of the power of eminent domain requires that the taking be "for a public use." The Agreement concerns the construction and management of the "Project," defined in Section 1.1 of the Agreement as follows:

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<sup>3</sup> 25 U.S.C. § 1301 defines "Indian tribe" as "any tribe, band or other group of Indians subject to the jurisdiction of the United States and recognizing as possessing powers of self-government . . . ."

“Project” means the Project Improvements, the Site, all Furniture and Equipment, the Inventories and all other items of real or personal property used in connection with the development, management and operation of the Project.

“Project Improvements” are, in turn, defined as:

“Project Improvements” means the Glass Bridge and adjacent building providing security and structural support for the Glass Bridge and will also contain a gift shop, together with all related on and off site improvements and infrastructure.

As these terms are generically described as the “Skywalk,” this memorandum will similarly refer to the “Skywalk.” It is important to keep in mind that the Skywalk includes all of the related infrastructure, including without limitation the Visitor Center and the associated electricity, water, sewer and (possibly) roadway.

In the *City of Oakland* case, the franchise owner argued that the condemnation of the franchise was not for a “public use,” but the California Supreme Court held that a “public use is a use which concerns the whole community or promotes the general interest in its relation to any legitimate object of government.” 32 Cal.3d at 69, 183 Cal.Rptr. at 679, 646 P.2d at 841. The court went on to agree with the City’s argument that “the factual circumstances surrounding the construction of the Oakland coliseum and the integration of the past use of the stadium with the life of the City of Oakland in general will readily demonstrate the “public” nature of the use contemplated here.” 32 Cal.3d at 75, 183 Cal.Rptr. at 683, 646 P.2d at 844.

Under the Agreement, ownership of the Skywalk lies with the Tribe. Thus the Agreement concerns GCSD’s construction and management of tribal property. Such being the case, and while no one can predict what a court will do as to any particular issue, a court can reasonably conclude that the exercise of eminent domain over GCSD’s interest in the Agreement would be for a “public use.” To paraphrase the City of Oakland decision, the “integration” of the Skywalk “with the life of the Hualapai Tribe demonstrates that the construction and operation of the Skywalk is a ‘public use.’”

**D. THE NEED TO MAKE “JUST COMPENSATION” TO GCSD.**

Under both the Tribe’s Constitution and 25 U.S.C. § 1302, the taking of any private property must be with “just compensation.” This concept is quite similar to what is understood to be the Hualapai custom of “fair trade.”

In any eminent domain action, the determination of “just compensation” is the primary issue in contention. Often, such a determination is quite complex, involving expert witness testimony and sophisticated financial analysis. Given the numerous issues in dispute between



the Tribe and GCSD under the Agreement, it can be expected that the valuation issues will be even more complex than the typical condemnation case. A detailed analysis of all of the matters in contention is beyond the scope of this memorandum, but are generally addressed in Section G below.

The bottom line is that GCSD can be expected to present the strongest case possible that its interests in the Agreement can only be taken with "just compensation" of \$50 million or more. It is anticipated the Tribe, through expert witnesses, should be able to present a compelling argument that GCSD's "just compensation" (after various deductions or discounts) should be a fraction of that number, perhaps as low as one-fourth or one-fifth. As described in greater detail below, in our judgment a minimal or very, very low valuation would be unlikely to survive the scrutiny of judicial review.

**E. JUDICIAL JURISDICTION.**

United States courts considering the Indian Civil Rights Act (25 U.S.C. §§ 1301 *et. seq.*) have generally concluded that tribal and United States District courts have "concurrent jurisdiction" over eminent domain cases. United States District courts have, in turn, generally deferred exercise of their jurisdiction until the tribe and the adverse party have fully litigated all matters in dispute in the Tribal courts. Thus, as discussed below, the Tribe may initiate eminent domain proceedings in Tribal court but should expect GCSD's attorneys to seek redress in the United States courts (or, alternatively, in a state court if the federal court feels that this is not a federal case), either immediately or after completion of tribal judicial proceedings. *See, e.g., Seneca Constitutional Rights. Org. v. George*, 348 F.Supp. 51, 60 (W.D.N.Y 1972):

Plaintiffs . . . claim that condemnation of their use interests would be a taking for nonpublic use and without just compensation. It is premature to raise these claims [in federal court] prior to the initiation of any condemnation proceedings. Only after such proceedings are held and their claims are raised and rejected therein may they seek relief in the federal courts.

Thus, U.S. Constitution Fifth Amendment standards should govern a Hualapai Tribal Court's condemnation proceedings, regardless of any countervailing Hualapai cultural norms or laws.

Also, it appears that, after the exhaustion of remedies in the United States District courts, either the Tribe or GCSD, or both, would then have the right to seek review of the District Court's judgment by the United States Court of Appeals, and potentially the United States Supreme Court. Thus, given the import of the Skywalk and the dollar amounts at issue, there is a substantial chance that eminent domain proceedings will entail several layers of judicial review.

We now turn to strategic considerations.



**F. ADOPTION OF TRIBAL ORDINANCE REGARDING EMINENT DOMAIN.**

To evidence that the Tribe is aware of and sensitive to “due process” and other rights, and to provide guidance for the tribal court, it is highly recommended that the Council enact an ordinance regarding eminent domain. Assuming the Council confirms that it wishes to proceed with this course of action, we will prepare such an ordinance for Council review.

**G. RECOMMENDED COURSE OF ACTION IN TRIBAL COURT.**

Given the prospect of federal court review of any tribal court ruling, while the Tribe could present a “bare bones” case in Tribal court and potentially obtain a minimal valuation of “just compensation,” such would not be in the Tribe’s long-term best interest. Simply, unless GCSD is indeed given a “fair trade” for its interests in the Agreement, the Tribe will leave itself very vulnerable to reversal of that determination in the United States courts, pursuant to the Indian Civil Rights Act (25 U.S.C. § 1302). Even if GCSD’s attorneys are not successful in convincing a United States District court to exercise jurisdiction immediately and to interfere with the Tribal courts’ condemnation proceeding, there is ample authority for United States District courts reversing Tribal court determinations on a number of issues.

In our judgment the Tribe would be best served by presenting a *compelling* case for its position on “just compensation” in the Tribal court, in order to make it as likely as possible that the Tribal Court’s determination withstands review by the United States courts.

We believe the Tribe will need to retain at least three outside consultants in connection with any eminent domain proceeding.

First, the Tribe will need expert witness support for the valuation of “just compensation.” This will entail a sophisticated financial expert, such as a certified public accountant, to conduct a detailed valuation of GCSD’s interests under the Agreement. Because of the lengthy term of the Agreement, GCSD’s valuation would likely be the “present value” of its interests as of the date of the initiation of the eminent domain proceeding. While the amount GCSD has invested in the design and construction of the Skywalk is in dispute, it is conceivable that GCSD will seek to put in evidence that the investment is in the range of at least \$20 to \$30 million and perhaps even \$50 million or more. The Tribe will seek to argue that it has offsetting claims against GCSD and its affiliates, but the bottom line is that the Skywalk exists and has substantial economic value and that, therefore, GCSD’s contract to manage the Skywalk also has substantial value.

We have experience with business valuation experts who have qualified as expert witnesses in numerous judicial proceedings, and who can undertake the sophisticated, detailed analysis of the value of GCSD’s interest in the Agreement.

We also recommend that the Tribe retain someone with substantial experience in governmental public relations. GCSD and its attorneys will almost certainly attempt to have the Tribe’s exercise of its powers of eminent domain portrayed to the public as an exercise of raw “power” by the Tribe, with the Tribe taking for itself all future revenue associated with the



Skywalk, after it was designed and constructed by GCSD. The Tribe will want to be able to present itself as the more reasonable party in the eyes of the public at large.

Again, there are public-relations firms with which we are familiar and could seek to have the Tribe retain for this purpose.

And third, the Tribe will need to make arrangements for a financing source for the amount ultimately determined to be "just compensation." Thus the Tribe will want a financial consultant to best explore the Tribe's available financing options.

#### **H. COST CONSIDERATIONS.**

Initiating eminent domain proceedings in Tribal court would entail minimal legal costs and fees, but obtaining the initial appraisal can be expected to cost several thousand dollars. Simply, like any other lawsuit, the litigation is commenced by the preparation and filing of a Complaint. In eminent domain proceedings, there is also generally a request for the right to "immediate possession", which, if granted by the court, would give the Tribe immediate control over the Skywalk.

Thereafter, however, it can be expected that GCSD will put up a strenuous fight. Assuming the Tribe is able to prevail on any objections to the condemnation power, public purpose, and immediate possession, the only remaining principal matter at issue in the proceeding would likely be the valuation of "just compensation." As discussed above, the Tribe will need a sophisticated, qualified expert witness to present its position, and we will need to coordinate with that expert witness to justify the lowest *defensible* value. This will entail more substantial cost, both for counsel and the expert, but given the potential multi-million range, the cost associated with the valuation process will be a very small fraction of that amount. Thus, in our judgment it would not be prudent for the Tribe to *not* invest the necessary resources to put together the strongest possible arguments for a valuation of \$20 million or less.

Also, as discussed above, there is the potential for judicial proceedings in the United States District Court, the 9th Circuit Court of Appeals, and conceivably even the United States Supreme Court (or, alternatively, in a state court system). Thus it is impossible to estimate all future litigation expenses or the length of time that the matter will continue, and even then there can be no assurance of an ultimate outcome in favor of the Tribe. Like any other substantial litigation, the ultimate costs depend upon the parties' respective positions and the manner in which they litigate the issues. In addition to being represented by Mr. Parker, GCSD has now retained a second law firm, Greenburg Traurig, which is a very large, national law firm, who will be able to devote substantial resources (i.e., a team of attorneys and experts) to present its position that "just compensation" should be \$50 million or more. For the Tribe to prevail in its contention that the dollar amount should be substantially less, the Tribe will need the strongest possible case as well.<sup>4</sup>

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<sup>4</sup> Of course, as with any litigation, there is always the potential for a settlement, with GCSD and the Tribe compromising on an alternative means of resolving their differences or on an intermediate valuation, to finally resolve all matters in dispute. This, however, would require flexibility on the part of GCSD that has not heretofore demonstrated.

**I. CONCLUSION.**

While the law is unsettled in this area, it appears that the Tribe can effectively “buy-out” GCSD’s interest in the Skywalk through the exercise of the power of eminent domain. Assuming the Tribe prevails in the exercise of its condemnation right, the Tribe will be legally obligated to provide GCSD “just compensation” therefor. There will be substantial costs associated with litigating both the Tribe’s right to condemn GCSD’s interests in the Agreement and the value of GCSD’s interest, but those costs should be a small fraction of the total dollar amount at issue between the parties.

Such a course of action would be a substantial undertaking, but given the import of the Skywalk to the Tribe as a whole and the long patience displayed by the Tribal Council in trying to resolve issues by other means, it seems the Tribal Council would be fully justified in so proceeding.