

A G E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
November 25, 2014
201 W. Chaco, City Hall
6:00 p.m.

- I. **CALL TO ORDER**
- II. **INVOCATION**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **ROLL CALL**
- V. **AGENDA APPROVAL**
- VI. **CITIZEN RECOGNITION**
- VII. **EMPLOYEE RECOGNITION**
- VIII. **CONSENT AGENDA**

- A. Commission Workshop Meeting Minutes, November 11, 2014
- B. Commission Meeting Minutes, November 11, 2014
- C. Travel Requests
- D. RFQP 201415-444 As Needed Construction Management, Geotechnical Engineering, Surveying and Construction Testing Services
- E. Memorandum of Understanding between the City of Aztec and the State of New Mexico, Human Service Division, LIHEAP

Items placed on the Consent Agenda will be voted on with one motion. If any item proposed does not meet the approval of all Commissioners, a Commissioner may request that the item be heard under "Items from Consent Agenda"

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

Note: A final agenda will be posted 24 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410

IX. ITEMS FROM CONSENT AGENDA

X. CITIZENS INPUT (3 Minutes Maximum)

(Citizens who wish to speak will sign up prior to the meeting – this section is for items not otherwise listed on the agenda)

XI. BUSINESS ITEMS

- A. Intent to Adopt Ordinance 2014-440: Amending Chapter 1, General Provisions, Section 12. Mandatory Penalty and Fees
- B. Intent To Adopt Ordinance 2014-441 Amending Ordinance 2013-423 Authorizing City of Aztec New Mexico Loan Agreement with New Mexico Environment Department Clean Water State Revolving Fund, Wastewater Interceptor Line

XII. LAND USE HEARING

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

XIV. DEPARTMENT REPORTS

(When this item is announced, all Department Heads who wish to give a report will move to the podium)

XV. ADJOURNMENT

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

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CITY OF AZTEC
COMMISSION WORKSHOP MINUTES
November 11, 2014

I. Call to Order

Mayor Burbridge called the Meeting into order at 5:15p.m. at the Aztec City Commission Room, City Hall, 201 W. Chaco, Aztec NM.

MEMBERS PRESENT: Mayor Sally Burbridge; Commissioner Roberta Locke; Commissioner Sheri Rogers; Commissioner Katee McClure;

MEMBERS ABSENT: Mayor Pro-Tem Sherri Sipe

OTHERS PRESENT: City Manager, Joshua Ray; City Clerk, Karla Sayler; Larry Thrower, City Attorney

A. Downtown Revitalization Project Venture

Josh opened the workshop by mentioning that over the years the City has looked into how to become an effective partner in the downtown development. Josh mentioned that they have tried to engage business owners to figure out what makes people want to locate downtown. The City has developed an idea that the City can start a downtown revitalization fund. This fund will work as a revolving fund to purchase downtown buildings, revive them and get them to the hands of local entrepreneurs who possess the dream of becoming a shop owner. Commission discussed this project proposal and they will determine if this is a venture the City will undertake. City staff is looking into which funds they can use to start this revolving fund. Once the City decides on this revenue stream they will begin to target which buildings are best to pursue. Josh mentioned that there are two aspects to this proposal:

- The City will create an inventory of all vacant buildings on Main Street which will include utility information, building size, infrastructure information, and the asking price for the building. The City will use this information to market buildings downtown to interested entrepreneurs looking for their next location.
- City staff will evaluate these properties and look for a property that they can specifically market. Once they have chosen a building, City staff will work to upgrade the building to the level of which a business can walk in and open the doors for commerce. The City will set a price for the building,

taking into consideration the amount of work put into the structure. Any profit made on the building will go back into the fund for the next purchase.

Commission, Staff and Business owners discussed the opportunity and came up with the conclusion that they would research the proposal and bring back when they have more information.

The Mayor adjourned the workshop at 5:52 pm.

Mayor, Sally Burbridge

ATTEST:

Karla Sayler, City Clerk

MINUTES PREPARED BY:

Karla Sayler, City Clerk

CITY OF AZTEC
COMMISSION MEETING MINUTES
November 11, 2014

I. CALL TO ORDER

Mayor Burbridge called the Meeting to order at 6:05pm at the Aztec City Commission Room, City Hall, 201 W. Chaco, Aztec, NM.

II. INVOCATION

The Invocation was led by City Manager, Joshua Ray

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was let by Commissioner, Katie McClure

IV. ROLL CALL

Members Present: Mayor, Sally Burbridge; Mayor Commissioner, Katee McClure; Commissioner, Roberta Locke; Commissioner, Sheri Rogers

Members Absent: Mayor Pro-Tem, Sherri Sipe

Others Present: City Manager, Joshua Ray; City Attorney, Larry Thrower; City Clerk, Karla Saylor; Project Manager, Ed Kotyk (see attendance sheet)

V. AGENDA APPROVAL

MOVED by Commissioner Locke, SECONDED by Commissioner McClure to Approve the Consent Agenda as Presented

VI. CITIZEN RECOGNITION

None

VII. EMPLOYEE RECOGNITION

Josh recognized and thanked the following employees that are Veterans that are currently employed by the City mentioning that they get Veterans day off paid:

- Bob Carmen-Code Compliance Officer
- Dawn Lewis-Community Development
- Frank Lee-General Services
- Troy Morris-Police Department
- Jacob Swenk-Police Department
- Larry Thrower-City Attorney

Josh also mentioned that Mayor Burbridge was recognized by Council of Governments as the 2014 Regional Champion.

VIII. CONSENT AGENDA

MOVED by Commissioner Rogers, SECONDED by Commissioner Locke to Approve the Consent Agenda As Presented

- A. Commission Meeting Minutes, October 14, 2014
- B. Commission Meeting Minutes, October 28, 2014
- C. Travel Requests
- D. Four Winds Recover Center Inc, and City of Aztec Contract
- E. Dedication/Acceptance Of The First Phase Of Pioneer Heights Streets
- F. Bid #2014-408 Reservoir #3 Raw Water Pump Improvements, change Order #1

IX. ITEMS FROM CONSENT AGENDA

X. CITIZENS INPUT

XI. BUSINESS ITEMS

- A. Petition for Voter ID for Elections in the City of Aztec

Josh mentioned that this item is a Petition that was circulated by Mr. Ed Cooper with the intent to pass an ordinance for voter photo ID for elections in the City of Aztec. City Clerk, Karla Saylor certified the petition as Valid then sent it to City Attorney, Larry Thrower for review. Mr. Thrower provided his legal opinion that such a municipal ordinance adding new voter id requirements to the NM

Municipal Election Code is preempted by NM State Law. It is the opinion of the City Attorney that Commission is prevented by such state law preemption from passing the proposed citizen initiative measure and that the special election requirement under State Statute 3-14-18 would not be triggered by the Commission's denial of the measure. Aaron Lee, Resident of Kirtland mentioned that Rio Rancho currently has this type of Ordinance in their City. He mentioned that they have had it for a few years. The City of Rio Rancho is Mayor-Council form of Government allowing them to have this type of Ordinance in place. As of now they are the only City that has this Ordinance in place in New Mexico.

MOVED by Mayor Burbridge, SECONDED, Commissioner McClure to Deny Petition to Pass an Ordinance to Have Voter Photo ID For Elections

A Roll Call Was Taken: Motion to Deny Passed 3-1

XII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

Josh reported that the Bridge dedication had a very positive turnout. He also mentioned that the turnout that we had tonight at our workshop shows that the community is being active in City events.

Mayor Burbridge reported that she spoke to Mosaic Academy classes K-6 on local Government. She mentioned that grades 4 and 5 from Mosaic Academy will be coming to City Hall to visit on November 19th. She also mentioned that she spoke to a Sociology and Economics Class on Politics and Economics. She mentioned that she will be attending a joint meeting with the NMML & New Mexico Association of Counties Board Meeting discussing Legislative Issues and Policies for the upcoming session and she will be attending the National League of Cities Conference in Austin, Texas on November 18-23.

Commissioner Rogers mentioned that she was elected as Treasurer for the Four Corners Federated Republicans Women's Group.

Commissioner Locke mentioned that the turnout at the Bridge opening was attended well. She mentioned not to forget the ECHO food drive.

Commissioner McClure acknowledged Veteran's Day mentioning that her Father was a Veteran. She also mentioned that there were 75-100 people in attendance at the Bridge opening. She thanked Wilann Thomas at the Visitor Center on printing 100 flyers for the Christmas Light contest downtown. She also requested that employees put date and year on monthly reports. She mentioned the Aztec Sparkle event downtown on December 13th.

Larry reported that he will be attending the Attorney's Association Meeting on December 10-12 in Albuquerque and one of the topics on the agenda is Voter ID.

XIV. DEPARTMENT REPORTS

Bil Homka, Community Development Director passed out a report on the estimated value of Pioneer Heights dedication which is \$2,363,000 dollars. He also mentioned that he attended the Aztec Sparkles meeting and mentioned that there is no budget for signage and that his department will be using \$100 from the float budget if allowed to use toward the event. The Mayor mentioned that there is a backup offer for signage from Attorney, Ryan Lane. Josh mentioned that the next Chamber luncheon is on November 20th and invited Commission members to attend.

XV. ADJOURNMENT

MOVED by Mayor Burbridge, SECONDED Commissioner Locke to adjourn the meeting at 6:58 pm.

Mayor, Sally Burbridge

ATTEST:

Karla Sayler, City Clerk

MINUTES PREPARED BY:

Karla Sayler, City Clerk

Staff Summary Report

MEETING DATE:	November 25, 2014
AGENDA ITEM:	VIII. CONSENT AGENDA (C)
AGENDA TITLE:	Travel Requests

ACTION REQUESTED BY:	Commission, Tourism and Public Works
ACTION REQUESTED:	Approval of Employee/Public Official Travel Requests
SUMMARY BY:	Cheryl Franklin

PROJECT DESCRIPTION / FACTS (Leading Department)

- Resolution 2003-603 identifies the requirement for employee/public official travel requests to be pre-approved by the commission. All travel requests will be submitted to the commission for approval prior to the travel occurring except in unusual circumstances when the City Manager may approve as provided in resolution 2003-603.
- The attached log is sorted by dates of travel and then by department. One request for travel had already occurred and the Commission is requesting approval for travel on the date of this meeting; however, the remaining request are dated for future.
- If travel/training is to be reimbursed or some of the costs will be paid by another entity, those notes have been included on the log.

FISCAL INPUT (Finance Department)

- All departments requesting travel have sufficient funds budgeted within their travel/training budgets

SUPPORT DOCUMENTS:	Travel Log November 25, 2014
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DEPARTMENT'S RECOMMENDED MOTION:	Approve Employee/Public Official Travel Requests
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**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL
MEETING DATE: NOVEMBER 25, 2014**

Dates of Travel	Department	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY15 Budget Available
11/24/14	Commission	SIF Board Meeting Albuquerque, NM.	No	No	36.00 60.00	Meal & Gratuity Allowance Estimated Cost for Fuel	Yes
12/06-08/14	Tourism	Grand Circle Association Quarterly Meeting Monument Valley, UT.	Yes	Yes	162.00 25.00 54.00 158.68	Meal & Gratuity Allowance Registration Estimated Cost for Fuel Lodging	Yes
01/25-30/15	Public Works	NM Water & Wastewater Association 2015 Annual School Las Cruces, NM.	Yes	No	204.00 300.00 70.00 405.23	Meal & Gratuity Allowance Registration Estimated Cost for Fuel Lodging *Riding w/Nathan Thomas	Yes
01/25-30/15	Public Works	NM Water & Wastewater Association 2015 Annual School Las Cruces, NM.	Yes	No	204.00 300.00 70.00 405.23	Meal & Gratuity Allowance Registration Estimated Cost for Fuel Lodging *Riding w/Alex Gomez	Yes

Staff Summary Report

MEETING DATE:	November 25, 2014
AGENDA ITEM:	VIII. CONSENT ITEM (D)
AGENDA TITLE:	RFQP 2015-0444 As Needed Construction Management, Geotechnical Engineering, Surveying and Construction Testing Services

ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Approval of Award of Construction Management/Surveyand GeoTechnical/Construction Testing Services
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS (Leading Department)

- The City issued a RFQP (Request for Qualification Based Proposals) for on-going professional services for construction management, geotechnical engineering, surveying and construction testing services associated with water and sewer line, transportation project construction.
- The City will be constructing several projects which are a combination of federal, state and local funds and require professional teams with experience and expertise in the various standards established by each of the funding agencies.
- The City's intent is to utilize the successful team(s) as needed on a four year term for capital projects currently scheduled as well as miscellaneous projects as identified by the City Engineer/Public Works Director.
- Multiple consultants will be selected for construction management services. The City Engineer/Public Works Director will task projects to specific consultants based on the requirements of the project and consultant's ability.
- A single consultant will be used for construction testing and as-needed Geotechnical Engineering on all projects. NOTE: Some projects, due to funding requirements, may require an independent lab (separate from contractor and city testing) which will be included in the construction management services.
- Projects currently identified:
 - East Aztec Arterial Section 1B (FHWA, NMDOT, Local)
 - Simonds Road Reconstruction (NMDOT, Local)
 - Aztec Sewer Interceptor (US EPA, NMED)
 - East Aztec Arterial Section 2 (FHWA, NMDOT, State, Local)
 - Animas River Diversion (Local)
 - SCADA (Local)
 - Wastewater Treatment UV (Local)
 - Reservoir No 1 Reconstruction (Local)
 - Airport Tarmac Reconstruction (FAA, NM Aviation, Local)
 - Church Avenue Reconstruction (Local)
 - Arterial Section 1B Water (Local)

- North Main Construction (FTA, Local)
- Agreements and task orders are anticipated to be presented to Commission during the December 9, 2014 meeting.

PROCUREMENT INPUT (Purchasing)

- The City solicited the RFQP in October 2014.

CONSTRUCTION MANAGEMENT SERVICES

- Three (3) proposals were received, evaluated, and scored for construction management services: CHC Engineers, DTF Engineering and Wilson & Co.
- All consultants submitting proposals were interviewed.
- The committee evaluated Wilson & Co. highest in both proposal and interview for construction services.
- The City Engineer/Public Works Director recommends award of construction services to all three firms. On-call agreements will be negotiated with each firm. Wilson & Co., due to their resources, experience and expertise, will be tasked with construction management services for the Aztec Arterial Section 1B and Aztec Sewer Interceptor.

GEOTECHNICAL ENGINEERING AND CONSTRUCTION TESTING

- Two (2) proposals were received, evaluated and scored for construction testing and geotechnical engineering: Geomat and Terracon
- All consultants submitting proposals were interviewed.
- The committee evaluated Terracon higher in proposal submittal and Geomat higher in the interview process. The committee selected Geomat, the result of the interview, as the team best suited to respond to various project needs for the City.
- Both firms were notified of the results and the committee selection. Terracon has elected not to protest the selection but requested to meet with evaluation committee to discuss process and outcome. This meeting was held on November 20, 2014.

FISCAL INPUT (Finance Department)

- Construction management and geotechnical services are typically calculated into each capital project budget and award of the RFQP to the various firms as recommended will not negatively impact existing budgets.

SUPPORT DOCUMENTS:

- RFQP 2015-0444 Proposal Evaluation Results
- RFQP 2015-0444 Interview Evaluation Results

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Award of RFQP 2015-0444As Needed Construction Management, Geotechnical Engineering, Surveying and Construction Testing Services to: CHC Engineers, DTF Engineering and Wilson & Co. for Construction Management Services and to Geomat for Geotechnical Engineering and Construction Testing.

**City of Aztec
RFP 2015-444
Construction Management Services
Scored Evaluation Tabulation
Interviews will be conducted with all Respondents**

Evaluation Criteria>	Staff Experience & Technical Competence					Team Experience					Familiarity with State & Federal Requirements					Familiarity with Construction Management Practices and Procedures					Past Performance City Projects					NM Work Produced					Work not 75% Complete					Score Totals From Each Evaluator					Proposal Evaluation Score Average Before Preference		Preference					Proposal Evaluation Score Average	
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	Rank		1	2	3	4	5	Rank						
ACES Inc dba DTF Eng	13	14	15	15	14	12	12	0	15	14	15	16	14	13	15	14	15	9	15	14	0	0	0	0	10	5	5	5	5	5	5	5	5	5	5	64	67	48	68	77	64.80	3	3	3	2	3	4	68.04	3
CHC Engineers	16	11	16	15	15	18	10	15	15	16	17	0	9	15	17	16	12	17	15	17	3	0	0	5	0	3	3	3	3	3	90	52	77	85	86	78.00	2	0	0	0	0	0	78.00	2					
Wilson & Co	15	16	16	18	15	16	13	16	18	15	15	15	16	15	15	14	17	16	15	15	13	12	9	8	10	5	5	5	5	5	83	83	83	83	80	82.40	1	4	4	4	4	4	86.52	1					
	(Max Points: 18)					(Max Points: 18)					(Max Points: 18)					(Max Points: 18)					(Max Points: 18)					(Max Points: 5)					(Max Points: 5)					(Max Points: 100)							In State 5%						
																																						Veterans 10%											

**City of Aztec
RFP 2015-444
Geo-Tech Services
Scored Evaluation Tabulation
Interviews will be conducted with all Respondents**

Evaluation Criteria>	Staff Experience & Technical Competence					Team Experience					Familiarity with State & Federal Requirements					Familiarity with Construction Management Practices and Procedures					Past Performance City Projects					NM Work Produced					Work not 75% Complete					Score Totals From Each Evaluator					Proposal Evaluation Score Average Before Preference		Preference					Proposal Evaluation Score Average	
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	Rank		1	2	3	4	5	Rank						
Geomat, Inc.	13	14	18	17	16	14	10	0	17	17	16	0	0	15	16						17	15	18	18	17	5	5	5	5	5	5	5	5	5	5	70	49	46	77	76	63.60	2	4	2	2	4	4	66.78	2
Terracon Consultants	16	16	18	17	16	16	12	9	17	17	17	0	0	15	17						16	11	18	18	15	5	5	5	5	5	75	49	55	77	75	66.20	1	4	2	3	4	4	69.51	1					
	(Max Points: 18)					(Max Points: 18)					(Max Points: 18)					(Max Points: 0)					(Max Points: 18)					(Max Points: 5)					(Max Points: 5)					(Max Points: 82)							In State 5%						
																																											Veterans 10%						

**City of Aztec
RFP 2015-444
Construction Management Services
Interview Scored Evaluation**

Evaluation Criteria>	Company Overview					NMDOT Project Inception to Close Out					NMDOT Full Time On Site Management					Project Involvement Dependent on Contractor					Capable Full Time OnSite Const Management					MUTCD Enforcement					Const Plan Review and Const Schedule					Coordination & Communication with City														
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5										
Evaluator # >	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
ACES Inc dba DTF Eng	4.0	3.0	3.0	2.5	3.0	1.0	1.0	2.0	1.0	2.0	3.0	3.0	2.0	2.0	3.0	4.0	4.0	3.0	3.5	3.0	4.0	2.0	3.0	4.0	3.0	4.0	5.0	4.0	4.0	3.0	3.0	3.0	3.0	4.0	3.0	4.0	4.0	3.0	4.0	3.0	4.0	4.0	3.0	4.0	3.0					
CHC Engineers	3.0	3.0	3.0	3.0	3.0	2.0	2.0	2.0	1.0	2.0	3.0	3.0	3.0	2.0	3.0	3.0	4.0	3.0	3.0	4.0	3.0	2.0	3.0	1.0	3.0	4.0	4.0	3.0	4.0	4.0	4.0	4.0	3.0	4.0	4.0	2.0	4.0	3.0	1.0	4.0	3.0	4.0	4.0	4.0	4.0					
Wilson & Co	4.0	4.0	4.0	3.0	3.0	3.0	4.0	4.0	4.0	3.0	3.0	3.0	5.0	3.5	4.0	3.0	3.0	4.0	3.5	3.0	3.0	5.0	4.0	5.0	3.0	4.0	5.0	5.0	5.0	3.0	4.0	3.0	4.0	4.5	3.0	2.0	4.0	4.0	4.0	4.0	3.0	4.0	4.0	4.0	4.0					

Evaluation Criteria>	QA/QC Process					Staff Availability to Plan & Manage Multiple Projects					Contractors					Project Management Local Residents					NMDOT & NMED Funding Reimb					SWPPP & NPDES Permit Issues					Project Submittals & Material Certs					Time to Mobilize					Total Scores					Proposal Evaluation Score Average						
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	Rank											
Evaluator # >	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5							
ACES Inc dba DTF Eng	3.0	4.0	3.0	2.0	3.0	3.0	3.0	3.0	3.0	3.0	4.0	4.0	3.0	5.0	4.0	5.0	4.0	3.0	5.0	4.0	2.0	3.0	3.0	1.0	3.0	4.0	5.0	4.0	4.0	3.0	3.0	3.0	3.0	2.0	3.0	4.0	3.0	3.0	3.0	3.0	4.0	3.0	3.0	5.0	3.0	55.0	54.0	48.0	52.0	49.0	51.60	2
CHC Engineers	2.0	2.0	2.0	3.0	3.0	2.0	1.0	3.0	0.0	2.0	4.0	5.0	4.0	3.0	3.0	4.0	3.0	3.5	1.0	3.0	3.0	3.0	4.0	2.0	3.0	4.0	5.0	4.0	4.0	3.0	3.0	3.0	3.0	3.0	3.0	4.0	2.0	4.0	2.0	3.0	50.0	50.0	51.5	37.0	49.0	47.50	3					
Wilson & Co	4.0	4.0	5.0	3.0	3.0	4.0	4.0	4.0	4.5	4.0	4.0	4.0	3.0	3.5	3.0	4.0	3.0	4.0	4.0	3.0	3.0	5.0	5.0	4.0	3.0	3.0	5.0	4.0	4.5	3.0	3.0	5.0	4.5	4.5	3.0	5.0	5.0	5.0	4.5	3.0	57.0	66.0	68.5	65.0	51.0	61.50	1					

**City of Aztec
RFP 2015-444
Geo-Tech Services
Interview Scored Evaluation**

Evaluation Criteria>	Company Overview					NMDOT Project Inception to Close Out					Familiarity with State & Federal Requirements					Maintenance Testing Records					Generate Testing Reports					Coordinate & Communicate with City									
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5					
Evaluator # >	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Geomat, Inc.	4.0	5.0	5.0	5.0	4.0	4.0	4.0	4.5	5.0	4.0	4.0	5.0	4.5	5.0	4.0	4.0	3.0	4.0	5.0	4.0	4.0	3.0	4.0	5.0	3.0	4.0	3.0	4.0	5.0	3.0	3.0	4.0	4.0	5.0	3.0
Terracon Consultants	4.0	4.0	4.0	5.0	3.0	4.0	4.0	4.0	5.0	3.0	3.0	4.0	4.0	4.0	4.0	4.0	3.0	4.0	4.5	3.0	4.0	4.0	5.0	5.0	5.0	4.0	3.0	4.0	5.0	3.0	4.0	3.0	4.0	5.0	3.0

Evaluation Criteria>	QA/QC Process					Core Sample					Sufficiently Staffed					Contractors					Score Totals From Each Evaluator					Proposal Evaluation Score Average											
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	Rank						
Evaluator # >	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5		
Geomat, Inc.	4.0	4.0	4.5	4.5	3.0	4.0	5.0	4.0	5.0	4.0	4.0	5.0	4.5	4.5	3.0	4.0	5.0	4.0	4.0	3.0	4.0	5.0	4.0	4.0	3.0	39.0	43.0	43.0	48.0	35.0	41.60	1					
Terracon Consultants	4.0	4.0	4.0	4.0	4.0	3.0	3.0	4.0	4.0	4.0	3.0	5.0	5.0	5.0	3.0	3.0	3.0	4.0	4.5	3.0	36.0	37.0	42.0	46.0	35.0	39.20	2										

Staff Summary Report

MEETING DATE: November 25, 2015
AGENDA ITEM: VIII. Consent Agenda (E)
AGENDA TITLE: Memo of Understanding between City of Aztec and State of New Mexico Human Service Department - LIHEAP

ACTION REQUESTED BY: Delain George
ACTION REQUESTED: Approve Memorandum of Understanding
SUMMARY BY: Delain George

PROJECT DESCRIPTION / FACTS

- The federal government established the Low Income Home Energy Assistance Act in 1981.
- April 2009, the Low Income Utility Assistance Act was expanded to include municipalities as being subject to the provisions of the Act.
- Within the Act, it states: "Customers that receive LIHEAP assistance will not have their electric and/or their gas service disconnected for Non-payment from November 15 through March 15, provided they meet the qualifications". Customers must be current as of November 15, if the customer chooses not to make a payment for the 4 winter months (Dec-Mar) they cannot be disconnected for non-payment. After March 15, customers that qualified and did not make a payment they must be allowed to make a payment arrangement to payoff winter utility debt over the next 7 months, until the next heating season.
- State of New Mexico, Human Services Department is the single State Agency in New Mexico that administers the Low Income Home Energy Assistance Program. (LIHEAP)
- LIHEAP assist low income households to meet their residential heating and/or cooling cost.
- The purpose of the Memo of Understanding is:
 - To implement and update an ongoing information exchange/disclosure of protected information between the parties;
 - To establish the Service Provider (City) to receive benefits on behalf of LIHEAP eligible households under the stipulations or conditions listed in Exhibit A, and B.
 - To authorize the service provider to perform LIHEAP services as outlined in Exhibit A and B.

- The utility office has been following the scope of work for several years. 136 City of Aztec customers received assistance from the LIHEAP program during FY14.
- We made payment arrangements with 5 customers to pay off winter utility bills over the 7 month period.
- 18 customers that received LIHEAP assistance during FY14 were turned over to collections. 4 accounts had a balance over \$600 with a maximum of \$711. The average bill was \$293, with the lowest balance at \$92.00.
- The attached Memorandum of Understanding (MOU) was received via email from the LIHEAP office on November 4, 2014. The email asks that 3 original MOU's be signed and returned within 30 days (December 4, 2014).

PROCUREMENT / PURCHASING (if applicable)

None

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

The utility customer applies for assistance through the LIHEAP program during the federal fiscal year. The program operates on a point system depending on income levels of each customer. The program is dependent on the level of funding from the federal and state government each year. A dollar value is given to each point. This federal fiscal year the value of a point is \$25. A \$9 increase over the past four years point value of \$16. We are seeing customers receive up to \$250 towards their electric bill. The customer is eligible to receive a one-time assistance during the federal fiscal year. The customer can choose to have the assistance applied to the electric bill or their gas bill.

The financial impact comes from the winter disconnect moratorium. Most customers will make good on their payment arrangements. However, we have a few customers that will move out after the winter, leaving a large bill with the City of Aztec, and if not collected, will become a write-off account to the City 4 years after.

SUPPORT DOCUMENTS: Memorandum of Understanding between the State of New Mexico, Human Service Department and the City of Aztec.

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Memorandum of Understanding between the State of New Mexico, Human Service Department and the City of Aztec.

STATE OF NEW MEXICO

HUMAN SERVICES DEPARTMENT

Memorandum of Understanding (MOU)

This MOU is made and entered into by and between the State of New Mexico, Human Services Department, hereinafter referred to as the “HSD”, and City of Aztec, hereinafter referred to as the “Service Provider” or “Contractor”, and collectively referred to as the “Parties”.

RECITALS

WHEREAS, the purpose of this MOU is:

1. To implement and update an ongoing information exchange/disclosure of Protected Information between the Parties;
2. To establish the Service Provider as a designated authorized or approved Service Provider working with the HSD Low Income Home Energy Assistance Program (LIHEAP);
3. To authorize the Service Provider to receive benefits on behalf of LIHEAP eligible household customers under the stipulations or conditions listed in Exhibit A, Scope of Work (SOW);
4. To authorize the Service Provider to perform LIHEAP services as outlined in Exhibit A, SOW.

WHEREAS, the federal government established the Low Income Home Energy Assistance Program Statute detailed in the LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 As Amended Through August 1, 1999 and the Code of Federal Regulations//Title 45, Part 96, Subpart H//From the U.S. Government Printing Office via GPO Access//CITE: 45C FR 96;

WHEREAS, the Service Provider, provides either electric, natural gas, propane, wood, pellets or other fuel energy that provides New Mexican residents with residential heating and/or cooling;

WHEREAS, 27 NMSA 1978 (1992 Repl.) establishes the HSD as the Single State Agency in New Mexico, that administers low income programs including the Low Income Home Energy Assistance Program that assists low income households to meet their residential heating and/or cooling costs;

WHEREAS, the Parties agree that it is mutually beneficial for the HSD to send LIHEAP benefits on behalf of eligible LIHEAP household customers to the customer’s Service Provider to be credited to the customer’s account;

WHEREAS, the Parties contemplate a continued relationship with one another in various capacities in conjunction with providing services to low income residents of New Mexico.

NOW, THEREFORE, IT IS AGREED that:

I. TERM OF THE AGREEMENT

This MOU becomes effective upon execution by the Parties and will be in effect until terminated in accordance with the provisions for Termination of MOU contained herein. Prior agreements as to the subject matter herein will be superseded and replaced by this MOU.

II. PROTECTED INFORMATION AND CONFIDENTIALITY

- A. **“PII”** or personally identifiable information as used in U.S. privacy law and information security is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.

PII may involve any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, date and place of birth, mother’s maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

“PII Breach” shall mean a loss of PII control amounting to actual or potential or temporary compromise, including: unauthorized acquisition or access; or any similar situation involving unauthorized use through inappropriate PII access, potential or confirmed; regardless of format whether physical (e.g., paper) or electronic.

- B. The Parties will safeguard Protected Information being shared as follows:

1. Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees and its subcontractors with the following requirements:

- a) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- b) Contractor agrees that any PII made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by or disclosure to any person or entity other than an officer or employee of the Contractor is prohibited.
- c) All PII will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- d) The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, including printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that

any PII data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

- e) Any spoilage or any intermediate hard copy printout that may result during the processing of PII will be given to the HSD or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- f) The HSD will have the right to terminate the contract if the Contractor or its subcontractors fail to provide the safeguards described above, consistent with the termination clause herein.
- g) All incidents resulting in the wrongful disclosure of PII must be reported to the HSD. In addition to the self-certification and evaluation requirements, the Contractor shall notify the HSD of any instances of security breach issues or non-compliance promptly upon their discovery, but no later than one (1) Business Day after such determination of a *PII Breach* has been made. Notification shall include a description of the security/non-compliance issue and corrective action planned and/or taken. *At the Contractor's expense, the Contractor shall notify all individuals potentially affected by a PII Breach.*
- h) The Contractor must provide the HSD with a summary corrective action plan to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy or security threats to PII. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures until the issue is resolved. *The Contractor shall be responsible for all costs of implementing the corrective action plan.*
- i) All client files created or used to provide services under this contract are at all times property of HSD. Upon HSD's request, all such client files shall be returned to the HSD no later than the final agreed upon termination date of this Agreement.

2. Criminal/Civil Sanctions

- a) It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- b) Contractor agrees that granting access to PII must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding PII.

3. Inspection

The HSD shall have the right to send its officers and/or employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work related to PII under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

4. Contractor's Responsibility for Compliance With Laws and Regulations

- a) The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.
- b) The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.

5. Contractor's Responsibility for Compliance With Laws and Regulations Relating to Information Security

The Contractor and all its employees, subcontractors, consultants, or agents performing the Services under this Agreement must comply with the following insofar as they apply to Contractor's processing or storage of HSD's data:

- a) The Federal Information Security Management Act of 2002 (FISMA);
- b) New Mexico Administrative Code (NMAC) 1.12.20, *et seq.*: "INFORMATION SECURITY OPERATION MANAGEMENT".

III. COMPENSATION

This is a mutually beneficial, reciprocal agreement between Parties incurring similar expense. Any costs involved will be borne by each party incurring the expense. No departmental funds shall be exchanged through this MOU. Only Federal LIHEAP transfers will be sent to the Service Provider for qualifying credits under this MOU.

IV. TERMINATION OR SUSPENSION OF MOU

If the HSD believes that the Service Provider has violated the provisions of this MOU and/or any applicable regulation or statute governing the program, or is abusing or defrauding the program or its clients and desires to suspend this MOU, the HSD shall provide written notice of its intent to suspend this MOU, with such notice being delivered to Service Provider not less than forty-five (45) days prior to the effective date of suspension ("Notice of Suspension"). Such Notice of Suspension shall also specify the bases for such suspension and the terms of the suspension. Service Provider may within fifteen (15) business days of receipt of the notice, request reconsideration of the suspension from the HSD-ISD Director (the "Request"). Service Provider may provide the HSD-ISD Director with additional information and documentation to support

the Request. Upon receipt of the Request, the HSD-ISD Director will review the appropriateness of the proposed suspension and will consider any additional information provided by Service Provider. The Director will render a decision within 30 days of the receipt of the request for reconsideration. The Division Director's or his/her designee's decision will be final. If Service Provider does not submit a Request within the time-period specified herein, the suspension shall become effective on the date and under the terms specified in the Notice.

This MOU may be terminated by either of the Parties upon written notice delivered to the other party not less than fifteen (15) days prior to the intended termination date ("Notice of Termination"). The Notice of Termination shall specifically identify the effective date of Termination. Neither party shall negate obligations already incurred or required to be performed prior to the effective date of termination.

V. ADMINISTERING AGENCY

Each party shall administer its portion of the MOU. As problems may from time to time arise, the Parties will cooperate in taking corrective action. Disputes will be resolved by discussion or mediation.

VI. LIABILITY

This MOU shall be binding on the Parties, their agents and subcontractors, and the provisions hereof shall be included in any subcontract executed by them. Each party is solely liable for fiscal or other sanctions, penalties or fines resulting from noncompliance, violation or alleged violation of its responsibilities under this MOU. Each party shall be solely liable for its own acts or failure to act in accordance with this MOU, and shall be solely responsible for the actions of its own officers, agents and employees. However, the liability of the HSD is further limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq.

VII. EQUAL OPPORTUNITY COMPLIANCE

The Parties agree to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such state laws, rules and regulations, and executive orders, the Parties agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, citizenship, political affiliation or belief, sex, sexual orientation, gender identity, spousal affiliation, age or disability be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program or activity performed under this MOU. If either party is found to not be in compliance with these requirements during the term of this MOU, the Parties agree to take appropriate steps to correct the deficiencies.

VIII. DEFAULT AND REMEDY UPON DEFAULT

- A. Default: Any abuse of the data received from either party by the other including, but not limited to, its unauthorized use or unauthorized disclosure or unsecured storage shall constitute a default under this MOU on the part of the party misusing the information. Any failure by either party to comply with any term of this MOU shall constitute a default.

- B. Remedy upon Default: If either party defaults in the terms of this MOU, the non-defaulting party shall give the other party fifteen (15) days written notice of the default and the non-defaulting party's intent to terminate the MOU. If the default is one that can be cured, the non-defaulting party shall give the defaulting party an additional thirty (30) days in which to cure the default and to provide the non-defaulting party with assurances that the default has been cured and will not occur again. The termination of this MOU under the default provisions or under any other provision shall not relieve either party from its confidentiality.
- C. No Waiver: The waiver by either party of any default by the other under this MOU shall not act as a waiver of any other preceding or succeeding default.

IX. AMENDMENT AND CHANGE OF LAW

This MOU shall not be amended other than by an instrument in writing executed by the Parties hereto, to accommodate changes in state or federal law. Upon enactment of a change in the law affecting either party's performance under this MOU, this MOU shall be deemed automatically modified to give effect to the change in law insofar as practicable. If, however, within 30 days after the effective date of the change in law, a party notifies the other that it objects to such automatic amendment, this MOU shall not be deemed automatically amended, and the Parties shall negotiate the effect the change in law will have on the continuation of this MOU. The notice of objection shall set forth the reasons the party believes the automatic amendment should not take place.

X. GOVERNING LAW

The laws of the State of New Mexico will govern any disputes arising from this MOU.

XI. SOLE AGREEMENT

This MOU supersedes all previous offers, negotiations and agreements or understandings between the two parties as to the subject matter of this MOU.

XII. SEVERABILITY

If any provision of this MOU shall be held void or invalid, the remaining provisions shall nevertheless be valid, effective, and binding, and it is the intention of the Parties hereto that each provision of this MOU is being stipulated separately in the event one or more of such provisions should be held void or invalid.

XIII. CONTACT INFORMATION

Delain George
City of Aztec
201 W. Chaco
Aztec, NM 87410
Phone: 505-334-7673
dgeorge@aztecnm.gov

Joann Lapington
LIHEAP
NM Human Services Department
Income Support Division
LIHEAP Central Office
PO Box 2348
Santa Fe, NM 87505-2348
Phone: 505-827-7258
Phone: 505-827-7258
Facsimile: 505-827-7259
JoAnn.Lapington@state.nm.us

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed on the year and date indicated.

CITY OF AZTEC
The Service Provider:

HUMAN SERVICES DEPARTMENT:

By: _____
(Print Name)

HSD Cabinet Secretary

Signature

Date

Title

Approved As To Form And Legal Sufficiency By:

Date

HSD Office of General Counsel

Date

EXHIBIT A
SCOPE OF WORK

Service Provider Agrees:

1. To make its best effort to establish, the ability to accept payments from HSD on behalf of eligible clients via electronic funds transfer (EFT) to a bank account.
2. To make its best effort to establish, the ability to report exceptions to customer files via a data transfer acceptable to HSD.
3. To apply LIHEAP benefits issued on behalf of eligible LIHEAP household customers to those customers' accounts, and when a credit balance results on a particular account, that it remains on the account until used by the customer. To use the August 19, 2014 memorandum (Exhibit B) as a guide to determine if account credits should be refunded to the HSD or directly to the customer.
4. To make available the heating/cooling source or allowable services to the eligible LIHEAP household customer within fourteen (14) working days of receipt of the HSD benefits issued on behalf of eligible LIHEAP households.
5. To accept benefits on behalf of eligible LIHEAP household customers for:
 - a) Electricity or natural gas provided to the customer for home heating/cooling purposes and for ancillary labor, parts and services necessary to maintain services to the residence, provided that such charges are part of the Service Provider's approved rate structure and are included as a part of the customer's regular bill, and/or
 - b) Firewood obtained in compliance with NMSA 1978 Section 68-2-22, and provided to the customer for home heating purposes and for ancillary charges for delivery, stacking and splitting of firewood following delivery, and/or
 - c) Coal, kerosene, fuel oil, LP gas or other approved fuels sold to the customer for home heating purposes and for ancillary charges for delivery of fuel to the customer's residence, including, in the case of LP gas or fuel oil, cost of parts and labor incurred in attaching the fuel tank to the customer's residence as well as for tank rental or purchase costs, and/or
 - d) Closed accounts, whenever possible, unless an agreement has been negotiated with the client regarding re-initiation of service, and/or
 - e) A supplemental benefit issuance that is clearly allowed when an arrearage exists on the customer's account that can be applied to past due balances if they occurred within the same federal fiscal year during which benefits were paid.
6. To ensure that eligible LIHEAP household customers are not treated differently than other customer households. Specifically, the Service Provider may not charge higher prices for goods or services provided to eligible LIHEAP household customers under this MOU, impose additional charges or surcharges which result from processing benefits received on behalf of eligible LIHEAP household customers or delays resulting thereof, or establish more difficult or complicated billing or payment procedures for LIHEAP household customers than are applied to

households not receiving a LIHEAP benefit. The Service Provider shall only charge the LIHEAP eligible household customer, in the normal billing process, the difference between the actual cost of the home energy and related services and the amount of benefit issued on behalf of eligible LIHEAP household customers. In the event that the HSD determines that unallowable charges have been made, the Service Provider will reimburse each customer subjected to such additional charges the full amount of the unallowable charges.

7. To comply with those provisions of the New Mexico Public Regulation Commission (NMPRC) 17.5.410 NMAC setting forth the conditions under which service may or may not be terminated for non-payment of bills, in the case of regulated electric and natural gas service providers. In carrying out the relevant provisions of NMPRC Rule 410 NMAC, under certain conditions, LIHEAP eligible household customers that are considered chronically delinquent under the terms of the Rule may be given the opportunity to make an agreement with the Service Provider for payment of past due amounts in installments.

8. To comply with those provisions of the county, city, village or town rules, statutes, or regulations setting forth the conditions under which service may or may not be terminated for non-payment of bills, in the case of unregulated electric and natural gas service providers. In carrying out the relevant provisions of the applicable regulations, LIHEAP eligible household customers should be given an opportunity to make an agreement with the Service Provider for payment in installments of past due amounts or any balance due which exceeds the amount of benefit issued on behalf of eligible LIHEAP household customers by the HSD.

9. To comply with those provisions of the New Mexico Public Regulation Commission (NMPRC) 17.10.410 NMAC that set forth the conditions under which propane dealers must operate in New Mexico, in the case of propane (liquefied gas or LP gas) service providers. In carrying out the relevant provisions of NMPRC 17.10.2 NMAC, under certain conditions, LIHEAP eligible household customers that are considered delinquent under the terms of the Rule may be given the opportunity to make an agreement with the Service Provider for payment of past due amounts in installments.

10. To, continue current service, to reconnect service, to suspend an impending termination of utility services of household customer within 48 hours of receiving confirmation of the benefit amount from HSD Income Support Division (ISD). The benefit amount for the household member shall not exceed the maximum benefit established for the current funding period. If the eligible LIHEAP household customer's minimum payment required by the Service Provider is greater than the eligible LIHEAP household customer's benefit amount, the Service Provider shall provide an opportunity for the customer to negotiate payment of the remaining balance.

11. To refer the LIHEAP household customer, when possible, to other local resources for possible additional assistance, within the rules set forth in 17.5.410 NMAC.

12. To promptly review all LIHEAP Vendor Verification Reports and use its best efforts to verify that the account number, name and address on the report all match the Service Provider's account information where this review reveals an error or inconsistency, the Service Provider shall notify the LIHEAP Central office.

13. To make a good faith effort to ensure that the account, if applicable to the benefit issued on behalf of the LIHEAP eligible household, will be credited to the household for which the benefit is issued.

14. Upon request, to provide the LIHEAP customer or to the ISD office, home energy consumption information for that LIHEAP household customer's residence for the past twelve (12) months, or less when the LIHEAP household customer has not lived in the residence for twelve (12) months.
15. To notify the LIHEAP Central office if a LIHEAP eligible household customer appears to be receiving multiple benefits.
- 16.. To make no attempt to recover the value of funds for which the Service Provider is not able to obtain reimbursement due to the Service Provider's actions or omissions from the LIHEAP eligible household customer.
17. To make reimbursement to the HSD for benefits that cannot be credited to or are not used by the applicable LIHEAP eligible household customer, by the end of the federal fiscal year in which those benefits were issued . However, the Service Provider shall not be required to make reimbursement to the HSD for any benefits issued to a LIHEAP household customer's account where the head of household has died, and for which payment is due for energy consumed prior to the death of that head of household.
18. Upon notification from the HSD of benefits issued in error on behalf of an eligible client, to make reimbursement to the HSD by the end of the federal fiscal year in which those benefits were issued.
19. To transfer a benefit to another LIHEAP account that is managed by the Service Provider, within seven (7) days of notification by the LIHEAP Central Office, within the federal fiscal year in which those benefits were issued, that it has determined that a benefit was sent to the Service Provider in error or applied in error to an incorrect account.
20. To refer customers who make requests for LIHEAP refunds or transfers of a benefit issued on behalf of an eligible LIHEAP household, to HSD for assistance. To comply with modifications or amendments to the HSD rules, policies, procedures and forms as may be issued by the HSD. If unable to comply, provide a 30-day notice to the LIHEAP Central Office of intent to terminate this MOU.
21. To the extent that it is required under federal or New Mexico law, and upon reasonable written notice, to allow federal, state or outside auditors and/or investigators access to such records as the Service Provider may have and that the HSD determines are reasonably needed to monitor and review the Service Provider's compliance with the conditions and provisions of this MOU, and to cooperate in the conducting of such audit or investigation. Notwithstanding the above, in no event shall Service Provider be required to provide access to proprietary or critical energy infrastructure information, or to non-public information for customers not enrolled in the LIHEAP program.
22. To comply with all federal and state rules and regulations governing LIHEAP, including but not limited to the LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended)Section 2605 Applications and Requirements and Code of Federal Regulations//Title 45, Part 96, Subpart H//From the U.S. Government Printing Office via GPO Access//CITE: 45C FR 96 Subpart H Section 96.84 and those current the HSD regulations concerning service providers.
23. To not charge the HSD interest or service charges with respect to LIHEAP benefits issued on behalf of eligible LIHEAP household customers.

24. To provide a year-end report for the end of LIHEAP's fiscal year of September 30th for each year to the LIHEAP central Office in a mutually agreed upon format, by December 31st of each year.
25. To work with the HSD when information is requested and/or mandated by the U. S. Department of Health and Human Services and to comply with federal statute or an Action Transmittal issued by the Department of Health and Human Services.
26. To maintain those records determined by the Service Provider to be related to LIHEAP for seven (7) calendar years or until audit issues are resolved, whichever is later, if in such case, Service Provider is provided with reasonable notice that certain records will need to be retained beyond the seven (7) year period to facilitate full resolution of audit issues.
27. Upon reasonable written notice from the HSD, and subject to the record-retention provision above at Paragraph No. 26, to cooperate in good faith with the HSD to the best of Service Provider's ability when information is requested and/or mandated by the U. S. Department of Health and Human Services and to comply with federal statute or an Action Transmittal issued by the Department of Health and Human Services.

The HSD Agrees:

1. To issue a LIHEAP Verification Report, at least weekly, informing the Service Providers which clients are requesting that their LIHEAP benefit be issued on their behalf to the Service Provider. The report will be in electronic format and be made available by accessing a secure transport system operated by the State of New Mexico. The report will include account numbers (if applicable), the name on the account and the residential address so that data can be matched to Service Provider's records;
2. To provide benefits on behalf of eligible LIHEAP household customers to the Service Provider in the form of an HSD Warrant issuance or through an electronic fund transfer;
3. To provide training and/or instruction, if requested, to the Service Provider regarding the program, in particular those aspects of the program that affect the Service Provider, such as goods and services toward which the benefits issued on behalf of an eligible LIHEAP household customer may be applied, as well as training and/or instruction regarding the reimbursement process;
4. To provide reasonable advance written notice of a planned audit of Service Provider's records and a listing of those records required for review during the audit;
5. When the HSD has determined that Excess Benefits have been issued for which the HSD is requesting reimbursement from the Service Provider, to make a good faith effort to notify the Service Provider within sixty (60) days of the issuance of those benefits;
6. When the HSD has determined that a benefit has been sent in error or incorrectly applied to an account and is seeking a refund or transfer of that benefit, to make a good faith effort to notify the Service Provider within sixty (60) days of the issuance of that benefit.

Exhibit B**Memorandum**

Susana Martinez, Governor
Sidonie Squier, Secretary

August 19, 2014

To: LIHEAP Fuel Providers

Re: Refunds for LIHEAP households

The Human Services Department (HSD) has established the following guidelines for the appropriate disbursement of Low Income Home Energy Program (LIHEAP) cash refunds to account holders with a LIHEAP credit balance. The determination of whether or not an account holder should receive a refund is based on the following three groups:

- The household is moving but is staying within the service area for your company
- The household is moving outside the service area for your company
- The household is not moving.

Please use the following guidelines to determine when it is appropriate to issue a refund either to the account holder or to HSD.

1. *Moving within the service area for your company -*

YES...*Issue a refund* if, within the next 60 days, the household **will NOT** incur utility expenses with your company. Maintain a list that includes the account holder name, account number, amount of refund, old address and new address.

NO...*Do not issue a refund* if, within the next 60 days, the household **will** incur utility expenses with your company at a new address. Any **credit** on the household's old account should be transferred to the new account for future expenses. The new account may or may not be in the household's name if the household is moving to a residence that has an existing account with your company. If the household is not immediately able to provide a new address, please allow the household 60 days to provide this information. If, after 60 days, the account holder has not provided the necessary information or cannot be located, return the credit balance to HSD.

2. *Moving outside the service area of your company -*

YES...*Issue a refund*. Maintain a list that includes account holder name, account number, amount of refund, old address and, if available, new address. If, after 60 days, the account holder has not provided the necessary information or cannot be located, return the credit balance to HSD.

3. *Household is not moving -*

YES...Issue a refund if, within the next 60 days, the household **will NOT** incur utility expenses with your company. Maintain a list that includes account holder name, account number and amount of refund.

NO...Do not issue a refund if, within the next 60 days, the household will incur utility expenses with your company.

Upon receipt of this letter, begin disbursing refunds according to these guidelines.

As noted above, a list of LIHEAP account holders receiving funds should be maintained at your site. The list should include the following information:

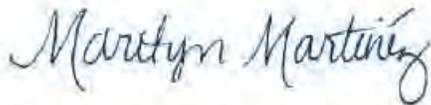
- a. Account holder name
- b. Account number
- c. Amount of refund
- d. Old address, if applicable
- e. New address, if applicable and available.

If HSD needs to access this refund list for any evaluations or for audit purposes, it must be provided at the time of HSD's request. All funds that are to be returned to HSD should be accompanied by a list of account holder names, account numbers, and the dollar amounts for each account holder returned to HSD.

Thank you for your continued cooperation with HSD and the LIHEAP program.

If you have any questions, please contact JoAnn Lapington, by phone at 505-827-7258 or by email at JoAnn.Lapington@state.nm.us

Sincerely,



Marilyn Martinez, Acting ISD Director

Staff Summary Report

MEETING DATE: November 25, 2014
AGENDA ITEM: XI. Business Item (A)
AGENDA TITLE: Intent to Adopt Ordinance 2014-440: Amending Chapter 1, General Provisions, Section 12. Mandatory Penalty and Fees

ACTION REQUESTED BY: Judge Gray
ACTION REQUESTED: Approve Intent to Adopt
SUMMARY BY: Judge Gray

PROJECT DESCRIPTION / FACTS (Leading Department)

The City of Aztec last updated our Municipal court traffic penalty assessment in 2013.

With the passing of the State Law prohibiting "Texting While Driving" the Aztec Municipal Court needs to include the fine for such within Section 1-12 Mandatory Penalty and Fees; Disposition and Use of Fees of the City Code.

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-7-374	Texting While Driving	No	\$61	\$29	\$90

Judge Gray will be present at the Commission meeting to answer any questions that you may have.

SUPPORT DOCUMENTS: Ordinance 2014-440

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Intent to Adopt Ordinance 2014-440: Amending Chapter 1, General Provisions, Section 12. Mandatory Penalty and Fees

**City of Aztec
ORDINANCE 2014-440**

**An Ordinance Amending Chapter 1, General Provisions,
Section 12. Mandatory Penalty and Fees; Disposition and Use of Fees.**

WHEREAS: The Aztec Municipal Court staff has thoroughly reviewed and analyzed the Fine Schedule for all offenses within the City of Aztec;

WHEREAS: The Aztec Municipal Court staff has proposed that the attached fine schedule be adopted by the Aztec City Commission as the Fine Schedule for all offenses occurring within the City of Aztec:

NOW THEREFORE BE IT ORDAINED by the Governing Body of the City of Aztec, New Mexico that Ordinance 2014-440 be adopted.

PASSED, APPROVED, SIGNED AND ADOPTED this _____ day of _____ 2014.

By the Aztec City Commission, City of Aztec, New Mexico.

Mayor Sally Burbridge

ATTEST:

Karla Sayler, City Clerk

APPROVE AS TO FORM:

Larry Thrower, City Attorney

ADVERTISED DATE OF FINAL ADOPTION: _____

EFFECTIVE DATE OF ORDINANCE: _____

Sec. 1-12. Mandatory Penalty and Fees; Disposition and Use of Fees.

1. Mandatory Penalty. Unless a lesser maximum penalty or a specific penalty is established by ordinance for a particular offense, the maximum penalty for violation of any municipal ordinance shall be as follows:

- (1) Except for those violations of ordinances described in subsections 1-2 and 1-3 of this section, a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or both;
- (2) For violations of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than nine hundred and ninety-nine dollars (\$999.00) or imprisonment for not more than one hundred seventy-nine (179) days or both; and
- (3) For violations of a industrial user waste-water pretreatment ordinance as required by the United States Environmental Protection Agency, a fine of not more than nine hundred and ninety-nine dollars (\$999.00) a day for each violation.
(Code 2007, 1-12-1)

2. Specific Penalty Schedule. A fine and fee schedule for specific penalties.

(1) *Traffic and Offenses.* In reference to Chapter 12 and 24.

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-3-1	Vehicle Subject To Registration	No	\$51	\$29	\$80
12-1/66-3-4.A	Register and Certificate of Title	No	\$51	\$29	\$80
12-1/66-3-6	Temporary Permit Required	No	\$51	\$29	\$80
12-1/66-3-13	Registration Required	No	\$51	\$29	\$80
12-1/66-3-17	License Tag Expired	No	\$51	\$29	\$80
12-1/66-3-17.A	Registration Renewals/Sticker Only	No	\$51	\$29	\$80
12-1/66-3-17.B	Replacement of Plate	No	\$51	\$29	\$80
12-1/66-3-17.C	Owner Shall Apply & Obtain Replacement Plate	No	\$51	\$29	\$80
12-1/66-3-18	Display of Registration Plates	No	\$51	\$29	\$80
12-1/66-3-19	Renewal of Registration	No	\$51	\$29	\$80
12-1/66-3-23	Registration Address Change	No	\$51	\$29	\$80
12-1/66-3-104	Use Registration Wrong Vehicle	No	\$101	\$29	\$130
12-1/66-3-105	Transfer of Ownership	No	\$51	\$29	\$80
12-1/66-3-301	Registration By Non-residents	No	\$51	\$29	\$80
12-1/66-3-401	Operate Vehicle with Special Plate	No	\$51	\$29	\$80
12-1/66-3-701	Bicycles; Effect of Regulations	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-702	Traffic Laws Apply To Persons Riding	Yes	Set at Hearing	\$29	Set at Hearing

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
	Bicycles				
12-1/66-3-703	Riding On Bicycles	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-704	Clinging To Vehicles	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-705	Riding On Roadways and Bicycle Paths	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-706	Carrying Articles On Bicycle	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-707	Lamps and Other Equipment On Bicycles	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-801	Equipment Violation	No	\$41	\$29	\$70
12-1/66-3-802	When Lighted Lamps Required	No	\$41	\$29	\$70
12-1/66-3-804	Headlamps Required (# Required)	No	\$41	\$29	\$70
12-1/66-3-805	Tail Lamps Required (LP Lamp)	No	\$41	\$29	\$70
12-1/66-3-806	Motor Vehicle To Be Equipped with Reflectors	No	\$41	\$29	\$70
12-1/66-3-807	Stop Lamps & Turns Signals	No	\$41	\$29	\$70
12-1/66-3-810	Color of Lamps - Front/Side/Rear/License	No	\$41	\$29	\$70
12-1/66-3-813	Lamps/Reflectors On Trailers	No	\$41	\$29	\$70
12-1/66-3-824	Lamp/Flag Projecting Load	No	\$41	\$29	\$70
12-1/663-825	Lamps On Parked Vehicles	No	\$41	\$29	\$70
12-1/66-3-827	Stop Lamps / Auxiliary Lamp	No	\$41	\$29	\$70
12-1/66-3-828	Signal Lamps & Devices (Brake Lamps White)	No	\$41	\$29	\$70
12-1/66-3-829	Additional Lighting Equipment	No	\$41	\$29	\$70
12-1/66-3-831	Multiple-Beam Equipment (Dimming)	No	\$41	\$29	\$70
12-1/66-3-834	Number of Driver Lamps Required	No	\$41	\$29	\$70
12-1/66-3-835	Spec Restrict On Lamps (Driving Lights)	No	\$41	\$29	\$70
12-1/66-3-840	Brakes	No	\$41	\$29	\$70
12-1/66-3-841	Improper Height / Handle Bar Mc	No	\$41	\$29	\$70
12-1/66-3-842	M/C Maneuverability	No	\$41	\$29	\$70
12-1/66-3-843	Horns and Warning Devices	No	\$41	\$29	\$70
12-1/66-3-844	Mufflers	No	\$41	\$29	\$70
12-1/66-3-845	Mirrors	No	\$41	\$29	\$70
12-1/66-3-846	Obstructed Windshield	No	\$41	\$29	\$70

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-3-846.1	Tinting on Windshields and Windows	Yes	\$41	\$29	\$70
12-1/66-3-847	Restrictions As To Tire Equipment	No	\$41	\$29	\$70
12-1/66-3-852	Stop Vehicle Interfere with Traffic	No	\$41	\$29	\$70
12-1/66-3-874	Safety Belts Required In Vehicles	No	\$41	\$29	\$70
12-1/66-3-887	Slow-Moving Vehicle Identification	No	\$41	\$29	\$70
12-1/66-3-901	Unsafe Condition – Vehicle	No	\$101	\$29	\$130
12-1/66-3-1003	Off Hwy Motor Vehicle Registration	No	\$51	\$29	\$80
12-1/66-3-1011	Operation On Streets or Highways	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-1012	Movement of off-Highway Vehicles Adjacent To Highway	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-3-1101	Mopeds: Standard, Operator Requirement	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-4-3	Use of Temporary Permits	No	\$51	\$29	\$80
12-1/66-5-2	Drivers Must Be Licensed	No	\$51	\$29	\$80
12-1/66-5-5	Person Not To Be Licensed	No	\$51	\$29	\$80
12-1/66-5-7	Drives License Class / Exam	No	\$51	\$29	\$80
12-1/66-5-8	Instruction Permit / Temp License	No	\$51	\$29	\$80
12-1/66-5-9	Appl For License / Temp License	No	\$51	\$29	\$80
12-1/66-5-14	No Motorcycle Endorsement	No	\$51	\$29	\$80
12-1/66-5-16	Driver License Carried/Exhibited On Demand	No	\$51	\$29	\$80
12-1/66-5-18	Altered / Forged / Fictitious License	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-19	Restricted Licenses	No	\$51	\$29	\$80
12-1/66-5-20	Duplicate Licenses	No	\$51	\$29	\$80
12-1/66-5-22	Drivers License Address Change	No	\$51	\$29	\$80
12-1/66-5-34	No Operation Under Forged License On Suspension	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-37.A	Unlawful Use of License	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-38	False Affidavit Perjury	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-39	Drivers License Suspended/Revoked	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-40	Permit Minor To Drive	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-41	Permit Unauthorized Person To Drive	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-59	Commercial Drivers License Required	No	\$51	\$29	\$80

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-5-205	Vehicle Must Have Insurance	No	\$301	\$29	\$330
12-1/66-5-205.1	Uninsured Motorist/Req Following Accident	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-230	Surrender of License and Registration	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-231	Forged Evidence of Insurance	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-5-409	Unlawful Use of Identification Card	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-4	Obedience To Police Officers	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-6	Authorized Emergency Vehicles	No	\$51	\$29	\$80
12-1/66-7-7	Traffic Laws Apply To Riding/Driving/Animals	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-104	Obedience Traffic Devices (Cover All)	No	\$61	\$29	\$90
12-1/66-7-105	Traffic Control Signal Legend (Lights)	No	\$61	\$29	\$90
12-1/66-7-106	Pedestrian Control Signal	No	\$41	\$29	\$70
12-1/66-7-108	Display Unauthorized Sign	No	\$41	\$29	\$70
12-1/66-7-109	Interfere with Traffic Dev	No	\$61	\$29	\$90
12-1/66-7-201	Duty Accident - Death or Injury	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-202	Accident Involving Damage Vehicle	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-203	Duty To Give Information / Render Aid	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-204	Duty Upon Striking Unattended Vehicle	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-205	Duty Upon Striking Fixtures/Other Objects	No	Set at Hearing	\$29	Set at Hearing
12-1/66-7-206	Immediate Notice of Accident	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-207	Written Reports On Accident	No	\$61	\$29	\$90
12-1/66-7-208	Driver Unable To Report	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-210	False Report	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-301.A.1	Speeding School Zone	No	\$101	\$29	\$130
12-1/66-7-301.A.2	Speeding 1 To 15 Mph Over	No	\$61	\$29	\$90
12-1/66-7-301.A.3	Speeding 16 To 25 Mph Over	No	\$76	\$29	\$105
12-1/66-7-301.A.4	Speeding 26 Mph and Up	No	\$121	\$29	\$150
12-1/66-7-301.B.1	Speeding Basic Rule	No	\$61	\$29	\$90
12-1/66-7-303.1	Construction Zone	No	\$66	\$29	\$95

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-7-303.A.4	Construction Zone with Sign	No	\$122	\$29	\$151
12-1/66-7-303.D	Restricted Speed Zone	No	\$61	\$29	\$90
12-1/66-7-305	Minimum Speed	No	\$51	\$29	\$80
12-1/66-7-308	Improper Lane - Wrong Side	No	\$61	\$29	\$90
12-1/66-7-309	Improper Pass - Opposite Direct	No	\$51	\$29	\$80
12-1/66-7-310	Improper Pass - Overtake - Left	No	\$51	\$29	\$80
12-1/66-7-311	Improper Pass - On Right	No	\$51	\$29	\$80
12-1/66-7-312	Limitations On Overtaking On The Left	No	\$51	\$29	\$80
12-1/66-7-313	Further Limit On Driver/Left of Center of Roadway	No	\$51	\$29	\$80
12-1/66-7-314	Hazardous Vehicles Movement/Escort	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-315	No Passing Zone	No	\$51	\$29	\$80
12-1/66-7-316	One Way Roadway	No	\$61	\$29	\$90
12-1/66-7-317	Driving On Roadways Laned For Traffic	No	\$71	\$29	\$100
12-1/66-7-318	Following Too Closely	No	\$71	\$29	\$100
12-1/66-7-319	Driving On Divided Highway		\$71	\$29	\$100
12-1/66-7-320	Restricted Access Violation	No	\$51	\$29	\$80
12-1/66-7-321	Controlled Access Violation	No	\$51	\$29	\$80
12-1/66-7-322	Required Position/ Method Turning	No	\$51	\$29	\$80
12-1/66-7-323	Turn On Curve or Crest	No	\$51	\$29	\$80
12-1/66-7-324	Starting Parked Vehicle	No	\$51	\$29	\$80
12-1/66-7-325	Turn Movement & Required Signals	No	\$51	\$29	\$80
12-1/66-7-326	Signals By Hand / Arm or Signal Device	No	\$51	\$29	\$80
12-1/66-7-327	Method of Giving Hand / Arm Signals	No	\$51	\$29	\$80
12-1/66-7-328	Fail Yield / Approach Enter	No	\$51	\$29	\$80
12-1/66-7-329	Fail Yield / Turn Left	No	\$51	\$29	\$80
12-1/66-7-330	Vehicles Entering Stop or Yield Intersection	No	\$51	\$29	\$80
12-1/66-7-331	Fail Yield / Enter Private Drive	No	\$51	\$29	\$80
12-1/66-7-332	Operation of Vehicle On Approach of Emergency Vehicle	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-332.1	Approach of Oncoming Vehicle: Yield Right of Way	No	\$51	\$29	\$80
12-1/66-7-333	Pedestrian - Violation	No	\$51	\$29	\$80

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-7-334	Pedestrian – Right-of-Way	No	\$51	\$29	\$80
12-1/66-7-335	Cross - Other Than Crosswalks	No	\$51	\$29	\$80
12-1/66-7-336	School Crossings	No	\$61	\$29	\$90
12-1/66-7-337	Drivers To Exercise Due Care	No	\$51	\$29	\$80
12-1/66-7-339	Pedestrian On Roadways	No	\$51	\$29	\$80
12-1/66-7-340	Pedestrians Solicit Rides/Bus in Roadway	No	\$51	\$29	\$80
12-1/66-7-345	Fail Stop - Stop / Yield Sign	No	\$61	\$29	\$90
12-1/66-7-346	Fail Stop - Alley / Private Drive	No	\$51	\$29	\$80
12-1/66-7-347	Passing School Bus	No	\$101	\$29	\$130
12-1/66-7-349	Stop / Stand / Park Districts	No	\$41	\$29	\$70
12-1/66-7-350	Remove Illegally Stopped Vehicle	No	\$41	\$29	\$70
12-1/66-7-351	Stop / Stand / Parking Prohibited	No	\$30	-	\$30
12-1/66-7-352	Additional Parking Regulations	No	\$30	-	\$30
12-1/66-7-352.5	Unauthorized Use: Penalty (Handicap Parking)	No	\$100	-	\$100
12-1/66-7-353	Unattended Motor Vehicle	No	\$51	\$29	\$80
12-1/66-7-354	Limitation On Backing	No	\$51	\$29	\$80
12-1/66-7-355	Improper Riding - Motorcycles	No	\$51	\$29	\$80
12-1/66-7-356	Helmets Required	No	\$41	\$29	\$70
12-1/66-7-357	Obstructing Drivers View / Mech	No	\$51	\$29	\$80
12-1/66-7-360	Coasting Prohibited	Yes	\$51	\$29	\$80
12-1/66-7-361	Following Fire Apparatus	No	\$51	\$29	\$80
12-1/66-7-362	Crossing Fire Hose	No	\$51	\$29	\$80
12-1/66-7-363	Animals On Highway	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-7-364	Put Glass, Etc On Highway	No	\$101	\$29	\$130
12-1/66-7-366	Occupy Moving House Trailer	No	\$51	\$29	\$80
12-1/66-7-367	Improper Opening of Doors	No	\$41	\$29	\$70
12-1/66-7-369.A	Child Restraint Device Required – 1st offense	No	\$61	\$29	\$90
12-1/66-7-369.A	Child Restraint Device Required - 2nd offense	No	\$71	\$29	\$100
12-1/66-7-369.A	Child Restraint Device Required - 3rd offense	No	\$81	\$29	\$110
12-1/66-7-372	Mandatory Seatbelts Law	No	\$51	\$29	\$80
12-1/66-7-374	Texting While Driving	No	\$61	\$29	\$90

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-1/66-7-401	Weight & Size Limitations	No	\$41	\$29	\$70
12-1/66-7-402	Width of Vehicles	No	\$41	\$29	\$70
12-1/66-7-403	Projecting Loads / Passing Vehicle	No	\$41	\$29	\$70
12-1/66-7-404	Height & Length - Vehicles	No	\$41	\$29	\$70
12-1/66-7-405	Minimum Vehicle Size	No	\$41	\$29	\$70
12-1/66-7-406	Special Load Limitations	No	\$41	\$29	\$70
12-1/66-7-407	Improper Load	No	\$41	\$29	\$70
12-1/66-7-408	Trailers & Towed Vehicles	No	\$41	\$29	\$70
12-1/66-7-413.A	Overload Permit	No	\$41	\$29	\$70
12-1/66-7-416.B	Liability For Damage	No	\$101	\$29	\$130
12-1/66-8-2	Improper Use of Registration	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-10	Duplicate or Replacement Registration Plate	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-102	DWI	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-102.D	DWI Aggravated	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-113	Reckless Driving	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-114	Careless Driving	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-115	Racing on Highways	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-120	Parties to a Crime	Yes	Set at Hearing	\$29	Set at Hearing
12-1/66-8-121	Offenses Person Owning/Controlling Vehicle	No	\$61	\$29	\$90
12-1/66-8-138	Open Container In Vehicle	No	\$100	\$29	\$129
12-2	Aiding An Illegal Activity	Yes	Set at Hearing	\$29	Set at Hearing
12-3	Concealing	Yes	Set at Hearing	\$29	Set at Hearing
12-21	Assault	Yes	Set at Hearing	\$29	Set at Hearing
12-22	Battery	Yes	Set at Hearing	\$29	Set at Hearing
12-23	Libel	Yes	Set at Hearing	\$29	Set at Hearing
12-41	Criminal Damage To Property	Yes	Set at Hearing	\$29	Set at Hearing
12-42	Destructing/Defacing of Property	Yes	Set at Hearing	\$29	Set at Hearing

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
12-43	Tamper with Utilities	Yes	Set at Hearing	\$29	Set at Hearing
12-61	Petty Larceny	Yes	Set at Hearing	\$29	Set at Hearing
12-62	Shoplifting	Yes	Set at Hearing	\$29	Set at Hearing
12-63	Falsely Receive Services	Yes	Set at Hearing	\$29	Set at Hearing
12-64	Fraud	Yes	Set at Hearing	\$29	Set at Hearing
12-65	Receiving Stolen Property	Yes	Set at Hearing	\$29	Set at Hearing
12-81	Worthless Check – Notice	Yes	Set at Hearing	\$29	Set at Hearing
12-82	Worthless Check – Purpose	Yes	Set at Hearing	\$29	Set at Hearing
12-83	Worthless Check – Exception	Yes	Set at Hearing	\$29	Set at Hearing
12-84	Unlawful To Issue Worthless Check	Yes	Set at Hearing	\$29	Set at Hearing
12-85	Intent To Defraud - Worthless Check	Yes	Set at Hearing	\$29	Set at Hearing
12-101	Criminal Trespass	Yes	Set at Hearing	\$29	Set at Hearing
12-102	Wrongful Entry Public Facility	Yes	Set at Hearing	\$29	Set at Hearing
12-103	Wrongful Use of Public Property	Yes	Set at Hearing	\$29	Set at Hearing
12-104	Simple Trespassing	Yes	Set at Hearing	\$29	Set at Hearing
12-105	Idling, Loitering or Prowling	Yes	Set at Hearing	\$29	Set at Hearing
12-121	Disorderly Conduct	Yes	Set at Hearing	\$29	Set at Hearing
12-121.A	Disorderly House	Yes	Set at Hearing	\$29	Set at Hearing
12-122	Unlawful Assembly	Yes	Set at Hearing	\$29	Set at Hearing
12-123	Disturbing The Peace	Yes	Set at Hearing	\$29	Set at Hearing
12-124	Obstructing Movement	Yes	Set at Hearing	\$29	Set at Hearing
12-125	Unreasonable Noise	Yes	Set at Hearing	\$29	Set at Hearing
12-141	Removal of Barricades	Yes	Set at Hearing	\$29	Set at Hearing
12-142	Open Container	Yes	Set at Hearing	\$29	Set at Hearing
12-161	Unlawful Use of Deadly Weapon	Yes	Set at	\$29	Set at

Citing	Title	Appearance Required	Fine Amount	Court Costs	Total Fine
			Hearing		Hearing
12-162	Negligent Use of a Deadly Weapon	Yes	Set at Hearing	\$29	Set at Hearing
12-163	Unlawful Propulsion of Missiles	Yes	Set at Hearing	\$29	Set at Hearing
12-164	Unlawful Possession of Weapons	Yes	Set at Hearing	\$29	Set at Hearing
12-165	Firing of Rifle or Pistol	Yes	Set at Hearing	\$29	Set at Hearing
12-181	Curfew of Minors	Yes	Set at Hearing	\$29	Set at Hearing
12-182	Drinking in Public	Yes	Set at Hearing	\$29	Set at Hearing
12-183	Unlawful Possession of Marijuana	Yes	Set at Hearing	\$29	Set at Hearing
12-184	Obscenity	Yes	Set at Hearing	\$29	Set at Hearing
12-185	Prostitution	Yes	Set at Hearing	\$29	Set at Hearing
12-186	Patronizing Prostitutes	Yes	Set at Hearing	\$29	Set at Hearing
12-187	Indecent Exposure	Yes	Set at Hearing	\$29	Set at Hearing
12-206	Impersonating Public Officer	Yes	Set at Hearing	\$29	Set at Hearing
12-207	False Reports of Crimes	Yes	Set at Hearing	\$29	Set at Hearing
12-208	Resisting or Obstructing an Officer	Yes	Set at Hearing	\$29	Set at Hearing
12-209	Escape from Custody	Yes	Set at Hearing	\$29	Set at Hearing
12-210	False Alarms	Yes	Set at Hearing	\$29	Set at Hearing

Staff Summary Report

MEETING DATE:	November 25, 2014
AGENDA ITEM:	XI. BUSINESS AGENDA (B)
AGENDA TITLE:	Intent To Adopt Ordinance 2014-441 Amending Ordinance 2013-423 Authorizing City of Aztec New Mexico Loan Agreement with New Mexico Environment Department Clean Water State Revolving Fund, Wastewater Interceptor Line
ACTION REQUESTED BY:	FINANCE DEPARTMENT
ACTION REQUESTED:	Approve Intent To Adopt Ordinance 2014-441, NMED Clean Water State Revolving Fund
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS

1950s, 7500' of 15" clay pipe is installed for the purpose of collecting and transporting sewage to the City's wastewater treatment plant (interceptor line). The city contracted with Huitt-Zollars for the analysis and design of the replacement of the interceptor line.

The City applied for a NMED CWSRF (New Mexico Environment Department Clean Water State Revolving Fund) loan and was notified of approval for a loan of \$3,599,564 (20 yrs @ 3%) and a grant of \$350,000. The loan ordinance was adopted and interim loan agreement with NMED is approved by City Commission in June 2013.

Design work continued through 2013 with final design and engineer's probable estimate of construction costs provided in August 2014. Including an estimate for construction management services, the City requested if additional CWSRF funds were available. The City's finances were reviewed and additional funds were approved by NMED in November 2014.

Loan Ordinance

Additional loan funds in the amount of \$1,450,436 have been authorized by NMED requiring an ordinance amending the original for the new amount of \$5,050,000. Terms of the additional funding remain the same as the original amount (20 years @ 3%). Changes between the original ordinance and the amended ordinance are in red.

Total funding available through the NMED CWSRF loan includes:

\$5,050,000 loan proceeds, 3% @ 20yrs
\$ 350,000 loan subsidy (grant)
\$5,400,000 total funding package

The City will be required to fund a debt service reserve equal to one annual payment (estimated at \$339,440) AND a replacement reserve equal to 5% of the loan (estimated at \$252,500). Both reserves are required to be funded in equivalent amounts over a six year period and cannot be

used without NMED approval. This does not require the establishment of a separate bank account but the reserves will be noted in the annual financial statements to meet the requirements of the loan ordinance. Until the reserves are fully funded, the annual requirement will be included in the annual budget in the Joint Utility Fund beginning in FY16.

The first debt payment on the loan will be due one year after full reimbursement of the loan funds or completion of the project.

The loan may be prepaid at any time.

The loan is secured by net system revenues of the Joint Utility Fund. Net system revenues are defined as gross revenues less operation and maintenance expenses, debt obligations, approved indirect charges, capital replacements and repair of the system and required set asides for the debt service reserve requirement and replacement reserve requirement.

A public hearing specific to the loan ordinance will be scheduled for the December 9, 2014 meeting IF the commission approves the intent to adopt the ordinance on November 25, 2014.

Both NMED and City Attorney have reviewed the ordinance and found to be legally sufficient for the intended purpose.

Project Schedule

Project Advertises	December 2014
Pre-Bid	January 5, 2015
Bid Opening	January 19, 2015
Award (Tentative)	January 27, 2015
Notice to Proceed	March 2015
Construction Time	6 – 9 months (estimate)

FISCAL INPUT

Utility rates, specifically wastewater, will require review during the year to ensure sufficient revenues to meet the debt obligation.

SUPPORT DOCUMENTS: Ordinance 2014-441 NMED CWSRF Loan

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve the Intent To Adopt Ordinance 2014-441, NMED Clean Water State Revolving Fund

CITY OF AZTEC, NEW MEXICO

ORDINANCE NO. 2014-441

AUTHORIZING THE CITY OF AZTEC, NEW MEXICO (CITY) TO ENTER INTO **AN AMENDED** LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT FOR THE PURPOSE OF OBTAINING ADDITIONAL WASTEWATER CONSTRUCTION LOAN FUNDS IN THE PRINCIPAL AMOUNT OF **\$1,450,436, FOR A TOTAL LOAN AMOUNT NOT TO EXCEED \$5,050,000** PLUS ACCRUED CONSTRUCTION INTEREST,; DESIGNATING THE USE OF THE LOAN FUNDS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, MODIFYING AND OTHERWISE IMPROVING THE WASTEWATER FACILITIES OF THE CITY'S JOINT UTILITY SYSTEM; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET SYSTEM REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S JOINT UTILITY SYSTEM; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFOR.

If not otherwise defined in these recitals, capitalized terms used herein shall have the meanings given them in Section 1 of this Ordinance.

WHEREAS, the City is a legally and regularly created public body, organized under the general laws of the State; and

WHEREAS, the City now owns, operates and maintains a joint public utility constituting a joint water, wastewater (i.e., sanitary sewer) and electric system (the "System"), which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the present System is insufficient and inadequate to meet the needs of the City and its residents for the treatment and disposal of wastewater; and

WHEREAS, the Loan Agreement and Note will be payable solely from Net System Revenues; and

WHEREAS, the funds for this project will include funds from a one-time federal grant to the NMED from the Environmental Protection Agency; and

WHEREAS, the Project is subject to specific requirements of the federal grant; and

WHEREAS, the City has the following obligations to which Net System Revenues have already been pledged; and

WHEREAS, pursuant to City Ordinance No. 2008-353, duly adopted and approved on October 21, 2008, the City entered into a Loan Agreement, Loan No. CWSRF009 with the New Mexico Environment Department("NMED") dated February 3, 2010 ("2008 NMED Loan Agreement"); and

WHEREAS, pursuant to City Ordinance No. 2013-423, duly adopted and approved on June 10, 2013, the City entered into an Interim Loan Agreement, Loan No. CWSRF 021 with the New Mexico Environment Department ("NMED") dated June 24, 2013 ("2013 NMED Interim Loan Agreement"); and

WHEREAS, except as stated above and with respect to obligations relating to such bonds and other obligations, the Net System Revenues have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Net System Revenues on the date of this Ordinance; and

WHEREAS, the Commission has determined that it is necessary and in the best interest of the City to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED (as defined herein).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF AZTEC:

Section 1. DEFINITIONS. As used in this Ordinance, the following terms shall, for all purposes, have the meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined);

2008 NMED Loan Agreement.The Loan Agreement with the NMED dated February 3, 2010.

2013 NMED Interim Loan Agreement. The Interim Loan Agreement with the NMED dated June 24, 2013.

ACT.The general laws of the State, including the Wastewater Facility Construction Loan Act at sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended; enactments of the Council relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the City as a public body under authority given by the Constitution and Statutes of the State.

ADMINISTRATIVE FEE. A fee assessed and collected by the NMED from the City on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the City on the same date that principal and interest on the loan are due, for deposit in the Clean Water Administrative Fund;

ANNUAL AUDIT or SINGLE AUDIT. Financial statements of the City as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

ANNUAL LOAN REPAYMENT ACCOUNT. An account established under this Ordinance and held by the City, funded from the Net System Revenues in the amount necessary for payment of the principal, interest and administrative fees due annually under the Loan Agreement and Note.

AUTHORIZED OFFICER. The City's Mayor, Manager, Finance Director, or other officer or employee of the City as designated by City Resolution Number 2013-915 approved by the governing body of the City, as amended.

CITY. The entity requesting funds pursuant to the Act.

COMMISSION. The governing body of the City.

DEBT SERVICE RESERVE ACCOUNT. The account established under this Ordinance and held by the City as required pursuant to the Note, funded from Net System Revenues in the amount of the Debt Service Reserve Requirement.

DEBT SERVICE RESERVE REQUIREMENT. An amount equal to one annual repayment of principal, interest and administrative fees due pursuant to the Note.

FISCAL YEAR. The twelve-month period commencing on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period which the City or other appropriate authority hereafter may establish as the fiscal year for the System.

GROSS REVENUES. All income and revenues directly or indirectly derived by the City from the operation and use of the System.

HEREIN, HEREBY, HEREUNDER, HEREOF, HEREINBEFORE and HEREAFTER. Refer to this Ordinance generally and not solely to the particular portion of this Ordinance in which such word is used.

JOINT UTILITY O&M FUND. The fund established under this Ordinance for deposit of the Gross Revenues of the System.

JOINT UTILITY SYSTEM OR SYSTEM. The City's municipally owned public utility designated as the City's joint utility system, consisting of water, wastewater and electric facilities.

LOAN. The loan of funds from NMED made pursuant to the Loan Agreement.

LOAN AGREEMENT. One or more loan agreements in the form attached to the Ordinance as Exhibit A, and in the form of the amended loan agreement which shall amend Exhibit A to state the exact amount the NMED loaned to the City, and which shall be executed upon completion of the Project, to be dated on the date of execution thereof between the City and the NMED pursuant to which funds will be loaned to the City to construct the Project and pay eligible costs relating thereto, as amended from time to time.

LOAN SUBSIDY GRANT. A sub-grant of funds to the City from a one-time federal grant of funds to the NMED by EPA, for the purpose of subsidizing the amount loaned to the City under the Loan Agreement and Note.

NET SYSTEM REVENUES. Gross Revenues LESS the following expenses: (1) Operation and Maintenance expenses of the System, (2) Parity Bonds or Parity Obligations (3) approved indirect charges, (4) any amounts expended for capital replacements and repair of System, and (5) the required set asides for Debt Service Reserve Requirement and Replacement Reserve Requirement.

NMED.The New Mexico Environment Department, successor to the Environmental Improvement Division of the New Mexico Health and Environment Department and any assignee of the NMED pursuant to the Loan Agreement and Note, or its successor agency as provided by law.

NMSA.New Mexico Statutes Annotated, 1978 Compilation as amended and supplemented.

NOTE.The interim and final promissory notes in the forms attached to the Loan Agreement as Exhibit B, attached hereto issued by the City to the NMED, evidencing the indebtedness of the City to the NMED incurred pursuant to the Ordinance and Loan Agreement.

OPERATION AND MAINTENANCE. All reasonable and necessary current expenses of the System, paid or accrued, relating to operating, maintaining and repairing the System.

ORDINANCE.This Ordinance as amended or supplemented from time to time.

PARITY OBLIGATIONS. The Loan Agreement and Note, the 2008 NMED Loan Agreement, **2013 NMED Interim Loan Agreement** and other bonds or other obligations payable from Net System Revenues of the System issued with a lien on the Net System Revenues on parity with the lien thereon of the Loan Agreement and Note, hereafter issued with the prior written consent of the NMED.

PROJECT. Wastewater collection and treatment system upgrades approved by the NMED.

PROJECT COMPLETION DATE. The date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

REGULATIONS. Regulations promulgated by the Water Quality Control Commission Regulations at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 - 20.7.7 NMAC.

REPLACEMENT RESERVE ACCOUNT. The account established under this Ordinance and held by the City, to be funded from Net System Revenues in the amount of the Replacement Reserve Requirement.

REPLACEMENT RESERVE REQUIREMENT. An amount to be funded by the City in an annual deposit of one-sixth of 5% of the sum of the final principal amount loaned and the amount of the loan subsidy granted to the City from NMED.

STATE. The State of New Mexico.

Section 2. RATIFICATION. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Commission, the officers and employees of the City, directed toward the Loan Agreement and the Note, is hereby ratified, approved and confirmed.

Section 3. FINDINGS. The Commission hereby declares that it has considered all necessary and relevant information and data and hereby makes the following findings:

A. The execution and delivery of the Loan Agreement and the Note pursuant to the Act to provide funds to finance the Project, is necessary and in the interest of the public health, safety and welfare of the residents of the City and will result in savings of debt service costs to the City.

B. The City will acquire, improve and finance the Project.

C. The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the cost of the Project.

D. The Project is and will be part of the System, which is a publicly owned water, wastewater and electric system the purposes of which include the disposal and treatment of wastewater, either by surface or underground methods.

E. The Net System Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement and Note.

Section 4. JOINT UTILITY. The municipal water, wastewater and electric facilities shall continue to constitute a joint utility (i.e., the System) and shall be operated and maintained as such.

Section 5. AUTHORIZATION OF PROJECT. The acquisition and construction of the Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan Agreement and Note are hereby authorized at a cost not to exceed the principal amount of **\$5,050,000.00** excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreement and Note.

Section 6. AUTHORIZATION OF LOAN AGREEMENT.

A. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City and acquiring the Project, it is hereby declared necessary that the City, pursuant to the Act and the Regulations execute and deliver, and the City is hereby authorized to execute and deliver, the Loan Agreement and the Note as Parity Obligations to be payable and collectible solely from the Net System Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the City over the construction period of the Project. The aggregate principal amount of the Note shall not exceed \$5,050,000.00 plus accrued construction interest without the adoption of another Ordinance amending the Ordinance by the Commission, and the annual interest rate and

administrative fees on that principal amount shall not exceed three (3%) percent per annum collectively. Interest and the Administrative Fee shall be computed as a percentage per year on the outstanding principal amount on the Loan on the basis of a 365 day year, actual number of days lapsed. The final maturity date on the Note shall not extend beyond 20 years from the Project Completion Date. The Loan shall be repaid in substantially equal annual installments of principal, interest and administrative fees on the dates provided in the Loan Agreement, with the first annual installment due within one year of the Project Completion Date, but no later than one year after the date of the warrant of final payment from the NMED. The City must obtain the written consent of the NMED before issuing additional obligations secured by Net System Revenues. The NMED has given its written consent allowing the City to issue and incur the obligation to be evidenced by the Loan Agreement and the Note.

B. The City is hereby authorized to accept a Loan Grant Subsidy under the terms of the Loan Agreement. The aggregate Loan Grant Subsidy amount shall not exceed \$350,000 without the adoption of another Ordinance amending the Ordinance by the Commission. By accepting a Loan Grant Subsidy, the City is a sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the City is responsible for complying with the specific requirements and the conditions of the one-time federal grant. If the City fails to satisfy any federal grant requirements or conditions, the City may be required to refund any federal grant funds disbursed to the City from NMED. Specific federal grant requirements include but are not limited to:

- (1) Federal Grant Reporting Requirements; and
- (2) Wage Rate Requirements

C. The form of the Loan Agreement and the Note are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Loan Agreement and the Note, and any extensions of or amendments to any such documents to be executed after completion of the Project, or any substitution therefore, substantially in the forms attached hereto as Exhibits A and B with such changes therein as are not inconsistent with this Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this Section.

D. From and after the date of the initial execution and delivery of the Loan Agreement and the Note, Authorized Officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

Section 7. SPECIAL LIMITED OBLIGATIONS. The Loan Agreement and the Note and all payments of principal, interest and administrative fees thereon shall be special limited, and not general, obligations of the City and shall be payable and collectible solely from the Net System Revenues which are irrevocably pledged (but not exclusively pledged) as set forth in Section 5 and 6 of this Ordinance. The NMED may not look to any general or other municipal fund for the payment of the principal, interest or administrative fees on the Loan Agreement and the Note except the designated special funds pledged therefore. The Loan Agreement and the Note shall not constitute indebtedness or debts within the meaning of any constitutional or statutory provision or limitation, nor shall they be considered or be held to be general obligations of the City and shall recite that they are payable and collectible solely out of

the Net System Revenues, the income from which is so pledged, and that the NMED may not look to any general or other municipal fund for the payment of the principal, interest or the administrative fees on the Loan Agreement or the Note.

Section 8. OPERATION OF PROJECT. The City will operate and maintain the Project so that it will function properly over its structural and material design life, which is not less than 20 years.

Section 9. USE OF PROCEEDS. The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the City for the Project or to pay contractors or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.

Section 10. JOINT UTILITY O&M FUND. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest or administrative fees, all Gross Revenues shall continue to be set aside and credited to the Joint Utility O&M Fund.

Section 11. DEBT SERVICE, REPLACEMENT RESERVE, AND ANNUAL LOAN REPAYMENT ACCOUNTS.

A. DEBT SERVICE RESERVE ACCOUNT. A Debt Service Reserve Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount of the Debt Service Reserve Requirement. The City shall deposit no less than one-sixth of the amount of one annual repayment of principal, interest and the administrative fees from the Joint Utility O&M Fund into this account in each 12-month period beginning at final loan closing and continuing until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. In the event that funds from the Debt Service Reserve Account are used to service the Loan Agreement and the Note, the City shall replenish

the Debt Service Reserve Account as soon as possible by depositing funds in the manner described above until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee the City shall fund the Debt Service Reserve Account and identify this in the Annual Audit.

B. REPLACEMENT RESERVE ACCOUNT. A Replacement Reserve Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount of the Replacement Reserve Requirement. The City shall deposit no less than one-sixth of 5% of the sum of the final principal amount loaned and the amount of the loan subsidy granted to the City from the Joint Utility O&M Fund into this account in each 12-month period beginning at final loan closing and continuing until the full amount of the Replacement Reserve Requirement is on deposit. The Replacement Reserve Account shall accumulate funds to pay for replacement of parts to ensure the Project is fully operational during the term of the Loan Agreement and Note. In the event that funds from the Replacement Reserve Account are used to pay for replacement of parts, the City shall replenish the Replacement Reserve Account as soon as possible by depositing funds in the manner described above until the full amount of the Replacement Reserve Requirement is on deposit in the Replacement Reserve Account. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee, the City shall fund the Replacement Reserve Account and identify this in the Annual Audit.

C. ANNUAL LOAN REPAYMENT ACCOUNT. An Annual Loan Repayment Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount necessary for payment of the principal, interest and the administrative

fee due annually under the Loan Agreement and Note. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee, the City shall fund the Annual Loan Repayment Account and identify this in the Annual Audit.

Section 12. APPLICATION OF GROSS REVENUES.

A. **OPERATION AND MAINTENANCE.** The City shall pay for the operation and maintenance expenses of the System, approved indirect charges, and any amounts for capital replacement and repair of the System from the Joint Utility O&M Fund as incurred.

B. **PARITY OBLIGATIONS AND OTHER APPROVED DEBTS.** The City shall pay principal, interest and administrative fees of parity obligations and other approved debts which are secured from the Net System Revenues of the Joint Utility O&M Fund as scheduled.

C. **EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the city secured by Net System Revenues on a parity with the Loan Agreement and Note, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Net System Revenues, regardless of the time or times of their issuance or creation.

D. **DEBT SERVICE AND REPLACEMENT RESERVE ACCOUNTS.** The City shall deduct the required amounts for debt service reserve and replacement reserve accounts from the Joint Utility O&M Fund as required.

E. **SUBORDINATE OBLIGATIONS.** Net System Revenues used for the payment of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and the Note, including payments to be made to other obligations payable from Net System Revenues which have a lien on Net System Revenues on parity with the Loan Agreement and the Note.

Section 13. LIEN OF LOAN AGREEMENT AND NOTE.The Loan Agreement and the Note shall constitute irrevocable liens upon the Net System Revenues with priorities on the Net System Revenues as set forth in Section 12 of the Ordinance. The City hereby pledges and grants a security interest in the Net System Revenues for the payment of the Note and any other amounts owed by the City to the NMED pursuant to the Loan Agreement.

Section 14. OTHER OBLIGATIONS. Nothing in this Ordinance shall be construed to prevent the City from issuing bonds or other obligations payable from the Net System Revenues and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. For all other obligations, the City shall first obtain the prior written consent of the NMED prior to issuing such other obligations.

Section 15. DEFAULT.The following shall constitute an event of default under the Agreement:

A. The failure by the City to pay the principal, interest and administrative fees on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or

B. Default by the City in any of its covenants or conditions set forth under the Loan Agreement (other than a default described in the previous clause of this section) for 60 days after the NMED has given written notice to the City specifying such default and requiring the same to be remedied.

UPON OCCURRENCE OF DEFAULT:

A. The entire unpaid principal amount of the Final Promissory Note plus accrued interest and administrative fees thereon may be declared by the NMED to be immediately due and payable and the City shall pay the amounts due under Note from the Net System Revenues,

either immediately or in the manner required by the NMED in its declaration, but only to the extent Net System Revenues are available for payment of the Note(s). However, if insufficient funds are available for payment of the Note(s), the NMED may require the City to adjust the rates charged by the System to ensure repayment of the Note.

B. If default by the City is of covenants for conditions required under the federal grant, the City may be required to refund the amount of the Loan Subsidy Grant disbursed to the City from NMED.

C. The NMED shall have no further obligation to make payments to the City under the Loan Agreement.

Section 16. ENFORCEMENT; VENUE. The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the City cannot reach agreement regarding disputes as to the terms and conditions of the Loan Agreement, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe County. The City agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the City and the subject matter of the Loan Agreement and waives the right to challenge such jurisdiction.

Section 17. REMEDIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in the Loan Agreement (to the extent consistent with this Ordinance) or in Section 15 of this Ordinance, the NMED may proceed against the City to protect and enforce its rights under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in this Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective to

protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of the NMED in this Ordinance or the Loan Agreement or to require the City to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the NMED shall be in addition and cumulative to any other right or privilege under this Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

Section 18. DUTIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in Section 15 of this Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Note to ensure the payment of the principal, interest and administrative fees on the Note promptly as the same become due. All proceeds derived from the System, so long as the Note is outstanding, shall be treated as revenues. If the City fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in this Ordinance and the Loan Agreement.

Section 19. TERMINATION. When all obligations under the Note and Loan Agreement have been paid, the Loan Agreement and Note shall terminate and the pledge, lien, and all other obligations of the City under this Ordinance shall be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without penalty at the discretion of the City and the prepayments of principal shall be applied as set forth in the Loan Agreement.

Section 20. AMENDMENT OF ORDINANCE. This Ordinance may be amended with the prior written consent of the NMED, which consent shall not be unreasonably refused.

Section 21. ORDINANCE IRREPEALABLE.After the Loan Agreement and the Note have been executed and delivered, this Ordinance shall be and remain irrepealable until the Note has been fully paid, terminatedand discharged, as provided in this Ordinance.

Section 22. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

Section 23. REPEALER CLAUSE.All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof heretofore repealed.

Section 25. EFFECTIVE DATE.Upon the due adoption of this Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in this Ordinance shall be published in a newspaper which maintains an office and is of general circulation in the City. This Ordinance shall be in full force and effect after its publication and adoption in accordance with law.

ADOPTED THIS ____ DAY OF _____, 2014

CITY OF AZTEC, NEW MEXICO

Mayor

ATTEST:

City Clerk

[SEAL]

STATE OF NEW MEXICO)

) ss.

COUNTY OF SAN JUAN)

I, Karla Saylor, City Clerk of the City of Aztec, New Mexico, do hereby certify:

1. The foregoing copy of Ordinance No. _____ is a full, true and correct copy of the original of that ordinance as passed by the City Commission at its regular meeting held on _____, 2014, and the original ordinance has been duly authenticated by the signatures of the Mayor of the City and the City Clerk on that date, sealed with the corporate seal.

2. ____ (__) members of the City Commission were present at that meeting, and ____ (__) members of the City Commission voted in favor of passage of that Ordinance.

3. Notice of the _____, 2014 meeting of the City Commission was duly given as required by the Open Meetings Act, Sections 10-15-1 through 4, NMSA 1978 and Resolution No. 2014-932 which is the current resolution of the City which establishes the reasonable notice policy of the City as required by the Open Meetings Act.

4. On _____, 2014, a Notice of Public Hearing on Ordinance No. __ was published in the Farmington Daily Times, a newspaper which maintains an office in and is of general circulation within the City. A true and correct copy of the affidavit of publication of the Notice of Public Hearing is attached hereto as Exhibit C.

5. On _____, 2014, a Notice of Adoption of Ordinance No. _____, was published by title and summary of its subject matter in the Farmington Daily Times, a newspaper which maintains an office in and is of general circulation within the City. A true and

correct copy of the affidavit of publication of the Notice of Adoption is attached hereto as Exhibit D.

6. No other business concerning that Ordinance was taken at that meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Aztec,
New Mexico this _____, day of _____, 2014.

CITY CLERK

(SEAL)