

**A G E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION MEETING**  
**October 13, 2015**  
**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. PRESENTATION**

A. San Juan Water Commission - Aaron Chavez, Interim Director

**VII. CITIZEN RECOGNITION**

**VIII. EMPLOYEE RECOGNITION**

**IX. CONSENT AGENDA**

- A. Commission Workshop Meeting Minutes, September 22, 2015
- B. Commission Meeting Minutes, September 22, 2015
- C. Travel Requests
- D. Re-Bid 2015-0418 Aztec Remote SCADA Project, Change Order #1 Bladder Tank
- E. Re-Bid 2015-0418 Aztec Remote SCADA Project, Change Order #2 River Pump
- F. Re-Bid 2016-534 Aztec North Main Corridor, Phase 0, Award
- G. Re-Bid 2016-516 Airport AVGas Fuel System
- H. NM ALTSD Grant Agreements A14-1205, A14-1206, A14-1207, A14-1208
- I. Airport Annual Maintenance Funding Agreement
- J. Finance Department Record Destruction
- K. General Services and Public Works Department Record Destruction
- L. Visitor Center Record Destruction
- M. State Grants-In-Aid Agreement
- N. Pole Attachment Agreement for Zippy Tech/Cedar Network
- O. Probation Service Agreement With City of Farmington Probation Department

*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"*

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**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.

**X. ITEMS FROM CONSENT AGENDA**

**XI. CITIZENS INPUT (3 Minutes Maximum)**

*(Citizens who wish to speak will sign up prior to the meeting. This is for items not otherwise listed on the agenda)*

**XII. BUSINESS ITEMS**

- A. Final Adoption of Ordinance 2015-446 Amending Chapter 17, Section 17-3 Safety Policy
- B. Intent to Adopt Ordinance 2015-447 Amending Chapter 17, Section 17-3 Safety Policy
- C. Intent to Adopt Ordinance 2015-448 Amending Chapter 17, Section 17-1 Personnel Policy
- D. Discussion of New BLM Regulations

**XII. LAND USE HEARING**

**XIII. CLOSED SESSION**

- A. Closed Session Pursuant to Section 10-15-1H(8) Purchase of Real Property

**XIV. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS**

**XV. DEPARTMENT REPORTS**

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

**XVI. ADJOURNMENT**

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**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.

CITY OF AZTEC  
COMMISSION WORKSHOP MINUTES  
September 22, 2015

**I. CALL TO ORDER**

Mayor Burbridge called the meeting in to order at 5:15pm at the Aztec City Commission Room City hall 201 W. Chaco, Aztec NM.

MEMBERS PRESENT: Mayor, Sally Burbridge; Mayor Pro-Tem Sipe; Commissioner, Sheri Rogers; Commissioner, Katee McClure

MEMBERS ABSENT: Commissioner, Roberta Locke

OTHERS PRESENT: City Manager, Joshua Ray; Administrative Assistant, Sherlynn Morgan; Project Manager, Ed Kotyk

**A. Discussion on City of Aztec Personnel Policy & Safety Policy**

Josh Ray, City Manager opened the workshop for discussion on City of Aztec Personnel Policy and Safety Policy. He handed out the City Attorney's opinion on zero tolerance substance abuse policy and some copies of Supervisor's Legal updates that the City Department Heads receives monthly to Commission for their review to show some case law on drug policies. Commission and Staff reviewed the current policies in place and have determined that first time offenses for drugs or alcohol would be a 3 day suspension without pay and employee would have to enroll in a treatment program and second offense would be termination if the offense occurs within seven years of the first offense.

**II. Adjournment**

Mayor Burbridge adjourned the Workshop at 5:54 pm.

\_\_\_\_\_  
Mayor, Sally Burbridge

ATTEST:

\_\_\_\_\_  
Sherlynn, Morgan Administrative Assistant

MINUTES PREPARED BY:

\_\_\_\_\_  
Karla Sayler, City Clerk

DRAFT

CITY OF AZTEC  
COMMISSION MEETING MINUTES  
September 22, 2015

**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 Commissioner, Sherri Sipe

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Commissioner, Sheri Rogers

**IV. ROLL CALL**

Members Present: Mayor, Sally Burbridge; Mayor Pro-Tem, Sherri Sipe; Commissioner, Katee McClure; Commissioner, Sheri Rogers; Commissioner, Roberta Locke Via Face Time

Members Absent: None

Others Present: City Attorney, Larry Thrower; City Manager, Joshua Ray; Administrative Assistant, Sherlynn Morgan; Project Manager, Ed Kotyk (see attendance sheet)

**V. AGENDA APPROVAL**

MOVED by Commissioner Rogers, SECONDED by Mayor Pro-Tem Sipe to Approve the Agenda As Presented

**VI. PRESENTATION**

A. Crime Stoppers-Jamie Harcrow

Jamie presented commission with an overview of the Crime Stoppers Program. She presented about the program and purpose of the program, on the history of the program, on how the program works within San Juan County, on statistics, the programs funding and how to contact Crime Stoppers with a tip.

**VII. CITIZEN RECOGNITION**

None

## **VIII. EMPLOYEE RECOGNITION**

None

## **IX. CONSENT AGENDA**

MOVED by Mayor Pro-Tem Sipe, SECONDED by Commissioner McClure to Approve the Consent Agenda as presented

- A. Commission Workshop Meeting Minutes, September 8, 2015
- B. Commission Meeting Minutes, September 8, 2015
- C. Travel Requests
- D. Resolution 2015-970 Surplus
- E. Finance Department Record Destruction
- F. Bid 2016-0529 Municipal Building Re-Roofing Award
- G. Bid 2016-534 N Main Corridor Phase 0
- H. 2016 Airport Maintenance Grant
- I. Library Services Agreement With San Juan County
- J. Senior Citizen Services Agreement with San Juan County

## **X. ITEMS FROM CONSENT AGENDA**

None

## **XI. CITIZENS INPUT**

Cindy Cochran mentioned that they are one of the residents that had flood damage and stated that she was here tonight because she felt like she was mistreated by a City employee. She mentioned that this started from a question on why the resident needed a second lease agreement. She mentioned that Josh Ray had dropped off the agreement with them and she tried to contact him or to meet with him and had no response from him. She mentioned that City Engineer, Bill Watson met her at her house and that he was aggressive, used curse words and was very rude to her.

## **XII. BUSINESS ITEMS**

- A. Business Holiday Lighting Contest

Josh reviewed the flyer that was presented in the agenda packet mentioning that this will be year two for the Holiday lighting contest. He mentioned that there are two changes this year which are Honorable Mentions and will receive \$250 utility credits and that the winners will have to run their holiday lights from December 4<sup>th</sup> through December 31<sup>st</sup> in order to receive credit.

MOVED by Mayor Pro Tem Sipe, SECONDED by Commissioner McClure To Approve The Changes To The Business Holiday Lighting Contest With The Lights To

Be On From December 4<sup>th</sup> Through December 31<sup>st</sup> And Lights Cannot Be Off More Than 3 Days During This Period In Order To Receive The Utility Credit

All Voted Aye; Motion Passed Five to Zero

B. Business HUB

Josh mentioned that this project will provide a location for existing home based small businesses and businesses in need of space in Aztec to grow their product, services and market. The HUB project will present a pro-business community attitude that larger businesses seek in their location searches. Commission reviewed the budget for the project and reviewed rate schedules for various services. This project will involve coordination with many existing services from organizations such as the San Juan College Enterprise Center, and the Small Business Development Center.

MOVED by Mayor Pro Tem Sipe, SECONDED by Commissioner Rogers to Approve Motion To Allow Staff To Begin Negotiations On Entering Into A Lease Agreement With The Church To Secure Property For The Aztec Business HUB/Incubator And To Complete An Appraisal On The Property Located At 119 W. Chuska

A Roll Call Was Taken: All Voted Aye; Motion Passed Four to One

C. City Flood Response

Josh mentioned that this item is for discussion only on City Flood Response. He mentioned that the City hosted two meetings related to the recent flood event and during those meetings staff informed citizens that the City does need to embark on City wide storm water management system updates and mentioned that this will be a lengthy and challenging process that will cost a significant amount of money.

### **XIII. LAND USE HEARINGS**

A. 2015-112 Add a Compressor To A New Drill Gas Well

Mayor Burbridge opened the Land Use Hearing for Request for 2015-112 Add a Compressor to a New Drill Gas Well. Mayor Burbridge stated that this hearing would be conducted under Procedures mandated by the New Mexico Court of Appeals in Battershell versus the City of Albuquerque, which were intended to protect the due process rights of our parties. Mayor Burbridge subsequently identified the parties and City Staff. Mayor Burbridge then asked Commission if they would accept the parties and they did. She reviewed the procedures and then asked if any members of the Commission had a conflict of interest, bias, or engaged in ex parte communication, there were none. Mayor Burbridge then swore in the parties and reviewed the Order of Presentation.

William Homka, Community Development Director reviewed the staff summary with Commission and mentioned that this request follows an earlier application for a new gas well that was approved by Commission on July 14, 2015. He mentioned that this application seeks approval to add a compressor for wellhead compression on the well. The addition of the compressor is reasonable and undesirable effects have appropriate mitigation plans and all findings of fact cited in application 2012-076 are still in effect for this project, including remedies described in the application materials.

MOVED by Mayor Pro Tem Sipe, SECONDED by Commission McClure to Approve 2015-112, an Oil And Gas Well Application Submitted By The Mankin Land Company, LLC On Behalf Of BP America Production Company To Amend City Of Aztec Application 2015-076 And Approve The Addition Of A Compressor As Part Of The New Wells Construction At The Location Indicated In The Supporting Documents

A Roll Call Was Taken: All Voted Aye, Motion Passed Four to Zero

#### **XIV. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS**

#### **XVI. DEPARTMENT REPORTS**

#### **XVIII. ADJOURNMENT**

Moved by Mayor Burbridge, SECONDED by Mayor Pro-Tem Sipe to adjourn the meeting at 7:56 pm.

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Mayor, Sally Burbridge

ATTEST:

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Sherlynn Morgan, Administrative Assistant

MINUTES PREPARED BY:

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Karla Saylor, City Clerk

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (C)
<b>AGENDA TITLE:</b>	Travel Requests

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<b>ACTION REQUESTED BY:</b>	Public Works, Electric, Library, Finance, Commission and Administration
<b>ACTION REQUESTED:</b>	Approval of Employee/Public Official Travel Requests
<b>SUMMARY BY:</b>	Cheryl Franklin

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## **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. Two requests for travel had already occurred and the Public Works and Electric Dept. is requesting approval for travel on the date of this meeting; however, the remaining requests 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

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<b>SUPPORT DOCUMENTS:</b>	Travel Log October 13, 2015
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<b>DEPARTMENT'S RECOMMENDED MOTION:</b>	Approve Employee/Public Official Travel Requests
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**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL  
MEETING DATE: OCTOBER 13, 2015**

Dates of Travel	Department	Employee	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY16 Budget Available
10/07-08/15	Public Works	Nathan Thomas	NM Water & Wastewater Exam Las Vegas, NM.	Yes	No	60.00 85.00 101.14	Meal & Gratuity Allowance Estimated Cost for Fuel Lodging- Best Western Plus	Yes
10/09-14/15	Electric	Ken George	Itron Utility Week 2015 Los Angeles, CA.	Yes	Yes	306.60 1445.00 168.00 434.20 1500.00	Meal & Gratuity Allowance Registration Ground Transportation Airfare Lodging-JW Marriott Hotel (Traveling w/Delain; Electric Dept. paying all expenses, but airfare.)	Yes
10/20-23/15	Library	Kate Skinner	NMLA Conference Albuquerque, NM.	Yes	No	122.40 135.00 60.00 352.56	Meal & Gratuity Allowance Registration Estimated Cost for Fuel Lodging- Marriott Pyramid (Traveling w/Karen)	Yes
10/20-23/15	Library	Karen Lozier	NMLA Conference Albuquerque, NM.	Yes	No	122.40 135.00 352.56	Meal & Gratuity Allowance Registration Lodging- Marriott Pyramid	Yes
11/2-5/15	Finance	Kathy Lamb	NMDOT Cradle to Grave Training Albuquerque, NM.	Yes	No	132.00 75.00	Meal & Gratuity Allowance Estimated Cost for Fuel Lodging- Staying w/family	Yes
11/2-5/15	Public Works	Rudy Zohnie	Tribal/Local Public Agency Semi- Annual Training Albuquerque, NM.	Yes	No	132.00 60.00 313.56	Meal & Gratuity Allowance Estimated Cost for Fuel Lodging- Holiday Inn Express	Yes

**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL  
MEETING DATE: OCTOBER 13, 2015**

Dates of Travel	Department	Employee	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY16 Budget Available
11/3-8/15	Commission	Sally Burbridge	2015 National Leagues of Cities Nashville, TN.	Yes	Yes	324.00 545.18 12.00	Meal & Gratuity Allowance Airfare Estimated Cost for Fuel (NMML paying all expenses)	Yes
11/4-6/15	Admin.	Karla Sayler	2015 Municipal Election School Albuquerque, NM.	Yes	Yes	96.00 155.00 60.00 201.47	Meal & Gratuity Allowance Registration Estimated Cost for Fuel Lodging- Marriott Pyramid	Yes
11/4-6/15	Admin.	Sherlynn Morgan	2015 Municipal Election School Albuquerque, NM.	Yes	Yes	96.00 155.00 201.47	Meal & Gratuity Allowance Registration Lodging- Marriott Pyramid (Traveling w/Karla)	Yes

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (D)
<b>AGENDA TITLE:</b>	Re-Bid 2015-418 Aztec Remote Scada Project Change Order #1 Bladder Tank

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<b>ACTION REQUESTED BY:</b>	Finance Department, Public Works Department
<b>ACTION REQUESTED:</b>	APPROVAL
<b>SUMMARY BY:</b>	Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- Water System **SCADA (Supervisory Control And Data Acquisition)** will provide the ability to communicate the status of remote equipment to the water treatment plant allowing plant operators to monitor and control water storage and pumping facilities from the water plant. This project was awarded to Pillar Innovations in May 2015 and included:
  - Base Bid (Airport Booster Pump Station, Airport Concrete Tank, Oliver Pump Station, City Hall, Lower East Tank, Lower East Pump Station, Res #3 Pump Station, Water Plant, Blanco Tank, and West Tank)
  - Alternate #1: River Pump Station
  - Alternate #2: Ditch Pump Station
  - Alternate #3: Reservoir #3
- At the time the project was bid, electric power did not extend to the bladder tank site and was not expected to be available until late this year. City of Farmington was able to negotiate the necessary right of way and extend service ahead of schedule and allows the City the opportunity to include the bladder tank in the SCADA project.
- This change order is to include SCADA for the Bladder Tank only and does not include SCADA for the pump station. Monitoring the water level in the Bladder Tank is particularly important when we are receiving potable water from the City of Bloomfield in emergency conditions since the Bloomfield water is delivered directly to the Bladder Tank. During the emergency of the Animas River contamination water plant operators were required to drive to the bladder tank site several times a day to monitor the fill level to prevent tank overflow.

## PROCUREMENT / PURCHASING

- ReBid 15-0418 was advertised on March 29, 2015, mandatory pre-bid meeting on April 13, 2015, and bids were opened on April 28, 2015. Two firms attended the mandatory pre-bid limiting bid acceptance to those firms. One contractor submitted a responsive bid on April 28, 2015. The Commission awarded the bid to Pillars Innovations May 12, 2015 which included the base bid plus all alternates.
- The bid documents identify the requirement of the sites identified in the base bid to be complete within 120 calendar days from the Notice to Proceed and Alternates 1, 2 and 3 to be complete within 165 calendar days from the Notice to Proceed. Notice to Proceed was issued June 22, 2015 with a completion date for the base bid of November 20, 2015 and all alternates by January 4, 2016.
- Change order #1 increases contract amount and time:
  - Base Bid: \$212,725.00
  - Alternates: \$ 84,607.00
  - Change Order #1 \$ 15,415.00
  - § Total Contract \$312,747.00
  - Base Bid: 120 calendar days November 20, 2015
  - Alternates: +45 calendar days January 4, 2016
  - Change Order #1 + 30 calendar days February 3, 2016

## FISCAL INPUT / FINANCE DEPARTMENT

- FY16 Adopted Budget, Joint Utility Fund, Water Treatment Plant, includes \$350,000 specific to the SCADA project. Total award including gross receipts tax: \$321,118.56

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**SUPPORT DOCUMENTS:** Re-Bid 15-0418 Change Order #1 Bladder Tank

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Re-Bid 15-0418, Change Order #1 to Pillar Innovations LLC in the amount of \$15,415 plus gross receipts tax and extends the contract completion time by 30 calendar days.

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# Pillar<sup>LLC</sup> INNOVATIONS

40 Commerce Drive, Suite B  
Morgantown, WV 26501-3874  
TELEPHONE: 301-245-4007  
FAX: 301-245-4009

24 County Road 1956  
Farmington, NM 87401-3874  
TELEPHONE: 505-326-7600  
FAX: 505-326-3233

12074 BITTINGER ROAD • GRANTSVILLE, MD 21536  
TELEPHONE: 301-245-4007 • FAX: 301-245-4009

# PROPOSAL

SUBMITTED TO:		JOB DESCRIPTION:	
City of Aztec		Date:	9/22/15
		Job:	Bladder Tank Automation
		Location:	Aztec, NM
Attn:	Andrew Galloway	Quotation #:	Q300283a
Phone:	505-793-0241	Fax:	
		Email:	

<b>We Hereby Submit</b> specifications and estimates for the following:	
Supply the following material and labor to provide Scada Feedback of Bladder Tank Site:	
<ol style="list-style-type: none"> <li>1. Engineering and Drafting           <ol style="list-style-type: none"> <li>a) Supply engineering to properly design system and components</li> <li>b) Supply electrical and layout drawings for site</li> </ol> </li> </ol>	Labor Price: \$ 1,175.00
<ol style="list-style-type: none"> <li>2. Electrical and Instrumentation Installation           <ol style="list-style-type: none"> <li>a) Assemble control panel</li> <li>b) Install control panel and grounding</li> <li>c) Install new overflow switch</li> <li>d) Replace existing PVC conduits per NEC Guidelines</li> <li>e) Install radio communication hardware</li> <li>f) Install electrical service from utility j-box</li> </ol> </li> </ol>	Labor Price: \$ 7,530.00 Material Price: \$ 3,635.00
<ol style="list-style-type: none"> <li>3. Programming           <ol style="list-style-type: none"> <li>a) Program ScadaPack Controller</li> <li>b) Develop ClearScada Screen addition</li> <li>c) Establish communications</li> </ol> </li> </ol>	Labor Price: \$ 3,075.00

Payment to be made as follows: \_\_\_\_\_

**TOTAL PRICE: \$ 15,415.00**

**Note: Price quoted does not include any applicable tax due to contractor or owner.**

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by workmen's compensation insurance.

**Contact Person:** Billy Stone  
**Authorized Signature:** Billy Stone  
 Project Manager

**Acceptance of Proposal**

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date Accepted: \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

**Note: This proposal may be withdrawn if not accepted within 30 days.**

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (E)
<b>AGENDA TITLE:</b>	Re-Bid 2015-418 Aztec Remote Scada Project Change Order #2 River Pump

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<b>ACTION REQUESTED BY:</b>	Finance Department, Public Works Department
<b>ACTION REQUESTED:</b>	APPROVAL
<b>SUMMARY BY:</b>	Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- Water System **SCADA (Supervisory Control And Data Acquisition)** will provide the ability to communicate the status of remote equipment to the water treatment plant allowing plant operators to monitor and control water storage and pumping facilities from the water plant. This project was awarded to Pillar Innovations in May 2015 and included:
  - Base Bid (Airport Booster Pump Station, Airport Concrete Tank, Oliver Pump Station, City Hall, Lower East Tank, Lower East Pump Station, Res #3 Pump Station, Water Plant, Blanco Tank, and West Tank)
  - Alternate #1: River Pump Station
  - Alternate #2: Ditch Pump Station
  - Alternate #3: Reservoir #3
- This change order adds SCADA to the river pump where raw water is drawn for treatment in the water plant for the City's drinking water. Alternate #1 was developed to provide interface between the river pump and the SCADA that was to be installed with the River Diversion project. Since the River Diversion project has been delayed, the SCADA needs to be installed with this project to insure the changes being made with Alternate #1 function properly.

## PROCUREMENT / PURCHASING

- ReBid 15-0418 was advertised on March 29, 2015, mandatory pre-bid meeting on April 13, 2015, and bids were opened on April 28, 2015. Two firms attended the mandatory pre-bid limiting bid acceptance to those firms. One contractor submitted a responsive bid on April 28, 2015. The Commission awarded the bid to Pillar Innovations May 12, 2015 which included the base bid plus all alternates.
- The bid documents identify the requirement of the sites identified in the base bid to be complete within 120 calendar days from the Notice to Proceed and Alternates 1, 2 and 3

to be complete within 165 calendar days from the Notice to Proceed. Notice to Proceed was issued June 22, 2015 with a completion date for the base bid of November 20, 2015 and all alternates by January 4, 2016.

- Change order #2 increases contract amount and time:
  - Base Bid: \$212,725.00
  - Alternates: \$ 84,607.00
  - Change Order #1 \$ 15,415.00
  - Change Order #2 \$ 39,743.41
  - \$ Total Contract \$352,490.41
  
- Base Bid: 120 calendar days November 20, 2015
- Alternates: + 45 calendar days January 4, 2016
- Change Order #1 + 30 calendar days February 3, 2016
- Change Order #2 + 60 calendar days April 3, 2016

<b>FISCAL INPUT / FINANCE DEPARTMENT</b>
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- FY16 Adopted Budget, Joint Utility Fund, Water Treatment Plant, includes \$350,000 specific to the SCADA project. Total award including gross receipts tax: \$321,118.56

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**SUPPORT DOCUMENTS:** Re-Bid 15-0418 Change Order #2 River Pump

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Re-Bid 15-0418, Change Order #2 to Pillar Innovations LLC in the amount of \$39,743.41 plus gross receipts tax and extend contract completion date by 60 calendar days.

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# Pillar<sup>LLC</sup> INNOVATIONS

164 Corporate Drive PO Box 550  
Grantsville, MD 21536  
TELEPHONE: 301-245-4007  
FAX: 301-245-4009

9844 Hedden Road  
Evansville, IN 47725  
TELEPHONE: 814-474-9080  
FAX: 814-474-9082

104 Corporate Drive  
Morgantown, WV 26501  
TELEPHONE: 304-983-8900  
FAX: 304-983-8905

4970 Teays Valley Road Suite K  
Charleston, WV 25560  
TELEPHONE: 304-755-9501  
FAX: 304-755-9502

24 County Road 1956 • Farmington, NM 87401-3874

TELEPHONE: 505.326.7600 • FAX: 505.326.3233

# PROPOSAL

SUBMITTED TO:		JOB DESCRIPTION:	
City of Aztec		<b>Date:</b>	August 26, 2015
201 West, Chaco		<b>Job:</b>	Aztec River Lift Station
Aztec, NM 87410		<b>Location:</b>	Aztec
<b>Attn:</b>	Bill Watson	<b>Quotation #:</b>	Q300255 Rev.2
<b>Phone:</b>	702.250.5353	<b>Fax:</b>	
		<b>Email:</b>	wwatson@aztecnm.gov

**We Hereby Submit** specifications and estimates for the following:

*Provide a SCADA solution for the River Pump Station. This design will include:*

- Engineering Design
  - Design for existing inputs and outputs and future estimated I/O. Existing inputs consists of interfacing with motor soft-start, motor sensor and two floats. Current outputs consist of a soft-start run command. 25% additional I/O will be minimum estimated for future needs.

**Engineering - \$3,759.50**
  
- PLC Enclosure
  - Nema 4 Enclosure consisting of the following items:
    - CompactLogix PLC Processor
    - CompactLogix PLC Digital Input Card(s)
    - CompactLogix PLC Digital Output card(s)
    - CompactLogix PLC Analog Input Card(s)
    - CompactLogix PLC Analog Output Card(s)
    - CompactLogix Power Supply
    - 10" PanelView Plus 6 HMI
    - Terminal Blocks
    - AC to DC Power Supply
    - Relays and Bases

**PLC Enclosure - \$19,820.41**
  
- Electrical Installation
  - Mounting of PLC Enclosure
  - Conduit and wire/cables to connect existing field devices and power to the PLC Enclosure.

**Installation - \$7,858.00**
  
- Programming
  - Ladder logic programming to control the pump based on the soft-start, floats and existing field equipment. City of Aztec to provide a diagram and/or write-up on how the pump is to be controlled based on current field inputs and outputs.
  - Human Machine Interface (HMI) programming to display current readings and/or alarms and add control based on write-up provided by City of Aztec.

**Programming - \$8,305.50**

**Notes:**

- Engineering does not include panel design drawings. Drawings will consist of inputs and outputs related to the local I/O. City of Aztec to verify and sign-off on panel prior to installation.
- Battery backup to be added at a later date; design will be of a DC nature for future backup capabilities.
- Proposed price does not include local and/or state taxes.

**TOTAL PRICE: \$39,743.41**

Payment to be made as follows: Net 30 days

**Note: Price quoted does not include any applicable tax due to contractor or owner.**

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Owner shall maintain insurance in customary amounts to cover the work. Our workers are fully covered by workmen's compensation insurance.

**Contact Person:**

Brandy Edwards

**Authorized Signature:**

Brandy Edwards

Name - Title

**Acceptance of Proposal**

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.  
Payment will be made as outlined above.

Date Accepted: \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

**Note: This proposal may be withdrawn if not accepted within 30 days.**

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (F)  
**AGENDA TITLE:** Re-Bid 2016-534 North Main Corridor, Phase 0  
[DRAFT Summary – Bids open Monday October 12, 2015](#)

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**ACTION REQUESTED BY:** Public Works, Finance  
**ACTION REQUESTED:** Award of Bid  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- The development of the North Main Corridor has been a city project for several years and has included collaboration and participation with citizens, Aztec Ruins National Parks and Aztec Trails and Open Spaces.
- Federal funding for the development of the transit stop and courtyard (N Main Corridor, Phase 1) has been finalized but prior to construction of phase 1 (anticipated to bid in October), it is necessary to preliminary construct the roadway area for the corridor which has been identified as phase 0.
- Phase 0 includes the creation of a detention pond and the import of material to elevate the roadway to sub-grade level. Due to the elevation of the roadway, temporary construction easements are required and all landowners have agreed to provide the temporary easements and are anticipated to be fully executed prior to the issue of a Notice to Proceed. These easements will remain in effect until the landowner develops their respective properties which will require similar elevations to the roadway.

## PROCUREMENT / PURCHASING

- Invitation to Bid (ITB) was published on the city website and advertised in the TALON on September 25, 2015 and Daily Times, September 27, 2015. A prebid was conducted on September 24, 2015 and attended by one contractor. The bid was publically opened on October 12, 2015 with XXX responsive bids received.
- Recommended bid award to XXXX in the amount of xxxxx:
- A Notice of Award will be issued following Commission award of the bid which will allow XXXXX to acquire Performance and Payment bonds as required. The contract will be executed upon receipt of the bonds. The Notice to Proceed will be issued after the pre-construction meeting has been held.
- From the date of the Notice to Proceed, the bid documents identify 60 calendar days for substantial completion (complete and ready for intended use for this phase) and 75

calendar days for final payment readiness. Penalty for if project not substantially complete is \$1,000 per calendar day and \$500.00 per day for final payment completion.

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**FISCAL INPUT / FINANCE DEPARTMENT**

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- The FY16 Adopted Budget, Capital Projects Fund, includes funds for this project phase in the amount of \$200,000. Engineer's estimate for the project (without gross receipts tax) is \$108,000.00

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**SUPPORT DOCUMENTS:** Re-Bid 2016-534 Tabulation (will be provided after bid opening)

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Award of Re-Bid #2016-534 North Main Corridor, Phase 0 to **xxxxx** in the amount of \$**xxxxxxx** plus GRT and authorize the City Manager to execute construction contract.

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# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (G)
<b>AGENDA TITLE:</b>	Re-Bid 2016-0516 Aztec Municipal Airport AVGas System

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<b>ACTION REQUESTED BY:</b>	Public Works, Finance
<b>ACTION REQUESTED:</b>	Award
<b>SUMMARY BY:</b>	Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- The City requested bids for an aviation fueling system to be furnished and installed complete and operational. The system is to have a double-walled storage tank with a credit card reader system attached. The fueling system will be installed at the Aztec City Airport in compliance with regulations of all applicable local, state and federal authorities.
- Four configurations were bid, 10,000 and 12,000 gallon tanks and above ground or in ground installation. The 10,000 gallon tank would be aviation fuel only; the 12,000 gallon tank will allow 10,000 gallon aviation fuel and 2,000 gallons mogas. Project requires successful bidder to remove and dispose of existing tank. Fuel tank will include all required containment and monitoring systems and card reader for sales.

## **PROCUREMENT / PURCHASING**

- Invitation to Bid (ITB) was published on the city website and advertised in the Daily Times, September 6, 2015. Pre-bid conferences were held on September 14 & 16, 2015. One addendum was issued on the project. The bid was publically opened on Wednesday, October 7, 2015.
- Three bids were received, one bid was determined to be non-responsive due to lack of registration with NM Workforce Solutions. Eaton Sales and Service and Petro West Inc. submitted responsive bids.
- Review of the bids submitted for each configuration have been evaluated and staff recommendation is to award the bid to Eaton Sales and Service for Fuel System 2, 12,000 gallon above ground tank. Amount of bid, without gross receipts tax, \$242,700.00.
- Equipment is anticipated to require 8 to 10 weeks for delivery to Eaton Sales and Service and 3 to 4 weeks installation, with project completion anticipated February 2016.

## FISCAL INPUT / FINANCE DEPARTMENT

- The City currently has NMDOT Aviation Division funding in the amount \$200,000. The Aviation Division has additional funds available for the project and will amend the agreement to \$262,116 (bid plus gross receipts tax) with a city match of 10% (\$26,212). Sufficient funds exist in the Airport Fund to meet the required match.
- A special budget resolution will be necessary to appropriate the additional grant funding when amended agreement is received.

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**SUPPORT DOCUMENTS:** None

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Award of Re-Bid #2016-0516 Aztec Municipal Airport AVGas System to Eaton Sales and Service, Fuel System 2, in the amount of \$242,700 plus gross receipts tax and authorize the City Manager to execute the construction contract.

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**CITY OF AZTEC  
AZTEC MUNICIPAL AIRPORT AVGAS SYSTEM**

**Re-BID #2016-516**

**Opened on October 7, 2015 @ 3:00 P.M.**

**Recommendation to Commission: Award to Eaton Sales and Service,  
Fuel System 2**

<i>Bidder's Company Name</i>	<i>Fuel System 1 10k gallon above ground tank</i>	<i>Fuel System 2 12k gallon above ground tank</i>	<i>Fuel System 3 10k gallon in-ground tank</i>	<i>Fuel System 4 12k gallon in ground tank</i>
D&H United Fueling Solutions	Non- responsive bid	Non- responsive bid	No Bid	No Bid
<b>Eaton Sales and Service *</b>	222,600.00	<b>242,700.00</b>	251,000.00	262,000.00
Petro West Inc	241,949.00	284,602.00	250,456.00	295,369.00

\* Eaton Sales and Service only bidder with NM Residential Preference

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (H)  
**AGENDA TITLE:** NM ALSTD Grant Agreements A14-1205, A14-1206, A14-1207, A14-1208

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**ACTION REQUESTED BY:** Senior/Community Center, Finance Department  
**ACTION REQUESTED:** Approval  
**SUMMARY BY:** Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- The New Mexico Laws of 2014 included legislative funding through the sale of general obligations bonds to the New Mexico Aging and Long-Term Services Department (NMALSTD) for various improvements to senior centers throughout the state including the Aztec Senior Center.
- Funding was approved in the categories of equipment (\$7,700), code related improvements (\$16,900), renovations (\$16,000) and vehicles (\$54,000) resulting in four agreements. Funding must be expended in full by June 30, 2018. There is no required match on the funding.
  - Equipment funding will be used to replace ceiling fans in the center. Alternate is the purchase of equipment to establish a computer center for the seniors.
  - Code related improvement is the replacement of all fluorescent lighting.
  - Renovations include flooring in store, activity, pool and volunteer rooms, stage area and office; painting in store and activity room.
  - Vehicles include two handicap home meal delivery and transportation vans.

## **PROCUREMENT / PURCHASING**

- After specifications are developed for each of items to be purchased, the Purchasing Office will seek quotes or prepare bids for the purchase of equipment and services in compliance with NMSA 1978 Procurement Code, City of Aztec Purchasing Policy and Procedures and NMALSTD Grant Agreements.

## **FISCAL INPUT / FINANCE DEPARTMENT**

- The FY16 Adopted Annual Budget includes this funding and equipment/service purchases.

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**SUPPORT DOCUMENTS:** NMALSTD Agreements A14-1205, A14-1206, A14-1207, A14-1208

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve NMALSTD Agreements A14-1205, A14-1206, A14-1207, A14-1208

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**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Aging and Long-Term Services Department, P.O. Box 27118, New Mexico, 87502-7118, hereinafter called the “Department” or abbreviation such as “ALTSD”, and the City of Aztec, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 106, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows and is further described in Exhibit 4, Project Description. Grantee agrees to expend the funds in accordance with the Project Description:

A14-1205                      \$7,700                      APPROPRIATION REVERSION DATE: June 30, 2018  
Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 106, seven thousand seven hundred dollars (\$7,700) to purchase and install equipment in the Aztec senior center in San Juan County.

The Grantee’s total reimbursements shall not exceed the appropriation amount seven thousand seven hundred dollars (\$7,700), (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals (\$7,700), (the “Adjusted Appropriation Amount”).

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<sup>1</sup> The AIPP amount is “a1 amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private Grantee or Fiscal Agent for Grantee, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity or Fiscal Agent for Grantee (if any) in accordance with law; or
  - b. if no oversight entity or Fiscal Agent for Grantee is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec  
Name: Sally Burbridge  
Title: Mayor  
Address: 201 W. Chaco St. – Aztec, NM 87410  
Email: [sburbridge@aztecnm.gov](mailto:sburbridge@aztecnm.gov)  
Telephone: 505-3334-7600 FAX: 505-334-7609

Department: Aging and Long-Term Services Department  
Name: Rebecca Martinez  
Title: Capital Projects Bureau Chief  
Address: P.O. Box 27118, Santa Fe, NM 87502-7118  
Email: [rebeccas.martinez@state.nm.us](mailto:rebeccas.martinez@state.nm.us)  
Telephone: 505-476-4768  
FAX: 505-476-4836

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

#### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

#### **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

#### **ARTICLE VIII. REPORTS**

##### **A. Paper Monthly Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Monthly Reports for the Project. Paper Monthly Reports shall be submitted on a form prescribed by the Department. The Paper Monthly and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Monthly Report format or content.

The Paper Monthly Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

##### **B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Monthly and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

##### **C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report monthly and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to

report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions, see Exhibit 3, imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

**B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
  - (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under

this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All sub recipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;  
 PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the

total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and ALTSD concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department."

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions, see Exhibit 3, to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND  
PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

By: \_\_\_\_\_  
ALTSD Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Chief Financial Officer

Date: \_\_\_\_\_



**EXHIBIT 1**  
**ALTSD CAPITAL OUTLAY GRANT**  
**MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT**

**MONTHLY REPORT**  **PROJECT TITLE:** \_\_\_\_\_ **PAY REQUEST NO.** \_\_\_\_\_  
(Due on the last day of the month)

**Grantee:** \_\_\_\_\_ **Grant Number:** \_\_\_\_\_ **Reporting Period:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Grant Expiration Date:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Preparer's Name & Phone Number:** \_\_\_\_\_  
City State Zip

Please provide a detailed status of project referenced above. Please check the box that would best explain the **project phase**.

- Bonds Sold  Plan / Design  Bid Documents  Construction/Improvements/Renovation in Process   
Purchase in Process  Substantial Completion  Project Complete  Other (Please specify in narrative section)

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

**REQUEST FOR PAYMENT**

**VENDOR INVOICE DETAIL** (Attach extra sheet if needed)

**Grant Amount:** \_\_\_\_\_  
**AIPP Amount (if applicable)** \_\_\_\_\_  
**Funds Requested to Date:** \_\_\_\_\_  
**Amount Requested This Payment:** \_\_\_\_\_  
**Grant Balance:** \_\_\_\_\_

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

**FINAL REPORT**   
**Fiscal Year Expenditure Period Ending**  
(check one)  
(Jan-Jun)  (Jul-Dec)   
Fiscal Year \_\_\_\_\_

- MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
Grantee Fiscal Officer Signature & Printed Name \_\_\_\_\_  
Grantee Representative Signature & Printed Name (Preparer)

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Accounting Manager \_\_\_\_\_ Date \_\_\_\_\_ ALTSD Capital Outlay Bureau Chief \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Code: \_\_\_\_\_ Fund No: \_\_\_\_\_ BudRef: \_\_\_\_\_ Class Code: \_\_\_\_\_

**SBOF DRAW INFORMATION:** Warrant # \_\_\_\_\_ Amount of Request: \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

**EXHIBIT 2**  
**STATE OF NEW MEXICO - CAPITAL GRANT PROJECT**  
**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_

FROM: Grantee Representative: \_\_\_\_\_  
Signature

Chief Procurement Officer: \_\_\_\_\_  
Signature

SUBJECT: Notice of Obligation to Reimburse<sup>1</sup> Grantee, Project Number: \_\_\_\_\_

As the designated representative of the Grantee, I certify that the following third party obligation executed, in writing, by the third party's authorized representative is in accordance with the NM State Procurement Code NMSA 13-1-30 or Local Procurement Code (if applicable); in addition, all indirect costs<sup>2</sup>, as defined by NM State Board of Finance are **NOT** included.

As the designated representative of the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative.

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse<sup>1</sup> Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement Article X – Project Conditions and Restrictions: Representations and Warranties.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1/ "Reimburse" as used throughout this Notice of Obligation to Reimburse includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of the Grant Agreement and are a valid liability of the Grantee.

2/ Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**EXHIBIT 3**  
**ALTSD CAPITAL OUTLAY**  
**SPECIAL GRANT CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit 3** is necessary pursuant to Executive Order 2013-006 (2.A.2.b.), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2014 audit. The Special Conditions identified below apply to the authorized agent, the City of Aztec. The special condition is as follows:

**Procurement** - All purchases or contracts the Grantee enters that shall use funding from the ALTSD capital appropriations grant must be approved by ALTSD prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from ALTSD, which may be through letter or email. The Grantee shall submit the following to ALTSD in pursuit of prior approval: purchasing policies and procedures, copies of bid documents, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

The City of Aztec was required to, and has provided sufficient documentation regarding procurement, as referenced in the City of Aztec's 2014 Audit file. Therefore, the criteria to enter into this agreement have been met.

**EXHIBIT 4  
 ALTSD CAPITAL OUTLAY  
 PROJECT DESCRIPTION  
 SCOPE OF WORK (SOW)**

Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 106, seven thousand seven hundred dollars (\$7,700) to purchase and install equipment in the Aztec senior center in San Juan County.

1. **Name of Grantee/ Fiscal Agent:** CITY OF AZTEC
2. **Project Title:** AZTEC SENIOR CENTER-EQUIP
3. **Grant Agreement Number:** A14-1205
- 4.
4. **Background Narrative:** The Aztec Senior Center needs new ceiling fans. The current ones no longer work and cannot be repaired. In order to be code compliant new lighting bulbs are also needed because the current ones are obsolete and are connected to the fans. There are no computers in the Senior Center for the seniors to use. The stage where the Seniors perform is in need of appropriate lighting.
5. **Work Plan:** Obtain quotes, issue purchase order, purchase and install equipment. Replace ceiling fans in the main room. Purchase and install 2 computers, printers, desks, and chairs. Purchase and install stage lighting kit.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Equipment		7700.00
Other Costs (specify)		
Totals		7700.00

7. **Performance Measures:** Complete project according to policies and procedures.
8. **Results Expected:** Improve air circulation in main room; provide modern technology center for seniors; improve stage area for senior performances which benefits them health-wise and socially.
- 9.

Time Frame/ Milestones	(Project the month & year for each milestone)
RFP/Quotes Secured	10/2015
Bid Closing	11/2015
Bid Award to Contractor/Vendor	12/2015
Purchase/Install Equipment	1/2016
Project Completion & Review	3/2016
Submit Request for Payment Form and Supporting Documents to ALTSD/Capital Projects Bureau	7/2016

**10. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Cindy Iacovetto  
Title: Senior/Community Center Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: ciacovetto@aztecnm.gov  
Phone: 505-334-7617

Name: Kathy Lamb  
Title: Finance Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: klamb@aztecnm.gov  
Phone: 505-334-7653

**NOTICE:** The Grant Application, if approved for funding by the ALTSD, and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Aging and Long-Term Services Department, P.O. Box 27118, New Mexico, 87502-7118, hereinafter called the “Department” or abbreviation such as “ALTSD”, and the City of Aztec, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 107, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows and is further described in Exhibit 4, Project Description. Grantee agrees to expend the funds in accordance with the Project Description:

A14-1206                      \$16,900                      APPROPRIATION REVERSION DATE: June 30, 2018  
Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 107, sixteen thousand nine hundred dollars (\$16,900) to make improvements for building code compliance, including purchase and installation of equipment, to the Aztec senior center in San Juan County.

The Grantee’s total reimbursements shall not exceed the appropriation amount sixteen thousand nine hundred dollars (\$16,900), (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals (\$16,900), (the “Adjusted Appropriation Amount”).

<sup>1</sup> The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private Grantee or Fiscal Agent for Grantee, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity or Fiscal Agent for Grantee (if any) in accordance with law; or
  - b. if no oversight entity or Fiscal Agent for Grantee is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
  - c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec  
Name: Sally Burbridge  
Title: Mayor  
Address: 201 W. Chaco St. – Aztec, NM 87410  
Email: [sburgridge@aztecnm.gov](mailto:sburgridge@aztecnm.gov)  
Telephone: 505-3334-7600 FAX: 505-334-7609

Department: Aging and Long-Term Services Department  
Name: Rebecca Martinez  
Title: Capital Projects Bureau Chief  
Address: P.O. Box 27118, Santa Fe, NM 87502-7118  
Email: [rebeccas.martinez@state.nm.us](mailto:rebeccas.martinez@state.nm.us)  
Telephone: 505-476-4768  
FAX: 505-476-4836

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Paper Monthly Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Monthly Reports for the Project. Paper Monthly Reports shall be submitted on a form prescribed by the Department. The Paper Monthly and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Monthly Report format or content.

The Paper Monthly Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

**B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Monthly and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report monthly and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to

report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions, see Exhibit 3, imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

**B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under

this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All sub recipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:  
PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the

total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and ALTSD concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department."

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions, see Exhibit 3, to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND  
PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

By: \_\_\_\_\_  
ALTSD Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Chief Financial Officer

Date: \_\_\_\_\_



**EXHIBIT 1**  
**ALTSD CAPITAL OUTLAY GRANT**  
**MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT**

**MONTHLY REPORT**  **PROJECT TITLE:** \_\_\_\_\_ **PAY REQUEST NO.** \_\_\_\_\_  
(Due on the last day of the month)

**Grantee:** \_\_\_\_\_ **Grant Number:** \_\_\_\_\_ **Reporting Period:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Grant Expiration Date:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Preparer's Name & Phone Number:** \_\_\_\_\_  
City State Zip

- Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.**
- Bonds Sold  Plan / Design  Bid Documents  Construction/Improvements/Renovation in Process   
Purchase in Process  Substantial Completion  Project Complete  Other (Please specify in narrative section)

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

**REQUEST FOR PAYMENT**

**VENDOR INVOICE DETAIL** (Attach extra sheet if needed)

**Grant Amount:** \_\_\_\_\_  
**AIPP Amount (if applicable)** \_\_\_\_\_  
**Funds Requested to Date:** \_\_\_\_\_  
**Amount Requested This Payment:** \_\_\_\_\_  
**Grant Balance:** \_\_\_\_\_

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

**FINAL REPORT**   
**Fiscal Year Expenditure Period Ending**  
(check one)  
(Jan-Jun)  (Jul-Dec)   
Fiscal Year \_\_\_\_\_

- MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer Signature & Printed Name** \_\_\_\_\_  
**Grantee Representative Signature & Printed Name (Preparer)**

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Accounting Manager \_\_\_\_\_ Date \_\_\_\_\_ ALTSD Capital Outlay Bureau Chief \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Code: \_\_\_\_\_ Fund No: \_\_\_\_\_ BudRef: \_\_\_\_\_ Class Code: \_\_\_\_\_

**SBOF DRAW INFORMATION:** Warrant # \_\_\_\_\_ Amount of Request: \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

**EXHIBIT 2**  
**STATE OF NEW MEXICO - CAPITAL GRANT PROJECT**  
**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_

FROM: Grantee Representative: \_\_\_\_\_  
Signature

Chief Procurement Officer: \_\_\_\_\_  
Signature

SUBJECT: Notice of Obligation to Reimburse<sup>1</sup> Grantee, Project Number: \_\_\_\_\_

As the designated representative of the Grantee, I certify that the following third party obligation executed, in writing, by the third party's authorized representative is in accordance with the NM State Procurement Code NMSA 13-1-30 or Local Procurement Code (if applicable); in addition, all indirect costs<sup>2</sup>, as defined by NM State Board of Finance are **NOT** included.

As the designated representative of the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative.

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse<sup>1</sup> Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement Article X – Project Conditions and Restrictions: Representations and Warranties.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1/ "Reimburse" as used throughout this Notice of Obligation to Reimburse includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of the Grant Agreement and are a valid liability of the Grantee.

2/ Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**EXHIBIT 3  
ALTSD CAPITAL OUTLAY  
SPECIAL GRANT CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit 3** is necessary pursuant to Executive Order 2013-006 (2.A.2.b.), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2014 audit. The Special Conditions identified below apply to the authorized agent, the City of Aztec. The special condition is as follows:

**Procurement** - All purchases or contracts the Grantee enters that shall use funding from the ALTSD capital appropriations grant must be approved by ALTSD prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from ALTSD, which may be through letter or email. The Grantee shall submit the following to ALTSD in pursuit of prior approval: purchasing policies and procedures, copies of bid documents, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

The City of Aztec was required to, and has provided sufficient documentation regarding procurement, as referenced in the City of Aztec's 2014 Audit file. Therefore, the criteria to enter into this agreement have been met.

**EXHIBIT 4  
 ALTSD CAPITAL OUTLAY  
 PROJECT DESCRIPTION  
 SCOPE OF WORK (SOW)**

Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 107, sixteen thousand nine hundred dollars (\$16,900) to make improvements for building code compliance, including purchase and installation of equipment, to the Aztec senior center in San Juan County.

1. **Name of Grantee/ Fiscal Agent:** CITY OF AZTEC
2. **Project Title:** AZTEC SENIOR CENTER IMPROVE CODE
3. **Grant Agreement Number:** A14-1206
4. **Background Narrative:** The noncompliant fluorescent lighting fixtures throughout facility must be replaced.
5. **Work Plan:** Develop project specifications, request quotes, issue purchase order (s), schedule project and replace all the fluorescent fixtures with code compliant lighting fixtures according to non-metro AAA regulations.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Improvements for Code Compliance		16,900.00
Equipment		
Other Costs (specify)		
<b>Totals</b>		<b>16,900.00</b>

7. **Performance Measures:** The Senior Center Director will monitor and evaluate the project in order to ensure that the project executed is according to policies and procedures and aligned with the intentions of the proposed project.
8. **Results Expected:** Energy efficient and code compliant lighting fixtures will be installed throughout the center and will benefit the seniors during their meal times and other social activities.

9.

Time Frame/ Milestones	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	10/2015
Bid Closing	11/2015
Bid Award to Contractor/Vendor	12/2015
Purchase/Install Equipment	1/2016
Project Completion & Review	4/2016
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	6/2016

**10. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Cindy Iacovetto  
Title: Senior/Community Center Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: ciacovetto@aztecnm.gov  
Phone: 505-334-7617

Name: Kathy Lamb  
Title: Finance Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: klamb@aztecnm.gov  
Phone: 505-334-7653

**NOTICE:** The Grant Application, if approved for funding by the ALTSD, and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Aging and Long-Term Services Department, P.O. Box 27118, New Mexico, 87502-7118, hereinafter called the “Department” or abbreviation such as “ALTSD”, and the City of Aztec, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 108, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows and is further described in Exhibit 4, Project Description. Grantee agrees to expend the funds in accordance with the Project Description:

A14-1207                      \$16,000                      APPROPRIATION REVERSION DATE: June 30, 2018  
Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 108, sixteen thousand dollars (\$16,000) to plan, design, renovate, and equip the Aztec senior center in San Juan County.

The Grantee’s total reimbursements shall not exceed the appropriation amount sixteen dollars (\$16,000), (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals (\$16,000), (the “Adjusted Appropriation Amount”).

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<sup>1</sup> The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private Grantee or Fiscal Agent for Grantee, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity or Fiscal Agent for Grantee (if any) in accordance with law; or
  - b. if no oversight entity or Fiscal Agent for Grantee is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
  - c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec  
Name: Sally Burbridge  
Title: Mayor  
Address: 201 W. Chaco St. – Aztec, NM 87410  
Email: [sburbridge@aztecnm.gov](mailto:sburbridge@aztecnm.gov)  
Telephone: 505-3334-7600 FAX: 505-334-7609

Department: Aging and Long-Term Services Department  
Name: Rebecca Martinez  
Title: Capital Projects Bureau Chief  
Address: P.O. Box 27118, Santa Fe, NM 87502-7118  
Email: [rebeccas.martinez@state.nm.us](mailto:rebeccas.martinez@state.nm.us)  
Telephone: 505-476-4768  
FAX: 505-476-4836

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Paper Monthly Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Monthly Reports for the Project. Paper Monthly Reports shall be submitted on a form prescribed by the Department. The Paper Monthly and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Monthly Report format or content.

The Paper Monthly Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

**B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Monthly and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report monthly and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to

report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions, see Exhibit 3, imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

**B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under

this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All sub recipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;  
PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the

total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and ALTSD concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department."

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions, see Exhibit 3, to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND  
PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

By: \_\_\_\_\_  
ALTSD Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Chief Financial Officer

Date: \_\_\_\_\_



**EXHIBIT 2**  
**STATE OF NEW MEXICO - CAPITAL GRANT PROJECT**  
**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

DATE: \_\_\_\_\_  
TO: Department Representative: \_\_\_\_\_  
FROM: Grantee Representative: \_\_\_\_\_  
Signature  
Chief Procurement Officer: \_\_\_\_\_  
Signature  
SUBJECT: Notice of Obligation to Reimburse<sup>1</sup> Grantee, Project Number: \_\_\_\_\_

As the designated representative of the Grantee, I certify that the following third party obligation executed, in writing, by the third party's authorized representative is in accordance with the NM State Procurement Code NMSA 13-1-30 or Local Procurement Code (if applicable); in addition, all indirect costs<sup>2</sup>, as defined by NM State Board of Finance are **NOT** included.

As the designated representative of the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative.

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_  
Vendor or Contractor: \_\_\_\_\_  
Third Party Obligation Amount: \_\_\_\_\_  
Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse<sup>1</sup> Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement Article X – Project Conditions and Restrictions: Representations and Warranties.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_  
The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_  
The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_  
The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1/ "Reimburse" as used throughout this Notice of Obligation to Reimburse includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of the Grant Agreement and are a valid liability of the Grantee.

2/ Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**EXHIBIT 3**  
**ALTSD CAPITAL OUTLAY**  
**SPECIAL GRANT CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit 3** is necessary pursuant to Executive Order 2013-006 (2.A.2.b.), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2014 audit. The Special Conditions identified below apply to the authorized agent, the City of Aztec. The special condition is as follows:

**Procurement** - All purchases or contracts the Grantee enters that shall use funding from the ALTSD capital appropriations grant must be approved by ALTSD prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from ALTSD, which may be through letter or email. The Grantee shall submit the following to ALTSD in pursuit of prior approval: purchasing policies and procedures, copies of bid documents, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

The City of Aztec was required to, and has provided sufficient documentation regarding procurement, as referenced in the City of Aztec's 2014 Audit file. Therefore, the criteria to enter into this agreement have been met.

**EXHIBIT 4  
 ALTSD CAPITAL OUTLAY  
 PROJECT DESCRIPTION  
 SCOPE OF WORK (SOW)**

Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 108, sixteen thousand dollars (\$16,000) to plan, design, renovate, and equip the Aztec senior center in San Juan County.

1. **Name of Grantee/ Fiscal Agent:** CITY OF AZTEC
2. **Project Title:** AZTEC SENIOR CENTER-RENOVATE
3. **Grant Agreement Number:** A14-1207
4. **Background Narrative:** The following improvements are needed at the Aztec senior center: store room painting & flooring; ladder for walk-in; stage area flooring and storage; senior activity room paint, flooring and shelves; flooring in office, pool room and volunteer room. Support via the capital outlay funds will alleviate the strain placed on the senior center budget.
5. **Work Plan:** The Senior Center Director will develop project specifications, request quotes, issue purchase order (s), and schedule the project according to the senior center's policies and procedures.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Renovation	7000.00	16,000.00
Equipment		
Other Costs (specify)		
<b>Totals</b>	<b>7000.00</b>	<b>16,000.00</b>

7. **Performance Measures:** Completion of the projects according to plan will enable our staff to continue providing quality services for our seniors.
8. **Results Expected:** The renovations will enhance the environment, and aid in the comfort, health, and well-being of the seniors as the congregate for meals and other social activities. The renovations will also improve the facility for daily operations.
- 9.

Time Frame/ Milestones	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	10/2015
Bid Closing	11/2015
Bid Award to Contractor/Vendor	12/2015
Purchase/Install Equipment	1/2016
Project Completion & Review	4/2016
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	6/2016

**10. Responsible Staff** (include Project Manager and Fiscal Contact):

Name: Cindy Iacovetto  
Title: Senior/Community Center Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: ciacovetto@aztecnm.gov  
Phone: 505-334-7617

Name: Kathy Lamb  
Title: Finance Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: klamb@aztecnm.gov  
Phone: 5-334-7653

**NOTICE:** The Grant Application, if approved for funding by the ALTSD, and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Aging and Long-Term Services Department, P.O. Box 27118, New Mexico, 87502-7118, hereinafter called the “Department” or abbreviation such as “ALTSD”, and the City of Aztec, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 109, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows and is further described in Exhibit 4, Project Description. Grantee agrees to expend the funds in accordance with the Project Description:

A14-1208                      \$54,000                      APPROPRIATION REVERSION DATE: June 30, 2018  
Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 109, fifty-four thousand dollars (\$54,000) to purchase and equip vehicles for the Aztec senior center in San Juan County.

The Grantee’s total reimbursements shall not exceed the appropriation amount fifty-four thousand dollars (\$54,000), (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals (\$54,000), (the “Adjusted Appropriation Amount”).

<sup>1</sup> The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private Grantee or Fiscal Agent for Grantee, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity or Fiscal Agent for Grantee (if any) in accordance with law; or
  - b. if no oversight entity or Fiscal Agent for Grantee is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec  
Name: Sally Burbridge  
Title: Mayor  
Address: 201 W. Chaco St. – Aztec, NM 87410  
Email: [sburgridge@aztecnm.gov](mailto:sburgridge@aztecnm.gov)  
Telephone: 505-3334-7600 FAX: 505-334-7609

Department: Aging and Long-Term Services Department  
Name: Rebecca Martinez  
Title: Capital Projects Bureau Chief  
Address: P.O. Box 27118, Santa Fe, NM 87502-7118  
Email: [rebeccas.martinez@state.nm.us](mailto:rebeccas.martinez@state.nm.us)  
Telephone: 505-476-4768  
FAX: 505-476-4836

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Paper Monthly Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Monthly Reports for the Project. Paper Monthly Reports shall be submitted on a form prescribed by the Department. The Paper Monthly and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Monthly Report format or content.

The Paper Monthly Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

**B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Monthly and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report monthly and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to

report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions, see Exhibit 3, imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

**B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under

this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All sub recipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;  
PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the

total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and ALTSD concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department."

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions, see Exhibit 3, to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND  
PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

By: \_\_\_\_\_  
ALTSD Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ALTSD Chief Financial Officer

Date: \_\_\_\_\_



**EXHIBIT 1**  
**ALTSD CAPITAL OUTLAY GRANT**  
**MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT**

**MONTHLY REPORT**  **PROJECT TITLE:** \_\_\_\_\_ **PAY REQUEST NO.** \_\_\_\_\_  
(Due on the last day of the month)

**Grantee:** \_\_\_\_\_ **Grant Number:** \_\_\_\_\_ **Reporting Period:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Grant Expiration Date:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Preparer's Name & Phone Number:** \_\_\_\_\_  
City State Zip

**Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.**

Bonds Sold  Plan / Design  Bid Documents  Construction/Improvements/Renovation in Process   
Purchase in Process  Substantial Completion  Project Complete  Other *(Please specify in narrative section)*

Provide a project update and the anticipated timeline for commencement and completion for each phase. *(Attach extra sheet if needed)*

**REQUEST FOR PAYMENT**

**VENDOR INVOICE DETAIL** *(Attach extra sheet if needed)*

**Grant Amount:** \_\_\_\_\_  
**AIPP Amount (if applicable)** \_\_\_\_\_  
**Funds Requested to Date:** \_\_\_\_\_  
**Amount Requested This Payment:** \_\_\_\_\_  
**Grant Balance:** \_\_\_\_\_

**FINAL REPORT**   
**Fiscal Year Expenditure Period Ending**  
(check one)  
(Jan-Jun)  (Jul-Dec)   
Fiscal Year \_\_\_\_\_

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

- MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer Signature & Printed Name** \_\_\_\_\_  
**Grantee Representative Signature & Printed Name (Preparer)**

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Accounting Manager \_\_\_\_\_ Date \_\_\_\_\_ ALTSD Capital Outlay Bureau Chief \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Code: \_\_\_\_\_ Fund No: \_\_\_\_\_ BudRef: \_\_\_\_\_ Class Code: \_\_\_\_\_

**SBOF DRAW INFORMATION:** Warrant # \_\_\_\_\_ Amount of Request: \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

**EXHIBIT 2**  
**STATE OF NEW MEXICO - CAPITAL GRANT PROJECT**  
**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_

FROM: Grantee Representative: \_\_\_\_\_  
Signature

Chief Procurement Officer: \_\_\_\_\_  
Signature

SUBJECT: Notice of Obligation to Reimburse<sup>1</sup> Grantee, Project Number: \_\_\_\_\_

As the designated representative of the Grantee, I certify that the following third party obligation executed, in writing, by the third party's authorized representative is in accordance with the NM State Procurement Code NMSA 13-1-30 or Local Procurement Code (if applicable); in addition, all indirect costs<sup>2</sup>, as defined by NM State Board of Finance are **NOT** included.

As the designated representative of the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative.

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse<sup>1</sup> Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement Article X – Project Conditions and Restrictions: Representations and Warranties.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1/</sup> "Reimburse" as used throughout this Notice of Obligation to Reimburse includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of the Grant Agreement and are a valid liability of the Grantee.

<sup>2/</sup> Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**EXHIBIT 3  
ALTSD CAPITAL OUTLAY  
SPECIAL GRANT CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit 3** is necessary pursuant to Executive Order 2013-006 (2.A.2.b.), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2014 audit. The Special Conditions identified below apply to the authorized agent, the City of Aztec. The special condition is as follows:

**Procurement** - All purchases or contracts the Grantee enters that shall use funding from the ALTSD capital appropriations grant must be approved by ALTSD prior to the initiation of implementing purchasing documents. The Grantee shall receive such prior approval via official correspondence from ALTSD, which may be through letter or email. The Grantee shall submit the following to ALTSD in pursuit of prior approval: purchasing policies and procedures, copies of bid documents, documentation of management and program approval, policies and procedures governing purchasing and contracting, a copy of the current procurement and contracting policies, and documentation regarding informing staff responsible for purchasing and contracting on such policies and procedures.

The City of Aztec was required to, and has provided sufficient documentation regarding procurement, as referenced in the City of Aztec's 2014 Audit file. Therefore, the criteria to enter into this agreement have been met.

**EXHIBIT 4  
 ALTSD CAPITAL OUTLAY  
 PROJECT DESCRIPTION  
 SCOPE OF WORK (SOW)**

Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 109, fifty-four thousand dollars (\$54,000) to purchase and equip vehicles for the Aztec senior center in San Juan County.

1. **Name of Grantee/ Fiscal Agent:** CITY OF AZTEC
2. **Project Title:** AZTEC SENIOR CENTER-VEHICLES
3. **Grant Agreement Number:** A14-1208
4. **Background Narrative:** It is imperative that we purchase new vehicles in order to have reliable transportation for our Home delivery meal route and transportation service. Our current vans are breaking down and requiring maintenance more frequently. All but one of our vehicles are over 10 years old.

**Work Plan:** Develop vehicle specifications. Procure vehicles through NM State Price Agreement or informal bids. Purchase two new handicap equipped home delivery meal and transportation vans.

5. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Vehicle Purchase/Equip		54,000.00
Other Costs (specify)		
<b>Totals</b>		<b>54,000.00</b>

6. **Performance Measures:** Purchase, delivery and acceptance of new, handicap equipped vehicles. It is vital to our seniors to have reliable transportation so that we can deliver home meals and transport them for the following purposes: doctor & medical appointments, to pay bills, to pick up medications, and to shop for groceries.
7. **Results Expected:** Dependable, efficient transportation vehicles for home meal delivery. The staff will conduct regular inspection and maintenance on the new vehicles so that they will last 100,000 miles or 10 years.

8.

Time Frame/ Milestones:	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	10/2015
Bid Closing	12/2015
Bid Award to Contractor/Vendor	2/2016
Purchase/Install Equipment	7/2016
Project Completion & Review	9/2016
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	11/2016

**9. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Cindy Iacovetto  
Title: Senior/Community Center Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: ciacovetto@aztecnm.gov  
Phone: 505-334-7617

Name: Kathy Lamb  
Title: Finance Director  
Address: 201 W Chaco, Aztec NM 87410  
Email: klamb@aztecnm.gov  
Phone: 505-334-7653

**NOTICE:** The Grant Application, if approved for funding by the ALTSD, and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (I)  
**AGENDA TITLE:** Airport Annual Maintenance Funding Agreement

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**ACTION REQUESTED BY:** Finance Department  
**ACTION REQUESTED:** Approval  
**SUMMARY BY:** Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- Maintenance Grant
  - Grant application was approved by City Commission on September 22, 2015 and NM Aviation Division has approved funding in the amount of \$11,111 which includes the city's 10% match of \$1,111.
  - Funding will be used for pest control, windsocks, pavement marking paint and beacon light replacement.
  - Funds must be expended and reimbursement requested by June 30, 2016.

## **FISCAL INPUT / FINANCE DEPARTMENT (if applicable)**

- Maintenance Grant
  - The FY16 Adopted Budget, Airport Fund, includes sufficient funds to meet the match requirement of the maintenance grant at the maximum funds available through the State. Grant funds for the repair of the runway end lights will reduce the impact of the repairs to the Airport Fund.

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**SUPPORT DOCUMENTS:** N19-16-02 Aviation Grant Agreement

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the N19-16-02 Aviation Grant Agreement in the amount of \$11,111

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# AVIATION GRANT AGREEMENT

Project Location

N19 - AZTEC MUNICIPAL AIRPORT

Sponsor

AZTEC, CITY OF

Address

201 W CHACO

City

AZTEC

NM

Zip Code

87410

**The Sponsor must print and mail (3) three copies all with original signatures to:**

**NMDOT - AVIATION DIVISION  
PO BOX 9830  
ALBUQUERQUE, NM 87119**

Participation

STATE ONLY

Funding Breakdown

90-10

Contract No. \_\_\_\_\_

Project No.

N19-16-02

Vendor No.

0000054308

Expiration Date \_\_\_\_\_

Purchase Order No: \_\_\_\_\_

# AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective as of the date of the last party to sign on the signature page below.

**Now Therefore**, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

## 1. Purpose.

The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

### a. Project Description:

ANNUAL MAINTENANCE GRANT

- b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.
- c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

	State		Sponsor		Other		Total
\$	10,000	\$	1,111	\$		\$	11,111

## 2. The Sponsor Shall:

- a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
- b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
- c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
- d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
- e. Be responsible for all design and pre-construction activities.
- f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
- g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
- h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

- i. Notify the Department when the plans and specifications are sufficiently complete for review.
- j. Make no changes in design or scope of work without documented approval of the Department.
- k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
- l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
- m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
- n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
- o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

**3. The Department Shall:**

- a. Assign a contact person for this project.
- b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
- c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

**4. Both Parties Agree:**

- a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
- b. The expenditure of any State money is subject to approval by the Department.
- c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

**5. Method of Payment - Reimbursement.**

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

**6. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

## **7. Term.**

The Agreement becomes effective upon signatures of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

## **8. Termination for Cause.**

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

## **9. Disposition of Property.**

- a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
- b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

## **10. Representations and Certification.**

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

## **11. Assurances.**

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

- a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
- b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

- c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
- d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
- e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
- f. That an airport facility that receives funds under the Aviation Act shall not charge landing fees for aircraft, except for aircraft used in commercial activities for compensation.
- g. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
- h. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

### **12. Third Party Beneficiaries.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

### **13. New Mexico Tort Claims Act.**

As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

### **14. Scope of Agreement.**

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

### **15. Terms of this Agreement.**

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

### **16. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and 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 laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

**17. Appropriations and Authorizations of State and Federal Funds.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**18. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**19. Applicable Law.**

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**20. Principal Contacts and Notices.**

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Daniel R. Moran  
Title: Grants Administrator  
  
Address: New Mexico Department of Transportation - Aviation Division  
PO Box 9830  
Albuquerque, NM 87119  
Office: (505) 244-1788 ext. 9112  
Fax: (505) 244-1790  
E-mail: dan.moran@state.nm.us

Name   
Title   
Sponsor   
Address   
City  NM Zip Code   
Office Phone  Fax   
E-Mail

**21. Amendment.**

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

**In witness whereof**, each party is signing this Agreement on the date stated opposite of that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

Recommended by:

By: \_\_\_\_\_  
Aviation Division Director  
or Designee

Date: \_\_\_\_\_

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

Date: \_\_\_\_\_

**SPONSOR**

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (J)  
**AGENDA TITLE:** Finance Department Record Destruction

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**ACTION REQUESTED BY:** Finance Department  
**ACTION REQUESTED:** Approval of Finance Department Record Destruction  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- Commission approved Resolution 2008-776 “Approving and Establishing a Records Management Program” for the City of Aztec on October 21, 2009.
- Prior to the final destruction of any city document, Commission approval must be obtained.
- If approval is obtained the documents will be shredded. The Destruction Form will be signed and held by the City Clerk.
- Destruction of the following Finance Department records **requiring** City Commission approval. Records are NOT scanned but have met record retention requirements:
  - Time cards and Time Card Audit Reports – Calendar years 2009, 2010, 2011 – retention period 3 years following calendar year
- Destruction of the following Finance Department records **requiring** City Commission approval. Destruction includes paper and electronic records
  - None
- Destruction of Finance Department records (information only – does not require City Commission approval, Resolution 2010-850 Authorizing Destruction of Hard Copy Records Once Digitally Archived, November 23, 2010):
  - Capital Asset paper documentation has been scanned to electronic records in electronic database.
  - Time Cards and Time Card Audit Reports – Calendar year 2012, 2013 (January to August 2013 – thereafter records are electronic)

**FISCAL INPUT**

- Due to the volume of paper to be destroyed, the Finance Department will contact a firm specializing in document destruction. Funds were included in the FY16 Finance Department budget specific to this purpose.

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**SUPPORT DOCUMENTS:** None

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Destruction of Finance Department Records

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# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (K)  
**AGENDA TITLE:** General Services and Public Works Department Record Destruction

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**ACTION REQUESTED BY:** Finance Department  
**ACTION REQUESTED:** Approval of Finance Department Record Destruction  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- Commission approved Resolution 2008-776 “Approving and Establishing a Records Management Program” for the City of Aztec on October 21, 2009.
- Prior to the final destruction of any city document, Commission approval must be obtained.
- If approval is obtained the documents will be shredded. The Destruction Form will be signed and held by the City Clerk.
- Documents were inventoried in one of the storage containers at the airport. Several boxes are ant infested limiting ability to safely complete an inventory of a few boxes of documents.
- Destruction of the following General Services and Public Works Department records **requiring** City Commission approval. Records are NOT scanned but have met record retention requirements:
  - Department Purchase Documentation: FY1995, FY1996, FY1997, FY1999, FY2000, FY2001, FY2002, FY2003, FY2004, FY2005, FY2006, FY2007, FY2008, FY2009 – 3 year retention period
  - Time Records: Calendar years - 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 – 3 year retention period following close of calendar year
  - Aztec Family Center Project File (ant infested, unsure of compete contents) – building for Boys and Girls Club completed 1999; 10 years retention period
  - Line Spots – 2003, 2004, 2008, 2009 – unable to identify specific record retention requirement
  - General Services and Public Works Miscellaneous – 1995,1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 may include:

- § Recreation Schedules – retention period is until superceded
- § Calendars – no retention period
- § Maxicom Schedules and Daily Logs – retention until superceded
- § Commission and Staff Meeting Agendas – department copies – no retention period
- § Work Orders – one year retention record after completion
- Irrigation Assessment Files (1980 & 1990s) – billing records – retention period 3 years after close of fiscal year
- Public Works Project Files (1995) includes purchase documentation and time records (two year retention period for these specific records).
- Destruction of the following General Services and Public Works Department records **requiring** City Commission approval. Destruction includes paper and electronic records
  - None
- Destruction of General Services and Public Works Department records (information only – does not require City Commission approval, Resolution 2010-850 Authorizing Destruction of Hard Copy Records Once Digitally Archived, November 23, 2010):
  - Line Spots – 2003, 2004, 2008, 2009
  - General Services and Public Works Miscellaneous – 1995,1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 may include:
    - § Recreation Schedules
    - § Calendars
    - § Maxicom Schedules and Daily Logs
    - § Commission and Staff Meeting Agendas
    - § Work Orders
    - § Irrigation Assessment Files (1980 & 1990s)
    - § Public Works Project Files (1995) includes purchase documentation and time records (two year retention period for these specific records).  
Finance Capital Asset electronic files contain same information.

<b>FISCAL INPUT</b>
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- Due to the volume of paper to be destroyed, the Finance Department will contact a firm specializing in document destruction. Funds were included in the FY16 Finance Department budget specific to this purpose.

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**SUPPORT DOCUMENTS:**     None

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**DEPARTMENT’S RECOMMENDED MOTION:** Move to Approve the Destruction of General Services and Public Works Department Records

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# Staff Summary

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (L)
<b>AGENDA TITLE:</b>	Visitor Center Record Destruction

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<b>ACTION REQUESTED BY:</b>	Visitor Center
<b>ACTION REQUESTED:</b>	Approval of Visitor Center Record Destruction
<b>SUMMARY BY:</b>	Wilann Thomas

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## PROJECT DESCRIPTION / FACTS

The following documents have been processed and scanned into Laserfiche. In accordance with the Community Developments Planning Records Retention Schedule these records and are now ready for disposal pending confirmation from Commission.

- Guest Book April - August
- Deposits May - August
- Surveys May - August

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<b>SUPPORT DOCUMENTS:</b>	None
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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Destruction of Visitor Center Records

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (M)
<b>AGENDA TITLE:</b>	State Grants-In-Aid Agreement

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<b>ACTION REQUESTED BY:</b>	Kate Skinner, Library Director, Aztec Public Library
<b>ACTION REQUESTED:</b>	Approve State Grants-In- Aid Agreement for library
<b>SUMMARY BY:</b>	Kate Skinner

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## PROJECT DESCRIPTION / FACTS

- The FY 16 State Grants-in-Aid to Public Libraries agreement was received October 1, 2015. The library grants award program helps support the delivery of local library services. Funds may be used for
  - Library collections;
  - Library staff salaries;
  - Library staff training;
  - Library equipment;
  - Other operational expenditures associated with delivery of library services as defined in Section 4.5.2 NMAC
- Libraries must report on how funds were spent in the 2015/16 Annual Report Library's local budget.
- Award notification and agreement was received on October 1, 2015 with the award amount of \$7526.55 with the award period July 1, 2015 – June 2016. All funds must be spent by June 30, 2016.
- Two (2) copies, signed in blue ink must go to Development Bureau, State Aid, NM State Library, 1209 Camino Carlos Rey, Santa Fe, NM, 87507.

## PROCUREMENT / PURCHASING

Both city and state procurement requirements will be followed for purchases. In addition, this funding will only be utilized on those items which meet the requirements of the funding agreement.

## FISCAL INPUT / FINANCE DEPARTMENT

The FY16 Adopted Annual Budget included \$3,000 specific to this funding source. General Fund Contingency Budget will be utilized to provide the additional funding to the Library Budget.

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**SUPPORT DOCUMENTS:** FY15-16 State Grants-in-Aid to Public Libraries Agreement

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to APPROVE FY15-16 State Grants-in-Aid to Public Library Agreement

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**State Grants-in-Aid to Public Libraries**  
**Agreement**  
**For FY2015/16**

This agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called NMSL, and **Aztec Public Library**, located in Aztec, NM, hereinafter called the Recipient.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4 (1978);

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL and the State Librarian adopted such rules for distributing state grants-in-aid to public libraries, codified as 4.5.2 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a state grant-in-aid under 4.5.2 NMAC.

THEREFORE, the Parties agree to the following terms and conditions:

I. NMSL agrees to pay the Recipient a grant in an amount not to exceed **seven thousand five hundred twenty six dollars and fifty five cents (\$ 7,526.55)** to support Recipient's library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of *library services* as defined in 4.5.2 NMAC.

II. The Recipient agrees to

1. Use the grant only for library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of *library services*, as those services are defined in 4.5.2 NMAC;
2. Continue to comply with 4.5.2 NMAC and other statutes and rules applicable to developing libraries or public libraries.
3. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;
4. Expend the grant according to the rules outlined in 4.5.2 NMAC, attached hereto as Attachment A;
5. Provide NMSL with a report on how the grant was spent as part of the Recipient's annual report for the fiscal year; and
6. Return any funds from the grant not spent in the 2016 fiscal year to NMSL by July 15, 2016.

III. The Laws of New Mexico shall govern this Agreement.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**By:** \_\_\_\_\_ Chairman or Authorized Agent of Recipient (print name)

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**By:** Kathleen Moeller-Peiffer, New Mexico State Librarian

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (N)
<b>AGENDA TITLE:</b>	Zippy Tech / Cedar Network Pole Attachment Agreement

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<b>ACTION REQUESTED BY:</b>	Ken George , Electric Director
<b>ACTION REQUESTED:</b>	Approve Pole Attachment Agreement With Zippy Tech / Cedar Network
<b>SUMMARY BY:</b>	Ken George

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## PROJECT DESCRIPTION / FACTS

Zippy Tech / Cedar Network a State registered communications utility would like to attach fiber optic cable to power poles owned by the City of Aztec in order to serve high speed fiber optic communications to businesses in Aztec.

The City Attorney has read and finds the agreement legally acceptable. (KBG)

## PROCUREMENT / PURCHASING (if applicable)

N/a

## FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

Once Zippy Tech has determined what poles they wish to attach to throw the permitting process there will be a fee charged per pole per year. This is a 15 year agreement. Fees charged are \$18.00 per pole per year for years 1-5, \$22.25 for years 6-10 and \$26.50 for years 11-15.

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<b>SUPPORT DOCUMENTS:</b>	Agreement Zippy Tech/Cedar Network
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<b>DEPARTMENT'S RECOMMENDED MOTION:</b>	Move to Approve Pole Attachment Agreement With Zippy Tech / Cedar Network
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CITY OF AZTEC  
JOINT USE POLE ATTACHMENT LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of September 2015 (“Effective Date”) by and between the CITY OF AZTEC, (hereinafter referred to as “LICENSOR”), and Cedar Networks/ZippyTech, (hereinafter referred to as “LICENSEE”),

WITNESSETH THAT:

WHEREAS, LICENSEE desires to place its cables, appliances, equipment and facilities, (hereinafter collectively called “attachments”) on LICENSOR’s distribution and transmission utility poles, (hereinafter collectively called “poles”); and

WHEREAS, LICENSOR is willing to permit said attachments to its poles solely for the purpose of permitting LICENSEE to provide services as LICENSEE is authorized to provide in compliance with local, state, or federal law, and where such attachments will not interfere with its own core use, subject to the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) Subject to compliance with the terms of this Agreement, LICENSOR agrees to issue to LICENSEE a revocable, nonexclusive license authorizing LICENSEE to place its attachments on LICENSOR’s poles. Said license includes the right for the continued placement and maintenance of LICENSEE’s attachments previously authorized by LICENSOR.

(b) No use of LICENSOR’s poles or payment of any fees or charges required under this Agreement shall vest in LICENSEE any property rights in said poles, but LICENSEE shall have a mere license. LICENSOR is not required to construct, retain, extend, place or maintain any poles or other facilities not needed for its own service requirements, and LICENSOR reserves the right to exclude from LICENSEE’s use any poles; provided, that LICENSOR may only deny access to poles where there is insufficient capacity or for the reason of safety, reliability and applicable engineering standards as defined by the NESC; or by City ordinance.

(c) LICENSEE acknowledges that LICENSOR has heretofore entered into, or may in the future enter into, arrangements or agreements with others not party to this Agreement regarding the joint use or rental of poles covered by this Agreement. Therefore, any application made under the terms of this Agreement and any permit granted shall be subject to such joint use or rental agreements or arrangements.

When a party to this Agreement enters into a license Agreement with a third party concerning use of the Joint Pole(s) it owns, it shall require the attachments of such third party to comply with substantially the same requirements as set forth in this Agreement.

The party owning the Joint Pole(s) shall require such third party to compensate Licensor and Licensee for reasonable costs incurred in rearranging any of their attachments necessary to provide clearance, as required in this Agreement, for such third party's installation upon the Joint Pole(s).

In no situation, shall any third party's modification or attachment to any joint pole encumber, obstruct, or impede the maintenance, removal for installation, or permanent removal of any of the other parties' existing attachments.

## ARTICLE II

### TERM OF AGREEMENT

(a) The term of the Pole attachment license agreement granted hereunder shall be for an initial term of ten (10) years, commencing upon the Effective date of the Pole attachment license agreement, unless the Pole attachment license agreement is renewed or is lawfully terminated in accordance with the terms of this Pole attachment license agreement. At the conclusion of the initial ten (10) year term, as determined by mutual consent of both parties, a five (5) year extension to the Pole attachment license agreement shall be granted to LICENSEE.

(b) Upon termination of this Agreement in accordance with any of its terms, LICENSEE shall immediately remove its attachments from all poles of LICENSOR. If not so removed within three hundred eighty (380) days or a negotiated signed agreement extending the time longer than 380 days, all lines, equipment and attachments shall become the property of the LICENSOR and may be removed by LICENSOR, at the expense of LICENSEE, and LICENSOR shall be free from any liability from removing or disposing of them.

## ARTICLE III

### FEES AND CHARGES

(a) LICENSEE shall pay for each occupied pole according to the schedule set forth below:

- (1) \$18.00 per pole for years 1 through 5 of the agreement.
- (2) \$22.25 per pole for years 6 through 10 of the agreement.
- (3) \$26.50 per pole for years 11 through 15 of the agreement.

(b) Annual rental payments shall be based on the number of poles on which there exists any attachment of LICENSEE on December 31 of the preceding year. LICENSOR will notify LICENSEE of such amount due for any year that this Agreement is in effect on or before March 31 of the preceding year. LICENSEE shall pay the Amount Due in accordance with

Article XVII of this Agreement. The above rental rate may be revised by LICENSOR upon written notice to LICENSEE at least six (6) months in advance of the date the next rental payment is due. Provided, however, that any adjustment to the rental rate shall not exceed the proportionate change over the same time period in the Handy-Whitman Index for Electric Utility Construction Cost for the Southwest Region of the United States for Federal Energy Regulatory Account Number 364, Poles, Towers and Fixtures. The revised rate will apply to all attachments existing on December 31 of the year in which notice is given and will continue to apply to all existing and future attachments unless further revised.

#### ARTICLE IV

##### APPLICATION FOR PERMIT AND NOTIFICATION OF ATTACHMENTS

(a) Before making attachment to any of LICENSOR's poles, LICENSEE shall make application to LICENSOR specifying the location of each pole on the form attached as Exhibit A. Within thirty (30) working days after receipt of the application, LICENSOR shall return to LICENSEE said application indicating thereon whether or not it is willing to permit the joint use of poles, and if so, under what conditions. Notwithstanding the foregoing, LICENSEE shall not be required to make application for attachments previously authorized by LICENSOR. The application requirement will be waived for new customer service drops added to poles on which LICENSEE already has an authorized attachment provided the LICENSEE has left efficient climbing and/or aerial basket approach space on the alley or road side of the pole or structure. In instances where a service drop is the initial attachment on Licensor's pole, Licensee shall make application to Licensor within 14 days of such attachment.

(b) LICENSOR shall have the sole right to determine the availability of such poles for joint use and shall be under no obligation to grant permission for LICENSEE's use of the poles. LICENSEE shall have the right to occupy the space allotted by LICENSOR under the conditions and in accordance with the terms of this Agreement. Upon receipt of LICENSOR's approval for the attachment, the payment shall be the applicable annual per pole sum calculated under Article III, paragraph (a) above.

(c) After making attachment to poles of LICENSOR, LICENSEE shall notify LICENSOR of the location of each attachment and any changes to the original application as set forth on the Notification of Attachment by LICENSEE Form attached as Exhibit B.

(d) LICENSEE shall be in compliance with any applicable ordinances, rules, regulations and laws presently in effect or that hereafter may be adopted or enacted by LICENSOR'S Municipal or State legislative body.

ARTICLE V  
SPECIFICATIONS

LICENSEE's attachments on LICENSOR's poles shall be placed and maintained in accordance with provisions of the edition of the National Electrical Safety Code, and all subsequent amendments or revisions of said code, and in compliance with any applicable rules, orders, regulations, ordinances and laws now in effect or that hereafter may be adopted or enacted by LICENSOR's municipal legislative body, the New Mexico Public Regulatory Commission, any Federal, State, local or other governmental agency, or other authority having jurisdiction, and the reasonable rules and practices of LICENSOR set forth in this Agreement. Changes in rules and practices shall not be retroactive to those attachments that were placed prior to the change that met the rules and practices in effect at the time. Those attachments placed prior to changes in rules shall be brought into compliance at the time of their replacement, relocation, or rearrangement.

ARTICLE VI  
PLACING AND MAINTAINING ATTACHMENTS

(a) LICENSEE shall, at its own expense, place and maintain its attachments in safe condition and thorough repair, so as not to conflict with the use of poles by LICENSOR for its core utility service (power transmission and delivery, fiber communications and municipal telephone) or other users, or interfere with the construction, operation, maintenance or removal of facilities thereon. LICENSEE shall take all necessary precautions, by the installation of protective equipment or other means, to protect all persons and property against injury or damages occurring by reason of LICENSEE's attachments on LICENSOR's poles.

(b) LICENSEE shall within thirty (30) days, at its own expense, upon notice from LICENSOR, relocate, replace or renew its attachments placed on the poles, and transfer them to substitute poles, or perform any other work in connection with the facilities that may be reasonably required by LICENSOR for its core service needs. In the event that third-party joint pole users not subject to this Agreement whose attachments are located above Licensee's shall have equipment attached to Licensor's poles, Licensee's thirty (30) day period to transfer its Attachment shall not commence until Licensee receives notice from Licensor that the third-party attachments above Licensee have been moved. In the case of an emergency, LICENSOR may arrange to relocate, replace or renew the attachments placed on the poles by LICENSEE, transfer them to substituted poles, or perform other work in connection with the attachments that may be required in the maintenance, removal, replacement or relocation of its poles, the attachments to the poles, or the service needs of LICENSOR. LICENSEE shall, on demand, reimburse LICENSOR for the expenses incurred.

(c) LICENSEE shall not place any additional equipment or change the position of any of its attachments upon any pole used by it hereunder without first making application therefore and receiving LICENSOR's approval so to do, all as prescribed in Article IV hereof.

(d) LICENSEE shall remove, relocate or place underground its facilities at its own expense if the LICENSOR removes or replaces an existing overhead line underground. In the instance the LICENSOR is replacing existing overhead facility(s) underground as a municipal beautification or enhancement project, LICENSOR shall notify LICENSEE a minimum of 120 days prior to project start and supply trenching and install conduit for the Licensee's trunk line and or fiber facilities under the direction of the Licensee's local engineer or systems planner.

## ARTICLE VII

### ALTERATIONS FOR LICENSEE'S ATTACHMENTS

(a) In the event that any pole of LICENSOR to which LICENSEE desires to make attachments, in the judgment of LICENSOR, requires rearrangement to support, or accommodate the additional attachments of LICENSEE, LICENSOR shall indicate on Exhibit A the changes it believes are necessary to provide adequate pole space and the estimated cost to LICENSEE. LICENSEE agrees to pay LICENSOR the cost of replacing any pole that is inadequate to accommodate LICENSEE's attachments, as well as the cost of transferring attachments from the old to the replacement poles. LICENSEE also agrees to pay LICENSOR the cost of rearranging attachments on an existing pole to accommodate LICENSEE's attachments, including the cost of strengthening or guying. LICENSEE shall pay LICENSOR upon the completion of the replacement of inadequate poles or rearrangement of its facilities, as billed by the LICENSOR. LICENSEE also agrees to pay the owner or owners of other attachments on said poles the cost of transferring or rearranging such attachments to accommodate LICENSEE's attachments. LICENSEE shall agree with other owners of facilities attached to said poles as to the payment to be made to such owners.

(b) In the event LICENSOR installs a new pole in its assigned service area and in order to provide space or strength to accommodate LICENSEE's attachments must install a stronger or taller pole, the cost of providing a pole of extra height or strength shall be paid by LICENSEE. Such cost shall include the difference between the cost of installing the new pole and the cost of installing a pole LICENSOR considers adequate for LICENSOR's attachments and of its other LICENSEE's. The new pole shall be the property of LICENSOR regardless of any payments by LICENSEE toward its cost and LICENSEE shall acquire no right, title or interest in such pole. The LICENSOR standard pole installed in rural areas is a 35' class 4 and a 40' class 4 in metropolitan areas.

(c) Because LICENSOR provides an essential service to the public, it reserves the right to make periodic inspections of LICENSEE's attachments to make certain that there is no impairment to its ability to provide electricity or fiber communications to its customers and LICENSEE shall pay LICENSOR the reasonable costs of such inspections. If such inspection finds that any of LICENSEE's attachments do not conform to requirements, specifications, rules, and regulations specified herein, subject to the provisions of the following sentence. LICENSOR shall not make such inspections more often than once every three years and upon notice to LICENSEE unless, in LICENSOR's judgment, such inspections are required for reasons involving safety, maintenance of service or where LICENSOR reasonably believes LICENSEE is violating the terms of this Agreement. The making of such inspections or the

failure to do so shall not relieve LICENSEE of any responsibility, obligation or liability assumed under this Agreement.

(d) If LICENSEE's attachments are found on a pole for which no permit has been obtained, LICENSOR may (1) impose a charge of \$150.00 (one hundred fifty dollars) plus five (5) years attachment fees as condition to such attachments remaining on the pole, or (2) require LICENSEE to remove such attachments. If LICENSEE fails to pay the charge or to remove the attachments, LICENSOR may remove the attachments and the expense of removal shall be borne by LICENSEE. For the purpose of determining the charge, an unauthorized attachment shall be treated as having existed for a period of five (5) years prior to its discovery; and the charge, computed at the applicable yearly rate per pole at the time of discovery plus \$150.00 (one hundred fifty dollars) and five (5) years, shall be due and payable immediately. Any such charge imposed by LICENSOR shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. As of the effective date of this Agreement, all existing attachments of LICENSEE shall be deemed authorized under Section VII.

## ARTICLE VIII

### LICENSOR'S RIGHTS AND SERVICE RESPONSIBILITIES

LICENSOR reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such a manner as will best enable it to fulfill its own service requirements and responsibilities. LICENSOR shall not be liable to LICENSEE for any interruption to service of LICENSEE or for interference with the operation of the attachments of LICENSEE arising in any manner out of the use of LICENSOR's poles. Nothing in this Agreement shall be construed to obligate LICENSOR to grant LICENSEE permission to use any particular pole or poles, and whenever LICENSOR notifies LICENSEE in writing to remove its attachments from LICENSOR's pole or poles, the LICENSEE shall within thirty (30) days after the date of such notice, remove its attachments from said pole or poles.

## ARTICLE IX

### RIGHTS-OF-WAY AND PERMITS FOR LICENSEE'S ATTACHMENTS

(a) Nothing in this Agreement shall be construed as a warranty or guarantee of permission from owners of private property, municipal or other governmental authorities, or other users, for LICENSEE to place or maintain its attachments upon the poles of LICENSOR. LICENSEE shall secure any required consents, permits or other appropriate authorization from such owners, users, or governmental authorities and shall furnish to LICENSOR evidence of the procurement of such authorizations with Exhibit "A" application and permit

(b) Upon notice from LICENSOR to LICENSEE that the use of any pole is forbidden by municipal authorities or property owners, the permit covering the use of such pole shall immediately terminate and LICENSEE's attachments shall be removed immediately at the expense of LICENSEE.

## ARTICLE X

### LIABILITY AND DAMAGE RESPONSIBILITIES

(a) LICENSEE shall exercise all reasonable precautions to avoid damage to facilities of LICENSOR and other authorized users of LICENSOR's poles and hereby assumes all responsibility for any and all loss for such damage caused by the LICENSEE or by any of its employees.

(b) LICENSEE hereby releases and discharges the LICENSOR from any and all liability for loss of or damage to the attachments of LICENSEE and for any detrimental effect upon, interruption to or failure of the service rendered by LICENSEE whether or not due in whole or in part to any act, omission, or negligence of LICENSOR or any of its representatives, agents, or employees.

(c) Throughout the term of this Agreement, LICENSEE shall maintain in full force and effect with a carrier or carriers selected by LICENSEE the following insurance:

- (1) Worker's compensation insurance in compliance with the laws of the State of New Mexico;
- (2) Bodily injury liability insurance, with limits of not less than \$500,000 as to any one person and \$1,000,000 as to any one accident or occurrence; and
- (3) Property damage liability insurance with limits of not less than \$500,000 for damage to the property of any one person and \$500,000 for each accident or occurrence.
- (4) An umbrella policy in favor of the LICENSOR in the amount of \$1,000,000.

The insurance described above also shall provide contractual liability coverage with respect to liability assumed by LICENSEE under Article XI. The LICENSOR shall be named as an additional insured with respect to bodily injury and property damage insurance. LICENSEE shall submit to LICENSOR certificates by each insurance carrier addressed to LICENSOR showing the effectiveness of insurance in accordance with this Agreement and containing a provision that the insurance carrier will not cancel or change any policy of insurance issued

pursuant to this Agreement except by written notice to LICENSOR served by certified mail stating the effective date of the cancellation or change, which effective date of cancellation or change shall not be less than thirty (30) days after receipt of such notice by LICENSOR.

## ARTICLE XI

### INDEMNIFICATION

(a) LICENSEE agrees to indemnify and save harmless LICENSOR, its representatives, agents, employees, successors and assigns, against and from any and all claims, demands, causes of action, damages, liabilities, costs (including without limitation reasonable attorneys' fees) and expenses, directly or indirectly resulting from or caused by: (1) the installation maintenance, use or removal of LICENSEE's equipment, including without limitation, those based upon LICENSEE's failure to secure any required consents, permits or authorization from the owners of private property, other users, or governmental authorities to maintain its attachments on LICENSOR's poles; (2) any act, omission, or negligence of LICENSEE, or any of its representative, agents or employees; (3) any detrimental effect upon, interruption, discontinuance, or interference with LICENSEE's service occasioned by any action by LICENSOR or any other user.

(b) The above and foregoing indemnities shall apply with respect to any and all claims, demands, causes of action, damages, liabilities, costs and expenses, except to the extent caused by the negligence of LICENSOR or any of its representatives, agents or employees.

(c) LICENSEE shall, upon demand and at its own risk and expense, defend any and all such suits, actions or other legal proceedings which may be brought or instituted against LICENSOR, its successors or assigns, on any such claim, demand, or cause of action; and shall pay and satisfy any judgment or decree which may be rendered against LICENSOR, its successors or assigns.

(d) LICENSOR shall promptly notify LICENSEE in writing of any claim under this Article XI and shall cooperate with LICENSEE with respect to the settlement and/or defense of or to such claims.

## ARTICLE XII

### REMOVAL OF LICENSEE'S ATTACHMENTS

(a) LICENSOR reserves the right, without liability to LICENSEE or its customers, to discontinue the use of, remove, replace or change the location of any of its poles regardless of LICENSEE's use of said poles and LICENSEE shall at its sole cost and within one hundred twenty (120) days after written notice by LICENSOR, remove its attachments as shall be required by LICENSOR.

(b) Upon notice from LICENSOR to LICENSEE that the use of any pole or poles by LICENSEE is unauthorized or illegal, the permit insofar as it covers the use of such pole or

poles shall immediately terminate and LICENSEE shall remove its attachments from such pole or poles.

(c) LICENSEE may at any time remove its attachments from any pole or poles of LICENSOR, but shall immediately give LICENSOR written notice of such removal in the form of the attached Exhibit C.

### ARTICLE XIII

#### ASSIGNMENT OF RIGHTS

(a) LICENSEE shall not assign, sell, lease or in any manner transfer any of the rights granted to it by this Agreement, without prior consent in writing of LICENSOR. The attempted assignment, transfer, lease or sale by LICENSEE of any of the rights hereby granted without written consent of LICENSOR shall constitute a breach of this Agreement by LICENSEE, subject to the remedies set forth in Article XIV. Notwithstanding anything to the contrary herein, LICENSEE may assign this Agreement without the necessity of obtaining LICENSOR'S consent, to any person acquiring all or substantially all of LICENSEE'S assets or stock; provided that such assignee has been duly authorized by the City of Aztec to provide the services described hereunder and provided further that LICENSEE shall notify LICENSOR in writing, within thirty (30) days of such assignment.

(b) The terms and provisions of this Agreement shall be binding upon and extend to and inure to the benefit of the successors, assigns and contractors and/or subcontractors of the LICENSEE.

### ARTICLE XIV

#### DEFAULTS AND REMEDIES

(a) If LICENSEE fails to comply with any of the provisions of this Agreement or is in default in any of its obligations under this Agreement and shall fail thirty (30) days after written notice from LICENSOR to notify LICENSOR of its intention to comply with such provisions and/or correct such default and if LICENSEE fails to correct such default or noncompliance within sixty (60) days after said notice by the LICENSOR to the LICENSEE, LICENSOR may, at its option, terminate this Agreement or terminate the permit covering the pole or poles as to which such default or noncompliance shall have occurred. Notwithstanding the foregoing, in such cases where a default cannot be cured within the specified period by the exercise of diligent, commercially reasonable effort, Licensee shall have an additional sixty (60) days within which to cure the defaults, giving Licensee a total of One hundred twenty (120) days from the date that Licensor provided its notice of default. In the event that LICENSOR terminates this Agreement, in writing and in entirety, LICENSEE shall have seven hundred twenty (720) days within which to remove its attachments, and in the event that LICENSEE does not remove its attachments within said period, LICENSOR may do so, the removal cost to be borne, in any event by LICENSEE or the attachments and infrastructure become property of LICENSOR.

(b) The rights and privileges by LICENSEE hereby granted shall not pass to any trustee, receiver, or assignee for the benefit of creditors of LICENSEE or be otherwise transferable by operation of law. This Agreement shall terminate, at LICENSOR's election, in the event of the liquidation or involuntary dissolution of LICENSEE, or in the event LICENSEE is adjudicated as bankrupt or insolvent, or if a receiver for LICENSEE's property is appointed and such receiver is not discharged or such appointment revoked within thirty (30) days after the date of the appointment of such receiver. LICENSOR may terminate this Agreement by thirty (30) days written notice to LICENSEE upon the happening of any one or more of the following events, to-wit:

- (1) The making by LICENSOR of any assignment for the benefit of creditors;
- (2) The taking of any action for the voluntary dissolution of LICENSEE;
- (3) The filing by LICENSEE of a voluntary petition in bankruptcy;
- (4) The appointment of a receiver for the LICENSEE.

(c) In the event either party shall be required to resort to litigation for the purpose of enforcing its rights under this Agreement, the judgment resulting from such litigation shall include an allowance for court costs and reasonable attorneys' fees, paid or incurred in connection with such litigation, unless such litigation has been compromised or settled and unless otherwise ordered or provided in the judgment or decree terminating such litigation.

(d) All rights and remedies hereby enumerated shall be cumulative and the enumeration of specific rights and remedies shall not preclude the exercise or prosecution of any other right or remedy afforded by law, and such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.

## ARTICLE XV

### ENFORCEMENT

Failure by LICENSOR to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any terms or conditions.

## ARTICLE XVI

### RIGHTS OF OTHER USERS

This Agreement shall not be construed as affecting the rights or privileges previously conferred by LICENSOR, by contract or otherwise, to others not parties to this Agreement, to use any poles covered by this Agreement; and LICENSOR shall have the right to continue and extend such rights and privileges. This Agreement shall not be construed as affecting or limiting the

rights of LICENSOR to make other and additional contracts with other persons, firms, or corporations for the joint use or rental of LICENSOR's poles and facilities.

## ARTICLE XVII

### PAYMENT OF STATEMENTS

Statements for expenses and other charges under this Agreement, including without limitation, amounts due under Article III, shall be paid within forty-five (45) days after presentation. Nonpayment of statements shall constitute a default of this Agreement if not paid within ten (10) days after written notice of such nonpayment by LICENSOR to LICENSEE and/or the guarantor herein.

## ARTICLE XVIII

### IDENTIFICATION OF LICENSEE'S EMPLOYEES

In furtherance of the purpose of the laws, rules and regulations relating to sabotage, espionage and subversive activities, LICENSEE shall identify each of its employees and agents accessing LICENSOR's poles and will require its contractors to have suitable means of identification as to their employees, who will have occasion to perform work on or about LICENSOR's poles, wires and other facilities.

## XIX

### FORCE MAJEURE

Neither LICENSOR nor LICENSEE shall be liable for any delay or failure to perform its obligations under this Agreement, other than the payment of money, in the event of a Force Majeure occurrence. Force Majeure as used herein, shall include, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; absence of necessary orders and permits of any kind which have been properly applied for; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; sabotage; injunction; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of the party claiming the Force Majeure.

## ARTICLE XX

### PREVENTION AND SATISFACTION OF LIENS

LICENSEE agrees that no lien shall attach to the property of the LICENSOR. LICENSEE, its subcontractors and the servants, agents and employees of LICENSEE and its subcontractors shall not file, assert or prosecute any mechanic's or material man's liens against LICENSOR or its property. LICENSEE, its subcontractors and the servants, agents and

employees of LICENSEE and its subcontractors also shall not permit any mechanic's or material man's liens to be filed assigned or prosecuted against LICENSOR or its property.

## ARTICLE XXI

### NOTICES

Any notices required or permitted pursuant to this Agreement shall be given by registered or certified mail with return receipt requested, addressed to City of Aztec, attention Electric Director, 201 West Chaco, Aztec, NM 87410 and to LICENSEE at:

With a copy to:

Cedar Networks  
ATTN: Vijay Bastawade, President  
954 E 2<sup>nd</sup> Street  
Durango, CO 81301

Either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be transmitted to it.

## ARTICLE XXII

### CONTRACTING

The LICENSEE shall, as soon as practical after the execution of this Agreement, notify the LICENSOR in writing of the names of any contractors or subcontractors which the LICENSEE proposes for any or various portions of the work to be performed in attaching LICENSEE's attachments to LICENSOR's poles. The LICENSEE shall be fully responsible under the provisions of Article X to LICENSOR for the acts or omissions of its contractors and/or subcontractors and of the persons directly or indirectly employed by them.

## ARTICLE XXIII

### LICENSEE'S COMPLIANCE WITH ORDINANCES, LAWS, RULES AND REGULATIONS

The LICENSEE in the performance of its service and in exercising the rights granted under any license issued to the LICENSEE by the LICENSOR under this Agreement shall at all times comply with all applicable ordinances, laws, rules and regulations of any and all governmental authorities having jurisdiction in the premises and shall exercise such rights for lawful communication purposes only.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the Parties.

CITY OF AZTEC

By \_\_\_\_\_  
Its \_\_\_\_\_  
"LICENSOR"

ATTEST \_\_\_\_\_  
Its \_\_\_\_\_

By *Visay* \_\_\_\_\_ 9/24/15  
"LICENSEE" VISAY BASTAWADE

ATTEST *Bonnie L. Pietrowski*  
Its *Public Notary*

BONNIE L. PIETROWSKI  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19944211951  
MY COMMISSION EXPIRES JULY 25, 2018

EXHIBIT A

PERMIT NO. APPLICATION AND PERMIT

TO: City of Aztec  
Attention: Electric Director  
201 West Chaco  
Aztec, NM 87410

In accordance with the terms of the Pole Attachment License Agreement, dated \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ hereby applies for a permit to make attachments to the poles identified below. \_\_\_\_\_ has obtained all necessary consents or permits from private property owners and governmental authorities in accordance with Article IX of the Pole Attachment License Agreement.

LOCATION

(Street Name(s))

No. Poles Attached \_\_\_\_\_

Aztec Electric Pole ID #'s

By  
Title

Licensee

Permit granted \_\_\_\_\_, 20\_\_\_\_, place the above described attachment(s) on the identified pole(s), subject to LICENSEE's acceptance of any changes or rearrangements detailed on the attached sheet, at an estimated cost of \$ \_\_\_\_\_ for LICENSOR's rearrangements. Acceptance should be indicated on this form and returned to LICENSOR within sixty (60) days from the date hereof, failing which the permission hereby granted shall automatically be revoked.

CITY OF AZTEC

By \_\_\_\_\_  
Title \_\_\_\_\_  
LICENSOR

TO: City of Aztec  
Attention: Electric Director  
201 West Chaco  
Aztec, NM 87410

The above-mentioned changes and rearrangements are accepted by the Licensee on \_\_\_\_\_, \_\_\_\_\_, and the costs thereof will be paid to LICENSOR in accordance with Article VI of the Pole Attachment License Agreement.

By \_\_\_\_\_  
Title \_\_\_\_\_  
LICENSEE

NOTICE NO. \_\_\_\_\_

EXHIBIT B

NOTIFICATION OF ATTACHMENT BY LICENSEE

\_\_\_\_\_, 20\_\_\_\_

TO: City of Aztec  
Attention: Electric Director  
201 West Chaco  
Aztec, NM 87410

In accordance with the terms of Pole Attachment License Agreement, dated \_\_\_\_\_, 20\_\_\_\_, pole attachment information is shown below:

Location \_\_\_\_\_  
(Street Name)

Total Poles Attached \_\_\_\_\_

Cedar Networks/ZippyTech

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensee

Notice Acknowledged

\_\_\_\_\_, 20\_\_\_\_.

CITY OF AZTEC

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensor  
NOTICE NO. \_\_\_\_\_

EXHIBIT C

NOTIFICATION OF REMOVAL BY LICENSEE

\_\_\_\_\_, 20\_\_\_\_

TO: City of Aztec  
Attention: Electric Director  
201 West Chaco  
Aztec, NM 87410

In accordance with the terms of Pole Attachment License Agreement, dated \_\_\_\_\_, 20\_\_\_\_, please cancel the Permit for the following pole(s) from which attachment(s) were removed on \_\_\_\_\_, 20\_\_\_\_.

Location \_\_\_\_\_  
(Street Name)

Total Poles Discontinued \_\_\_\_\_

Cedar Networks/ZippyTech

By \_\_\_\_\_ Title \_\_\_\_\_  
Licensee

Notice Acknowledged  
\_\_\_\_\_, 20\_\_\_\_

CITY OF AZTEC

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensor



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
ZIPPYTECH OF NEW MEXICO, INC. )  
FOR A CERTIFICATE OF REGISTRATION TO )  
PROVIDE COMPETITIVE LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES )  
WITHIN THE STATE OF NEW MEXICO. )

Undocketed Case

ORDER ISSUING CERTIFICATE OF REGISTRATION

THIS MATTER comes before the New Mexico Public Regulation Commission (Commission) upon the *Revised Application for a CLEC Certification* (Revised Application) filed by ZippyTech of New Mexico, Inc. ("ZippyTech") on November 9, 2006. ZippyTech seeks to provide local exchange telecommunication services within the State of New Mexico. The Commission, having reviewed the record pursuant to NMSA 1978, § 63-7-1.1, § 63-9A-1, *et seq.*, and 17.11.19 NMAC, *et seq.*, and being otherwise fully advised in the premises,

**FINDS AND CONCLUDES:**

1. Effective January 1, 2001, the Commission, pursuant to NMSA 1978, §§ 8-8-4, 8-8-15 and 63-9A-8.2, promulgated our new rule expediting procedures for competitive local exchange carriers to obtain authority to provide local exchange telecommunications services in New Mexico. Pursuant to this rule, the Commission, upon receipt of a completed application approved by Staff, "shall issue a certificate of registration if it finds that the applicant possesses adequate financial resources and technical competency to provide competitive local exchange service and that issuance of the certificate of registration is in the public interest. 17.11.19.11 NMAC.

2. On December 7, 2006, the Commission's Utility Division Staff (Mark A. Cessarich, Economist), presented the Revised Application to the Commission, stating that ZippyTech had completed its Application in compliance with 17.11.19.11 NMAC.

3. Based on the information contained in the Revised Application, as well as the Affidavit filed by Staff, the Commission finds and concludes that it is in the public interest to grant a *Certificate of Registration* to ZippyTech to provide competitive local exchange telecommunications services in New Mexico.

4. The Commission has jurisdiction over the subject matter of the Revised Application.

**IT IS THEREFORE ORDERED:**

A. The Revised Application of ZippyTech to provide competitive local exchange telecommunications services within the State of New Mexico (as described in the Revised Application) is in the public interest and is granted as provided by this *Order*.

B. A *Certificate of Registration* shall issue to ZippyTech of New Mexico, Inc. pursuant to 17.11.19 NMAC, *et seq.*, authorizing ZippyTech to provide local exchange telecommunications services within the State of New Mexico as provided by this *Order*; and this *Order* shall constitute said *Certificate of Registration*.

C. The Commission approves ZippyTech's proposed New Mexico local exchange tariff, on the condition that any provisions thereof concerning express or implied limitations of liability be conformed to the Commission's ruling in Case No. 04-00223-UT, as set forth in the Final Order that was issued on December 5, 2006 and that adopted the Certificate of Stipulation issued by the Hearing Examiner on October 11, 2006. Prior to providing service as a competitive telecommunications provider, ZippyTech shall file an initial tariff with the

Commission consistent with the approvals granted by this *Order*. The tariff shall bear an effective date of not less than ten (10) days subsequent to receipt by the Commission.

D. ZippyTech shall otherwise comply with all other provisions of 17.11.19 NMAC, *et seq.*, all rules and orders of this Commission, and all universal service requirements as determined by the Commission.

E. This *Order* is effective immediately.

F. A copy of this *Order* shall be served on the persons listed on the attached *Certificate of Service*.

G. Pursuant to the *Resolution*<sup>1</sup> issued by the Commission on April 17, 2001, this *Order* is being issued by the Commission Chairman or by a single Commissioner.

ISSUED at Santa Fe, New Mexico, this 12-day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
\_\_\_\_\_  
CHAIRMAN or COMMISSIONER

<sup>1</sup> A Resolution Establishing a Streamlined Procedure for Issuing Certificates of Registration to Qualifying Competitive Local Exchange Carriers In Conformity with the Expedited Procedures Set Forth in 17.11.19 NMAC.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
ZIPPYTECH OF NEW MEXICO, INC. FOR A )  
CERTIFICATE OF REGISTRATION TO )  
PROVIDE COMPETITIVE LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES WITHIN )  
THE STATE OF NEW MEXICO )

Undocketed Case

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing  
Order Issuing Certificate of Registration, issued December 12, 2006, was mailed  
first-class, postage pre-paid, to each of the following on December 15, 2006:

ZippyTech of New Mexico, Inc.  
3501 E. Main, Suite #1122  
Farmington, NM 87402

Vijay Bastawade  
10 Town Plaza #152  
Durango, CO 81301

hand-delivered to:

Mark Cessarich  
NM Public Regulation Commission  
224 East Palace Ave  
Santa Fe, NM 87501

hand-delivered to:

Ruby Rohrs  
NM Public Regulation Commission  
224 E. Palace Ave  
Santa Fe, NM 87501

hand-delivered to:

Margaret Caffey-Moquin  
Associate General Counsel  
NM Public Regulation Commission  
1120 Paseo de Peralta, PIRA Bldg Rm 518  
Santa Fe, NM 87501

hand-delivered to:

Mike Ripperger  
NM Public Regulation Commission  
224 E. Palace Ave  
Santa Fe, NM 87501

DATED this 15th day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



Cecilia Rios, Paralegal

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT AGENDA (O)
<b>AGENDA TITLE:</b>	Farmington Municipal Court Probation Department Agreement

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<b>ACTION REQUESTED BY:</b>	Judge Carlton Gray
<b>ACTION REQUESTED:</b>	Approve Agreement with Farmington Probation to monitor defendant's on probation for DWI's
<b>SUMMARY BY:</b>	Carlton Gray – Municipal Judge

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## PROJECT DESCRIPTION / FACTS

At this time we have an agreement with Farmington Probation to monitor our DWI probationer (City Commission approval 1/28/214). In the agreement there was a section (1-b) concerning billing that seemed confusing. We have changed the wording to make it less confusing.

## PROCUREMENT / PURCHASING

None Required

## FISCAL INPUT / FINANCE DEPARTMENT

The FY16 Adopted Annual Budget, General Fund, Municipal Court, established funding for the Municipal Court Probation Program.

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<b>SUPPORT DOCUMENTS:</b>	Farmington Municipal Court Probation Department Agreement
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<b>DEPARTMENT'S RECOMMENDED MOTION:</b>	Move to Approve the Probation Service Agreement with the City of Farmington Probation Department.
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## **Probation Services Agreement**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Aztec, a municipal corporation, and the City of Farmington, New Mexico, a municipal corporation.

WHEREAS, the City of Aztec operates a Municipal Court that handles a variety of crimes including the crime of Driving While Intoxicated.

WHEREAS, The City of Aztec wishes to have probation services provided to defendants that are convicted of the crime of Driving While Intoxicated in Municipal Court.

WHEREAS, The City of Aztec does not have a probation department and wishes to use the services of the City of Farmington Municipal Court Probation Department.

WHEREAS, the parties wish to enter into a service agreement to provide probation services to City of Aztec probationers.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREES AS FOLLOWS:

1. The City of Farmington agrees;

a. To bill the City Aztec on a quarterly basis for probation services rendered.

b. The City of Farmington will charge \$70.00 per probationer per month to supervise. \$50.00 of this amount will be paid by the probationer and the remaining \$20.00 will be paid by the City of Aztec. Should the probationer fail to pay his or her \$50.00 portion of the fee as required by his or her probation contract, the City of Farmington will bill this fee portion to the City of Aztec as well and it shall be paid by the City of Aztec.

c. The City of Farmington will bill the City of Aztec for any laboratory fees that are incurred due to positive drug tests from City of Aztec probationers.

d. The City of Farmington agrees to only supervise Driving While Intoxicated probationers.

e. The City of Farmington will not enforce any probation requirements that exceed the statutory and jurisdictional authority of the Municipal Court.

f. Probation services will be provided so long as available manpower exists.

2. The City of Aztec agrees;

a. To pay the quarterly bills within thirty (30) days of receipt of invoice.

- b. Provide the City of Farmington Municipal Court Probation Department with a list of newly assigned probationers weekly.
- c. The City of Aztec agrees that the City of Farmington will not supervise an individual for traffic offenses, with exception of the charge of Driving While Intoxicated.
- d. The City Aztec will hold all show cause hearings for probation violations and the hearings shall be held in front the Aztec Municipal Court Judge.
- e. The City of Aztec agrees not to exceed the jurisdictional authority of the Farmington Municipal Court in the terms of probation for each probationer.

3. The City of Aztec and the City of Farmington mutually agree to defend, indemnify and hold harmless the other from and against any and all liability caused by or arising from the negligent acts or omissions of their own agents or employees.

4. The parties agree that the Agreement will be reviewed annually for feasibility and financial means testing.

5. This agreement is effective as of January 1, 2015.

City of Farmington

By: \_\_\_\_\_  
 Judge William Liese

STATE OF NEW MEXICO )  
 ) ss:  
 COUNTY OF SAN JUAN )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by William Liese, Full Time Municipal Judge for the City of Farmington.

\_\_\_\_\_  
 Notary Public

My Commission Expires:



# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	XII. BUSINESS ITEM (A)
<b>AGENDA TITLE:</b>	Final Adoption of Ordinance 2015-446 Amending Chapter 17, Section 17-3 Safety Policy

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<b>ACTION REQUESTED BY:</b>	Safety Coordinator Troy Morris
<b>ACTION REQUESTED:</b>	DO NOT Approve Final Adoption of Ordinance 2015-446 Amending Chapter 17, Section 17-3 Safety Policy
<b>SUMMARY BY:</b>	Troy Morris

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## PROJECT DESCRIPTION / FACTS

The Safety Policy has been under annual review by the safety committee. Last updates were done in 2014.

Changes were submitted to Commission at the August 25 Commission Meeting and intent to approve ordinance 2015-446 was approved. However at the Commission meeting on September 8, 2015 revisions of the Personnel Policy were presented to Commission for Final Adoption of Ordinance 2015-445. It was at this meeting that conflicts with the Safety Policy and Personnel Policy were raised.

A workshop was held on September 22, 2015 to discuss direction of disciplinary actions with regards to the drug and alcohol section of the Personnel Policy. The personnel policy was approved for final adoption (Ordinance 2015-445) so that other changes could be implemented. Commission directed staff to change some parts of Section 14 Drug and Alcohol Policy of the Personnel Policy. These changes will be submitted in Ordinance 2015-448.

As such, staff recommends that the final adoption of Ordinance 2015-446 for the Safety Policy be rejected. Commission will have before them a revised version of the Safety Policy (Ordinance 2015-447) and amendments to Section 14 of the Personnel Policy (Ordinance 2015-448) to address the concerns and direction of the City Commission from the previous workshop on September 22, 2015.

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<b>SUPPORT DOCUMENTS:</b>	· Ordinance 2015-446
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<b>DEPARTMENT'S RECOMMENDED MOTION:</b>	Move to NOT APPROVE the Final Adoption of Ordinance 2015-446 Amending Chapter 17, Section 17-3 Safety Policy
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**City of Aztec**  
**ORDINANCE 2015-446**

An Ordinance to Amend Chapter 17, Section 17-3 Safety Policy

**WHEREAS**, the City of Aztec has a responsibility to create a safe working environment for its employees; and

**WHEREAS**, the City has created a Safety Program and a written Safety Policy to provide policies and procedures to guide the creation of the safe working environment;

**NOW THEREFORE BE IT ORDAINED** by the Governing Body of the City of Aztec, New Mexico that Chapter 17 Personnel be amended as follows with the addition of Section 17-3:

**Sec. 17-3. Safety Policy.**

The document entitled "City of Aztec Safety Policy, Revised August 2015" is adopted by reference. All associated forms can be amended through an administrative process by the City Manager.

**PASSED, APPROVED, SIGNED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2015.

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: \_\_\_\_\_

# Staff Summary Report

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<b>MEETING DATE:</b>	October 13, 2015
<b>AGENDA ITEM:</b>	XII. BUSINESS ITEM (B)
<b>AGENDA TITLE:</b>	Intent to Adopt Ordinance 2015-447 Amending Chapter 17, Section 17-3 Safety Policy

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<b>ACTION REQUESTED BY:</b>	Safety Coordinator Troy Morris
<b>ACTION REQUESTED:</b>	Approve Intent to Adopt Ordinance 2015-447 Amending Chapter 17, Section 17-3 Safety Policy
<b>SUMMARY BY:</b>	Troy Morris

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## PROJECT DESCRIPTION / FACTS

The Safety Policy has been under annual review by the safety committee. Last updates were done in 2014.

Changes were submitted to Commission at the August 25 Commission Meeting and intent to approve Ordinance 2015-446 was approved. However at the Commission meeting on September 8, 2015 revisions of the Personnel Policy were presented to Commission for Final Adoption of Ordinance 2015-445. It was at this meeting that conflicts with the Safety Policy and Personnel Policy were raised.

A workshop was held on September 22, 2015 to discuss direction of disciplinary actions with regards to the drug and alcohol section of the Personnel Policy. The personnel policy was approved for final adoption (Ordinance 2015-445) so that other changes could be implemented. Commission directed staff to change some parts of Section 14 Drug and Alcohol Policy of the Personnel Policy. These changes will be submitted in Ordinance 2015-448.

As such, staff recommends that the final adoption of Ordinance 2015-446 for the Safety Policy be rejected. Commission will have before them a revised version of the Safety Policy (Ordinance 2015-447) and amendments to Section 14 of the Personnel Policy (Ordinance 2015-448) to address the concerns and direction of the City Commission from the previous workshop on September 22, 2015.

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<b>SUPPORT DOCUMENTS:</b>	<ul style="list-style-type: none"><li>· Ordinance 2015-447</li><li>· Revisions to Safety Policy</li></ul>
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<b>DEPARTMENT'S RECOMMENDED MOTION:</b>	Move to Approve Intent to Adopt Ordinance 2015-447 Amending Chapter 17, Section 17-3 Safety Policy.
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**City of Aztec**  
**ORDINANCE 2015-447**

An Ordinance to Amend Chapter 17, Section 17-3 Safety Policy

**WHEREAS**, the City of Aztec has a responsibility to create a safe working environment for its employees; and

**WHEREAS**, the City has created a Safety Program and a written Safety Policy to provide policies and procedures to guide the creation of the safe working environment;

**NOW THEREFORE BE IT ORDAINED** by the Governing Body of the City of Aztec, New Mexico that Chapter 17 Personnel be amended as follows with the addition of Section 17-3:

**Sec. 17-3. Safety Policy.**

The document entitled "City of Aztec Safety Policy, Revised November 2015" is adopted by reference. All associated forms can be amended through an administrative process by the City Manager.

**PASSED, APPROVED, SIGNED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2015.

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: \_\_\_\_\_

Red = Previous changes submitted with Ord. 2015-446

Purple = Changes added since Commission Workshop and with proposed with Ord. 2015-447

## SECTION 1. SAFETY PLAN

### 1.1 Objective

The development and implementation of a program to protect and minimize personal injuries on the job, the safety of the general public, the environment, and to reduce work related injuries by a measurable amount. Our goal ~~will be a 100% reduction.~~ is to create a safe work environment.

## SECTION 2. SAFETY RESPONSIBILITIES AND DUTIES

### 2.3 Department Heads

#### 1. Responsibilities

Safety begins with the Department Heads' commitment and participation. They set the Department goals, establish accountability, and become involved. A poor safety record is a reflection of department management. Department heads are required to abide by and enforce the safety policy and programs.

#### 2. Duties

- (1) Communicate safety commitment and safety policy and programs.
- (2) Attend safety trainings.
- (3) Assure compliance with all government regulations and the City of Aztec safety programs.
- (4) Review accident reports.
- (5) Help develop and enforce the departmental safety programs.
- (6) Make needed budget appropriations.
- (7) Set a good example and support recommendations from Personnel Administrator and/or Safety Coordinator.
- (8) Provide resources and time to support the safety program.
- (9) Ensure that contractors or vendors providing services adhere to the City of Aztec safety policies.

### 2.6 Safety Committee

1. Safety Committee may meet quarterly (or as determined) to discuss workplace safety and health issues.
2. Conduct safety inspections in their respective departments.
3. Safety Committee may be responsible for assisting the Safety Coordinator(s) in reviewing and updating workplace safety rules and evacuation plans.
4. Safety Committee is responsible for promoting safety and health awareness and co-worker participation through continuous improvements to the workplace safety and health program.

- ~~5. The Safety Committee membership will be made up of the Safety Coordinator, one (1) representative each from the Electric Department, Public Works Department, General Services Department and three (3) representatives from other City Departments to be selected on a rotating basis by the Safety Coordinator. New members will be selected on an as-needed basis.~~

## SECTION 3. ACCOUNTABILITY

In order for a Safety Program to be effective, there must be a means developed for holding employees accountable for their unsafe work habits or conditions.

### 3.1 Responsibility for Disciplinary Action

Disciplinary action will be the direct responsibility of **Management Department Heads**. All employees will be held equally accountable for compliance with safety policies and regulations.

1. If an accident occurs and if it has been determined that the accident could have been avoided, the means of holding employees accountable should be made more severe after each consecutive offense.
2. The purpose of holding employees accountable is to help employees conform to the City of Aztec Safety Policy and work safely.

## SECTION 4. GENERAL SAFETY RULES

### 4.1 In General

1. Follow the safe job procedures established by this Safety Policy and Departmental Safety Guidelines.
2. Wear the protective equipment required for your job. It is your responsibility to see that your protective equipment is in good repair. Damaged equipment should be reported to your supervisor immediately and replaced.
3. Written job hazard assessments should be utilized as outlined in Section 26, Job Hazard Analysis.
4. Report unsafe acts or unsafe conditions to your supervisor without delay.
5. Report all accidents to your supervisor immediately whether anyone is hurt or not. In cases of injury, get first aid as soon as possible.
6. Keep all mechanical safeguards in position during operation. Don't allow machinery to operate unattended.
7. Use only the machinery, equipment and tools you are qualified and authorized to use by the supervisor.

8. Horseplay, such as scuffling, playing practical jokes, or throwing articles at each other will not be tolerated.
9. No employee is permitted to make repairs on any electrical device or equipment unless authorized to do so. Electrical Equipment is not to be tampered with in any way.
10. Compressed air should never be used for cleaning clothes, cooling or practical jokes.
11. No worker will be permitted to use flammable solvents in an open container. Flammables must be stored and handled in approved safety containers.
12. Only **maintenance qualified** personnel, ~~authorized by the City of Aztec,~~ are permitted to repair machinery and equipment.
13. Good housekeeping should be maintained at all times throughout all work areas.
14. Air lines, electrical cords, or any other objects that could cause a hazard need to be moved to a safe location when not in use.
15. Areas on, around, in front and over electrical controls or panels and fire extinguishers are to be kept clear at all times. This includes emergency exits.
16. Employees who violate these safety rules will be subject to disciplinary action as described in the City of Aztec's Personnel Policy, Section 6 - Disciplinary Action and Terminations.

### **4.3 House Keeping**

The City of Aztec employees will at all times keep all debris clear from work areas, passageways, and stairs and in and around buildings or other structures. The following will be performed to ensure a safe work environment:

1. **Written** quarterly building safety inspections (**turned in January, April, July, October**).
2. Segregation of hazardous and non-hazardous waste, along with documentation as needed and/or required.
3. Stored supplies, equipment, etc., are to be orderly stacked out of walkways and from in front of doors.
4. Oil, grease, and other such liquid spills shall be cleaned up at the time of spill and are not to be left unattended.
5. **Monthly inspections of fire extinguishers. Inspections should be documented on fire extinguishers tags.**

#### 4.5 Safety Training and Communication

1. As a minimum, employees will receive the number of training hours as required by New Mexico Self Insurer's Fund. The training shall be relevant to their job positions. The City of Aztec will have Safety Counseling conduct one safety training every month.
2. All employees must sign in when attending the safety trainings. Documentation of the topic(s) discussed, the name of the trainer, the location of the training, the sign in sheet of employees participating is kept on record. Documentation is to be forwarded to the Personnel Administrator Department.
3. Refresher training will be conducted when required, and/or when any new job assignment is assigned or when conditions change.
4. Outside training, that is relevant to the employee's position, may count toward employees obtaining the number of training hours as required by New Mexico Self Insurer's Fund. In order to obtain credit, the training class will need prior approval by Department Head and Safety Coordinator. Proof of the training will be required through submittal of a copy of the sign in sheet, name of the trainer, topic(s), location and how long (time) the class was must be turned into the Personnel Administrator Department.
5. The following safety training classes are mandatory:

<u>Course</u>	<u>Personnel</u>	<u>Frequency</u>
Blood Borne Pathogens	Police	Each Year
Defensive Driver Education	All City Staff	Every 2 years
First Aid / CPR	Field Personnel	Every 2 years
Hazard Communication (GHS)	Field Personnel	Each Year
Hazard Communication (Office)	Office Personnel	Each Year
Sexual Harassment	All City Staff	Every 2 years

### SECTION 5. ACCIDENT REPORTING AND INVESTIGATION PLAN

#### 5.3 Program Administration

~~The personnel and contact information for the administration of accident investigations are as follows:~~

<u>Function</u>	<u>Department</u>
<del>Safety and Health Program Administrator Coordinator</del>	<del>Safety Coordinator</del>
<del>Principal Accident Investigator</del>	<del>Safety Coordinator</del>
<del>Human Resources Manager</del>	<del>Human Resources</del>

1. ~~Safety and Health Program Administrator. Coordinator.~~ The ~~Administrator Coordinator~~ will:
  - (1) Develop and revise, when necessary, the Accident Investigation Plan.
  - (2) Provide relevant training to ensure that accident investigators and other personnel involved in accident investigations properly carry out investigations.
  - (3) Monitor corrective actions implemented as a result of accident investigations.
  - (4) Make recommendations when needed concerning the effectiveness of corrective actions.
  
2. Principal Accident Investigator (Department Head or Designee). The Principal Accident Investigator will direct investigations of all accidents and injuries sustained by employees, contractor employees while they are working at a City of Aztec work site, and visitors to City of Aztec work sites, according to the procedures outlined in this Plan. He or she will develop and implement corrective actions to prevent the causes of accidents and injuries identified through accident investigations.
  
3. Supervisor(s). Supervisors must:
  - (1) Ensure that injured or ill employees receive immediate medical attention.
  - (2) Immediately notify the Department Head and Safety Coordinator of the accident, injury, or near-miss, including any damage to equipment or other property.
  - (3) Complete the appropriate form for the accident or near miss, including damage to City property form if applicable.
  - (4) Advise the employee of his or her accident reporting requirements and provide the employee with necessary forms then send the completed form to Safety Coordinator within twenty-four (24) hours.
  
4. ~~Human Resources Manager. Personnel Administrator (or Designee).~~ The ~~Human Resources Manager Personnel Administrator~~ will provide the authorization for medical treatment of employees prior to their employment. Such staff will contact the employee(s) and describe benefits, ~~and develop a plan for returning the employee(s) to work.~~
  
5. Employees. All employees of the City of Aztec ~~including employees of contractors working at City of Aztec work sites~~, must report work-related injuries and illnesses to their supervisor(s) and complete the employee section of the *Accident Investigation Form* (Appendix C).

## 5.5 Definitions

### Near Miss

~~Incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.~~

### Near-Miss Incident

~~An unplanned, undesired event that adversely affects completion of a task and~~ An incident that does not result in an injury that requires medical treatment nor causes property damage.

## 5.6 Accident Investigation and Reporting Procedures for Injury or Damages

### Accident Investigation Procedures

The Principal Accident Investigator will follow the procedures outlined below to conduct accident investigations:

1. Launch an accident investigation after a work-related injury or illness that requires medical treatment or property damage occurs at any City of Aztec work site. Near-miss incidents will also be investigated.
2. Assign supervisors to carry out specific tasks. Such tasks may include:
  - Inspect the accident site.
  - Interview witnesses and injured person(s).
  - Compile and review data.
  - Develop recommendations for corrective action(s).
  - Compile the written investigation report.
3. Present a preliminary briefing to the investigating team, may including:
  - A description of the accident, with damage estimates.
  - Normal operating procedures.
  - Maps (local and general).
  - The location of the accident site.
  - List of witnesses.
  - Events that preceded the accident.
4. **When needed**, visit the accident site to:
  - Secure the site to protect evidence and prevent further injuries.
  - Inspect the area, including walking and working surfaces, equipment, entrances and exits, air quality systems, and all other conditions, processes, or items that could possibly have contributed to the accident or injury.
  - Record by voice recorder ~~(if feasible)~~ **and or** in writing the details of the accident site, including lighting conditions, other environmental factors, and any unsafe conditions, tools, equipment, or operations.
  - Document the location of victims, witnesses, machinery, energy sources, and hazardous materials.
  - Prepare drawings **and/or and** photographs, label each item carefully, and keep accurate records. Interview each injured person and witnesses. Also, interview those who were present before the accident and those who arrived at the site shortly after the accident. Keep accurate records of each interview. Use a ~~tape~~ **voice** recorder if desired **and if approved**. See Appendix C for a copy of the *Accident Witness Statement Form* and instructions for conducting interviews.
  - After all information from the accident site and interviews have been collected, determine and record in writing:
    - What was not normal before the accident;
    - Where the abnormality occurred;
    - When the abnormality was first noted; and
    - How it occurred.

5. Analyze the data collected from the determination/analysis of accident causes. Repeat any of the prior steps, if necessary. Determine:
  - Why the accident occurred;
  - A likely sequence of events and probable causes (direct, indirect, and basic); and
  - Alternative sequences.
6. Develop recommendations for corrective action, if needed.
7. Conduct a post-investigation briefing.
8. Prepare a summary report including the recommended actions to prevent a recurrence, and distribute the report according to applicable instructions. See Appendix C for a copy of the *Accident Investigation Form* and instructions.

## 5.7 Motor Vehicle Crash Investigation

Employees must notify their supervisor of any work-related **accident crash** with on-road motorized vehicles. The process for investigating **accident a crash** involving motorized vehicles will be conducted by the appropriate government authorities and the vehicle insurance provider. As stated in Section 12 of the City of Aztec Personnel Policy, any employee who has an automobile **accident crash** caused by the employee must submit to a drug screen within two (2) hours of **accident the crash**. In the event the employee is injured and medical attention is required, the drug screen shall be administered at the hospital or urgent care.

### City Owned Vehicle

All City of Aztec owned on-road motorized vehicles are for operator liability and operator liability for personal injury and property damage. Any accident involving a City of Aztec vehicle must be reported to the police. If the police do not come to the scene of the **accident crash**, the person operating the vehicle, if possible, must go to the police to file a **accident crash** report.

### Personally Owned Vehicle

An employee of City of Aztec who is involved in **an accident a crash** while operating a personal motorized vehicle and performing a work-related task must immediately report the accident to police, and notify his or her supervisor of the **accident crash**. The employee must file **an accident a crash** report with the police and make a copy of the report available to their Department Head and the Safety Coordinator.

### Accident Investigation Reports

All investigations of **accident crashes** and injuries will be reported on the prescribed *Accident Investigation Report Form* (Appendix C). ~~All near-miss incidents and injuries that do not require medical treatment will be reported promptly to their Supervisor and a Near-Miss Incident Form shall be completed (Appendix C).~~ **Accident Crash** investigators will submit all completed **accident crash** investigation reports to the Safety Coordinator for review.

## 5.9 Training

The **Administrator Safety Coordinator** will ensure that investigators and others engaged in accident investigations are trained in the techniques of workplace accident investigation, and that they receive all manuals, guides, and other information related to accident investigation.

The training program will include the following topics:

- Initiating the accident investigation
- Inspection and documentation of the accident scene
- Interviews
- Accident analysis
- Root cause determination
- Development of recommendations for corrective action
- Writing the Accident Investigation Report

## SECTION 6. BLOOD BORNE PATHOGENS / EXPOSURE CONTROL PLAN

### 6.2 Policy

~~The policy of the City of Aztec is that employees shall adhere to universal precautions. Universal precautions are an approach to infection control. According to this concept, all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, HCV, and other blood borne pathogens.~~

~~The City of Aztec is committed to providing a safe and healthful work environment for our entire staff. In pursuit of this endeavor, the following exposure control plan (ECP) is provided to eliminate or minimize occupational exposure to bloodborne pathogens in accordance with OSHA standard 29 CFR 1910.1030, "*Occupational Exposure to Bloodborne Pathogens*." The ECP is a key document to assist our firm in implementing and ensuring compliance with the standard, thereby protecting our employees. This ECP includes:~~

- ~~Determination of employee exposure~~
- ~~Implementation of various methods of exposure control, including:~~
- ~~Universal precautions~~
- ~~Engineering and work practice controls~~
- ~~Personal protective equipment~~
- ~~Housekeeping~~
- ~~Hepatitis B vaccination~~
- ~~Rabies vaccination~~
- ~~Post-exposure evaluation and follow-up~~
- ~~Communication of hazards to employees and training~~
- ~~Recordkeeping~~
- ~~Procedures for evaluating circumstances surrounding an exposure incident~~

~~The methods of implementation of these elements of the standard are discussed in the subsequent pages of this ECP.~~

### 6.3 Plan Administration

#### Safety Coordinator

- ~~Is responsible for the implementation of the ECP.~~

- Will maintain, review, and update the ECP at least annually, and whenever necessary to include new or modified tasks and procedures.
- Will be responsible for training, documentation of training, and making the written ECP available to employees, OSHA, and NIOSH representatives.

#### Department Head (or Designee)

- Is responsible for the implementation of the ECP.
- Will maintain and provide all necessary personal protective equipment (PPE), engineering controls (e.g. sharps containers), labels, and red bags as required by the standard.
- Will ensure that adequate supplies of the aforementioned equipment are available in the appropriate sizes.
- Will be responsible for ensuring that all medical actions required are performed and that appropriate employee health and OSHA records are maintained.

#### Employee

- Those employees who are determined to have occupational exposure to blood or other potentially infectious materials (OPIM) must comply with the procedures and work practices outlined in this ECP.

### **6.4 Definitions**

#### Exposure Control Officer

~~Individual~~ The Department Head or designee is responsible for receiving reports of blood borne pathogen exposures and ensuring proper follow-up and compliance.

### **6.5 Methods of Compliance**

#### 6. Laundry

- (1) Handle contaminated laundry as little as possible, with minimal agitation;
- (2) Place wet contaminated laundry in leak-proof, labeled or color-coded containers before transport. Use *bags marked with biohazard symbol* for this purpose.
- (3) Wear the following PPE when handling and/or sorting contaminated laundry:
  - Protective Eye Wear
  - Gloves

#### 7. Labels

- (1) Each department will ensure warning labels are affixed or red bags are used as required if regulated waste or contaminated equipment is brought into the facility.

Employees are to notify their immediate supervisor or Safety Coordinator if they discover regulated waste containers, refrigerators containing blood or OPIM, contaminated equipment, etc. without proper labels.

## 8. Employee Training

All employees who have occupational exposure to bloodborne pathogens will receive training conducted by City approved training contractors.

All employees who have occupational exposure to bloodborne pathogens receive training on the epidemiology, symptoms, and transmission of bloodborne pathogen diseases. In addition, the training program covers, at a minimum, the following elements:

- A copy and explanation of the standard;
- An explanation of our ECP and how to obtain a copy;
- An explanation of methods to recognize tasks and other activities that may involve exposure to blood and OPIM, including what constitutes an exposure incident;
- An explanation of the use and limitations of engineering controls, work practices, and PPE;
- An explanation of the types, uses, location, removal, handling, decontamination, and disposal of PPE;
- An explanation of the basis for PPE selection;
- Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine will be offered free of charge;
- Information on the appropriate actions to take and persons to contact in an emergency involving blood or OPIM;
- An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;
- Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident;
- An explanation of the signs and labels and/or color coding required by the standard and used at this facility;
- An opportunity for interactive questions and answers with the person conducting the training session.

Training materials for this facility are available on the City's Intranet – Kiva.

## 9. Record Keeping

The employer shall establish and maintain an accurate record for each employee with occupational exposure, in accordance with OSHA Standard 29 CFR 1910.1020.

(1) Training Records. Training records are completed for each employee upon completion of training. These documents will be kept for at least three (3) years within the personnel files of the employee located at the Personnel Administrator's office. The training records include:

- The dates of the training sessions.
- The contents or a summary of the training sessions.
- The names and qualifications of persons conducting the training.
- The names and job titles of all persons attending the training sessions.

Employee training records are provided upon request to the employee or the employee's authorized representative within 15 working days. Such requests should be addressed to the Personnel Administrator.

(2) Medical Records. Medical records are maintained for each employee with occupational exposure in accordance with 29 CFR 1910.1020, "Access to Employee Exposure and Medical Records." The Personnel Administrator is responsible for maintenance of the required medical records. These confidential records are kept at their office for at least the duration of employment plus 30 years in accordance with OSHA Standard 29 CFR 1910.1020. Employee medical records are provided upon request of the employee or to anyone having written consent of the employee within 15 working days. Such requests should be sent to the Personnel Administrator. These records shall include:

- Name of employee;
- A copy of the employee's hepatitis A/B vaccine status including the dates of all the hepatitis A/B vaccinations and any medical records relative to the employee's ability to receive vaccination.
- A copy of all results of examinations, medical testing, treatments and follow-up procedures.
- A copy of the information provided to the healthcare professional.
- Confidentiality. The employer shall ensure that the employee medical records required are:
  - Kept confidential; and
  - Not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by law and OSHA Standard 29 CFR 1910.1020.

(3) OSHA Records. An exposure incident is evaluated to determine if the case meets OSHA's Recordkeeping Requirements (29 CFR 1904). This determination and the recording activities are done by the Safety Coordinator.

(4) Sharps Injury Log. In addition to the 1904 Recordkeeping Requirements, all percutaneous injuries from contaminated sharps are also recorded in the Sharps Injury Log. All incidences must include at least:

- The date of the injury;
- The type and brand of the device involved
- The department or work area where the incident occurred; and

- An explanation of how the incident occurred.

This log is reviewed at least annually as part of the annual evaluation of the program and is maintained for at least five years following the end of the calendar year that they cover. If a copy is requested by anyone, it must have any personal identifiers removed from the report.

OSHA's Bloodborne Pathogens Standard 29 CFR 1910.1030, in paragraph (h)(5), requires an employer to establish and maintain a Sharps Injury Log for recording all percutaneous injuries in facility occurring from *contaminated* sharps. The purpose of the Log is to aid in the evaluation of devices being used in healthcare and other facilities and to identify problem devices or procedures requiring additional attention or review. This log must be kept in addition to the injury and illness log required by 29 CFR 1904. The Sharps Injury Log should include all sharps injuries occurring in a calendar year. The log must be retained for five years following the end of the year to which it relates. The Log must be kept in a manner that preserves the confidentiality of the affected employee.

## 6.6 Vaccinations

1. Hepatitis B vaccination shall be made available to all employees with occupational exposure at no cost to the employee according to the requirements and procedures specified in OSHA Standard 29 CFR 1910.1030(f) in Appendix A of this plan. Any employee refusing vaccination must sign a release found in Appendix B, which will be kept in his/her medical record. If the employee later changes his/her mind and still has occupational exposure, the vaccination will be provided at no cost to the employee. The Hepatitis B Declination Form is in Appendix B. Vaccination will also be made available to the employee, if exposure incident occurs and the medical provider determines it is necessary, using current U. S. Public Health Service guidelines.

The vaccination process includes three (3) vaccination shots and a final follow up for titer test. It is the employee's responsibility to complete the vaccination process. Failure to complete the vaccination process could result in disciplinary action per Personnel Policy (Section 6). Initial cost is covered by the city.

2. Rabies vaccination shall be made available to all animal shelter employees with occupational exposure at no cost to the employee according to the requirements and procedures specified in OSHA Standard 29 CFR 1910.1030(f) in Appendix A of this plan. Any employee refusing rabies vaccination must sign a release found in Appendix B, which will be kept in his/her medical record. If the employee later changes his/her mind, the rabies vaccination will be provided at no cost to the employee. The Rabies Declination Form is in Appendix B. Vaccination will also be made available to the employee, if exposure incident occurs and the medical provider determines it is necessary, using current U. S. Public Health Service guidelines.

The vaccination process includes three (3) vaccination shots. It is the employee's responsibility to complete the vaccination process. Failure to complete the vaccination process could result in disciplinary action per Personnel Policy (Section 6). Initial cost is covered by the city.

## 6.8 Administration of Post Exposure Evaluation and Follow-Up

The Safety Coordinator and Personnel Administrator ensures that health care professional(s) responsible for employee's hepatitis B vaccination and post-exposure evaluation and follow-up are given a copy of OSHA's bloodborne pathogens standard.

The Safety Coordinator and Personnel Administrator ensures that the health care professional evaluating an employee after an exposure incident receives the following:

- A description of the employee's job duties relevant to the exposure incident;
- Route(s) of exposure;
- Circumstances of exposure;
- If possible, results of the source individual's blood test;
- Relevant employee medical records, including vaccination status.

The Personnel Administrator provides the employee with a copy of the evaluating health care professional's written opinion within 15 days after completion of the evaluation.

## 6.9 Procedures for Evaluating the Circumstances of an Exposure Incident

The Safety Coordinator will review the circumstances of all exposure incidents to determine:

- Engineering controls in use at the time;
- Work practices followed;
- A description of the device being used (including type and brand);
- Protective equipment or clothing that was used at the time of the exposure incident (*gloves, eye shields, etc.*);
- Location of the incident (*O.R., E.R., patient room, etc.*);
- Procedure being performed when the incident occurred;
- Employee's training.

The Department Head or immediate supervisor will record all percutaneous injuries from contaminated sharps in the Sharps Injury Log.

If it is determined that revisions need to be made, the Department Head and Safety Coordinator will ensure that appropriate changes are made to this ECP.

## SECTION 10. FLEET SAFETY

### 10.1 Driver Responsibility and Fleet Safety Basics

1. Anyone who operates a licensed vehicle owned or controlled by the City of Aztec must maintain a current driver's license as required by Federal and/or State regulations.
2. Transportation of non-employee passengers is prohibited unless approved by the immediate supervisor. Use of City of Aztec vehicles by non-employees or unqualified employees is prohibited, unless permission has been given, by the City Manager.
3. All drivers are required to inspect their vehicle on a monthly basis ~~in the first week of the month~~. A vehicle check list will be provided to all drivers. All drivers are expected to do a daily walk around and report any deficiencies or issues. Vehicles must be kept clean.
4. Obey all traffic laws. All fines are the responsibility of the driver. You are required to report all citations to your supervisor in writing. Violations are cause for disciplinary action, including suspension and/or dismissal.
5. Seat belts will be worn by all occupants, at all times.
6. Unattended vehicles shall have the keys removed, brakes set, windows rolled up and the doors locked.
7. Consumption of alcohol or non-prescribed drugs is grounds for disciplinary action as established in the City of Aztec Personnel Policy whether reporting to work or while on the job. If anyone is taking prescribed medication which may affect their ability to perform their duties safely, they must notify their supervisor when reporting to work.
8. All incidents involving damage to city property, property of others, personal injury of employee or to others, must be reported to the supervisor immediately. Failure to report any accident involving a company vehicle is grounds for ~~termination~~ disciplinary action as established in the City of Aztec Personnel Policy.
9. Courtesy should be extended to other motorists. The vehicle and you are a rolling billboard for the city.
10. Any employee that is in charge of a vehicle is also responsible for all tools and equipment assigned to that vehicle.
10. All vehicles will be equipped with an appropriate fire extinguisher and a first aid kit.
11. All drivers will abide by city and state laws while operating city vehicles.
12. Employees who violate these safety rules may be subject to disciplinary action.

## SECTION 11. FALL PROTECTION PROGRAM

The following sub-sections are a brief summary. For those departments with departmental safety policies, the employee should refer to those departmental policies as they will be more detailed and restrictive.

### 11.1 Introduction

The City of Aztec's fall protection program promotes employee safety during maintenance and equipment installation work. This program focuses on fall hazards, appropriate fall protection equipment, equipment limitations, proper use and wear of the equipment, and the dynamic forces that could apply to such equipment and personnel in the event of a fall.

Fall protection equipment will be supplied and must meet or exceed all requirements of ANSI Z359.1 and [OSHA Standards 29 CFR 1926](#) (Subpart M). All items of fall protection equipment must be properly labeled, stating compliance with this standard, date of manufacture and date of purchase.

A total fall arrest system must be used every time the employee is ~~six (6) feet~~ **four (4) feet** or more above a lower working surface. All employees must be tied off at all times when climbing; there are no exceptions to this requirement. If any fall protective equipment is subjected to a fall or damaged, it must be immediately replaced with new equipment and the old equipment will be returned in a timely manner for destruction. Any employee who violates any portion of this policy will be subject to disciplinary action that will likely result in termination of employment.

## SECTION 12. HAZARD COMMUNICATION PROGRAM

### 12.4 List of Hazardous Chemicals

Our "chemical inventory" is a list of product identifiers of hazardous chemicals known to be present at our workplace. Anyone who comes in contact with the hazardous chemicals on the list needs to know what those chemicals are and how to protect themselves. That is why it is so important that hazardous chemicals are identified, whether they are found in a container or generated in work operations (for example, welding fumes, dusts, and exhaust fumes). The hazardous chemicals on the chemical inventory can cover a variety of physical forms including liquids, solids, gases, vapors, fumes, and mists.

Sometimes hazardous chemicals can be identified using purchase orders. Identification of other chemicals may require an actual survey of the workplace. The Department Head or designee updates the hazardous chemical inventory as necessary.

The inventory is attached to this written Hazard Communication Program. However, the **Program Right to Know** Coordinator also keeps a copy of the chemical inventory list located in the Safety Coordinators Office ~~at City Hall~~ where it is accessible during work hours. The chemical inventory serves as a list of every hazardous chemical for which an SDS must be maintained.

### 12.6 Safety Data Sheets (SDS)

1. Obtaining SDS's.

The Department Head or designee is the responsible person to obtain all SDS's from suppliers and contractors. This will be done by comparing the department's chemical inventory list to the SDS's on hand. Once obtained they shall be cataloged as per below procedures and checked annually as to their being the most current up to date SDS. Should any chemicals be found at the facility without an SDS, the designated person will contact the supplier or manufacturer immediately. The missing SDS's will be faxed or be provided as quickly as possible. The designated person shall be responsible to meet with all outside contractors before, work begins to exchange SDS's and chemical list and then on a regular basis to stay current as to all chemicals located or being used at the facility.

2. Maintenance of SDS's.

The Department Head or designee is designated as the responsible person to maintain all SDS's received. SDS's shall be maintained in each department and reviewed annually to ensure the most current SDS's are on hand.

The master copy of all SDS's shall be maintained in each Department. The SDS's in these notebooks shall be kept in alphabetical order and cross-referenced to the departments in which they are stored and used.

Each Department shall be provided with an SDS's notebook containing the chemical inventory list, and all SDS's of chemicals stored and used in the area. These notebooks shall keep the SDS's in alphabetical order by product name and crossed reference with the chemical name for ease of use by all employees and outside contractor employees. The SDS notebook will be readily available to all employees.

These Department SDS's notebooks shall be up-dated whenever there is an addition or deletion of any chemical in the Department.

SDS's shall be in English and when necessary and at least annually provided in other languages to meet the needs of current employees. They shall be filed in alphabetical order matching the name shown on the container label. Names other than listed on the label shall not be used.

Safety data sheets shall contain the following 16 OSHA required elements:

- Identification
- Hazard (s) identification
- Composition/Ingredients
- First Aid Measures
- Fire-fighting methods
- Accidental Release Measures
- Handling and Storage
- Exposure Control/Personal Protection
- Physical and Chemical properties
- Stability and Reactivity
- Toxicology Information
- Ecological Information
- Disposal Considerations
- Transport Information
- Regulatory Information

- Other Information

1. Coordination of SDS's with Outside Contractors. The Department Head ~~or designee~~ is the responsible person to coordinate the exchange of SDSs with outside contractors. This information shall then be cataloged and up-dated to all applicable SDS notebooks. The exchange of information required to protect both outside contractor employees as well as the City of Aztec employees is as follows: copies of SDSs exchanged, quantity of each chemical at the site, and the location of each chemical at the site.

## 12.7 Responsibility Profiles

There are three (3) major categories of responsibility that are essential to the effective implementation of this program. They are:

1. The "Right-to-Know" Coordinator
2. Safety Coordinator
3. All City of Aztec Employees

The following sections define the roles played by each of these groups in carrying out the program.

### 1. The "Right-To-Know" Coordinator

The Department Head ~~or designee~~ is the "Right-To-Know" coordinator. They will be responsible for overall management and support of the City of Aztec's hazard communication program. Activities which are delegated to the Right-to-Know coordinator include, but are not limited to:

- Overall responsibility for implementing the hazard communication program for the entire department.
- Develop and administer any additional policies and procedures needed to support the effective implementation of this program.
- Revise and up-date this program as necessary. At least annually.
- Collect and maintain a suitable reference file on the federal hazard communication regulations and chemical safety information.
- Act as liaison during OSHA inspections.
- Maintain master inventory list(s) of hazardous chemicals, SDS file and the written communication program.
- Maintain work area inventory list(s) of hazardous chemicals.
- Conduct yearly audits to maintain an up-to-date hazardous chemical inventory.
- Delegate responsibility to appropriate personnel for support of the hazard communication program. Such activities will include:
  - Designation of an alternate "right-to-know" coordinator.
  - Designation of hazard communication trailers.
  - Designation of personnel to develop SDS's for hazardous materials produced (or are by-products) at this facility.
  - Designation of personnel responsible for conducting periodic audits to update hazardous chemical inventory and to assure general compliance with the program.

Department Heads or designee person will be responsible for the on-site management of the hazard communication program. Activities which they will be held responsible for include:

- See that all employees in their work area have received training in the hazard communication program before beginning work in their area
- See that all employees in their work area properly use personal protective equipment.
- Maintain a supply of personal protective equipment (i.e. gloves, face shields, respirators, etc.), as necessary.
- Maintain an inventory list of hazardous substances in their work area in conduction with this program. This list will be update by doing an annual inventory.
- Informing all affected employees of any and all new chemicals brought into the work area.
- Insure all containers, including transfer containers, are appropriately labeled.
- Consult with right-to-know coordinator regarding any questions concerning the hazard communication program and any new hazardous chemicals in the work area.

## 2. Safety Coordinator.

The Safety Coordinator will be responsible for the education and training of all personnel who are exposed to or handle hazardous substances. Activities falling under the direction of the trainer include:

- Maintaining an up-to-date list of all personnel employed or contracted with the City of Aztec.
- Developing suitable training programs utilizing the methods identified in this program. Scheduling periodic training seminars for affected employees.
- Maintaining appropriate training documentation such as sign in sheets, manuals, quizzes, etc.
- Periodically reviewing the training programs with the right-to-know coordinators and designee to include appropriate new information.

Safety Counseling Inc. has been selected to be the City of Aztec, hazard communication trainer. With the exception of all New Employees will be trained initially by the Department Head or designee.

## 3. City of Aztec Employees.

As with all of the cities activities, the employees have the most important role in the hazard communication program, for the ultimate execution of the program rest in their hands. In this role employees must:

- Know which chemicals in their work area are hazardous, and the hazards of those chemicals.
- Attend and attentively gather information from the hazard communication training sessions conducted by the hazard communication trainer.
- Become familiar with the information on the SDS's for the hazardous chemicals in their Department.

- Observe all the handling precautions noted on the SDS's and as discussed in the training sessions.
- Inform Department Head or designee:
- Before performing a non-routine task in which hazardous chemicals are involved.
- When encountering hazardous materials in the work areas which are either not labeled properly, not identified in the inventory listing, or do not have an SDS's in the right-to-know compliance manual.

## 12.9 Hazard Communication Education and Training

Pursuant to the hazard communication program, an employee education and training program has been instituted at our facility regarding the handling and related dangers of exposure to chemicals in the work place. All personnel who are exposed to chemical hazards in their job assignments will be trained at the time of their initial assignment, and whenever circumstances in the workplace change involving the addition of a new hazard, or new hazardous chemical. All new employees will be trained by the Department Head or designee as part of our "new employee orientation program" so that they are adequately prepared to deal with the chemicals they will be using and are exposed to in their new jobs. Additionally, this education and training program will be given to all of our employees at least annually, by the hazard communication-training instructor, to keep their knowledge in these areas current. Should an employee transfer to a new job position there will be additional training provided to prepare that employee for the potential chemical exposures related to the new position.

The topics covered in the education program include, but not limited to, all of the following subjects:

- The [OSHA Standard 29 CFR 1910.1200](#) hazard communications standards.
- All employee rights under the standard.
- All employee responsibilities under the standard.
- The location and contents of our hazard communication program and "right-to-know compliance manual".
- The work area hazardous substance list.
- The work area Safety Data Sheet notebook.
- Physical and health hazards associated with the types of hazardous chemicals identified on the list.
- Methods and observations, which can be used by employees to detect the presence of hazardous chemicals in the work area.
- Engineering controls that have been instituted to reduce the potential exposure of hazardous substances to the employees.
- Recommended work practices for the employees to follow to protect themselves from exposure.
- Appropriate personal protective equipment to be used to protect the employees from potential exposures.
- Location and availability of personal protective equipment.
- Proper use, care, and maintenance of personal protective equipment that employees are expected to utilize.
- To read and interpret information contained on the material safety data sheets.
- How to read and interpret container-labeling information.
- Emergency procedures and first aid procedures required during an incident involving a hazardous substance.

- A review of the terminology used in the hazard communication program, including that which is found on Mess's and labeling.
- A review of any and all hazardous substances brought on the property by contractor and sub-contractor's.
- A review of the hazards of non-routine tasks.

Our education and training presentations make use of several training techniques including, but not limited to, those listed below:

- Classroom type atmosphere with personal instruction. A competent instructor for the topic being presented provides this.
- Videotape programs are used as a training aid not as a training program and consist of no more than one third of the training provided for this program.
- Employee handouts/training manuals will be used to supplement this training program and employees are expected to take notes.
- Supervisors are expected to implement review sessions with employees periodically to assess the retention of the material presented.

These activities are being conducted/overseen by our hazard communication trainer.

Training, scheduling, and documentation to facilitate the training of all our employees, as well as document the training process, we have developed several tools for use in these areas. A tracking system has been developed that will perform the following tasks:

- List all employees date of initial training, last review, and last update training session.
- ~~List work area that each employee has been trained to work in.~~
- Listing of the next review date and up-date training for each employee.

## SECTION 14. EQUIPMENT LOCKOUT / TAGOUT PROGRAM

### 14.3 Responsibilities

#### 1. Supervisor.

- (1) Maintains awareness of all aspects of the City of Aztec lockout/tagout policy.
- (2) Ensures that all employees under their supervision understand the requirements for compliance with this policy and are made aware of the lockout/tagout procedure and are issued appropriate locks/tags.
- (3) Conducts a periodic inspection of the energy control procedure at least annually to ensure that the procedure and the requirements of this policy are being followed.
- (4) Certifies that the periodic inspections have been performed.

#### 2. Employee.

- 1) Maintains awareness of all aspects of the lockout/tagout policy and complies with all procedures.

3. Safety Coordinator/Department Head.

- 1) Provides necessary employee training for lockout/tagout procedures.
- 2) Conducts periodic inspections of work sites to ensure compliance with lockout/tagout procedures.
- 3) Provides guidance regarding the applicability of the lockout/tagout policy.
- 4) Approves/disapproves exceptions of the lockout/tagout policy.

#### 14.4 General

1. Simple Lockout/Tagout.

- 1) Implementation of lockout/tagout shall be performed only by authorized employees.
- 2) Before any employee performs any maintenance or repair of a machine or equipment where unexpected start up or release of stored energy could occur and cause injury, the machine or equipment shall be isolated, and rendered inoperative.
- 3) If an energy isolating device is capable of being locked out, then this policy requires that a lockout and tagout be utilized. If an energy isolating device is not capable of being locked out, then a tagout shall be utilized.
- 4) Whenever major replacement, repair, renovation or modification of machines or equipment is performed, and whenever new machines or equipment are installed, energy isolating devices for such machines or equipment shall be designed to accept a lockout device.
- 5) Procedures during repairs on above devices shall include at least two persons. One person shall be at the disconnect area, while the other person performs repair and/or testing.

3. Periodic Inspections.

- 1) The periodic inspections shall be performed by a City of Aztec Supervisor. The inspections shall be designed to correct any deviations or inadequacies observed.
- 2) Where lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected.
- 3) The inspector shall certify that the periodic inspections have been performed. The certification shall identify the machine or equipment on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection and the person performing the inspection.
- 4) Copies of the inspection report shall be **filed by the department. ~~sent to the Safety Coordinator.~~**

4. Training and Communication.

- 1) The City of Aztec will provide joint training to ensure that the purpose and function of the energy control program is understood by employees and that the knowledge

and skills required for the safe application, usage, and removal of energy controls are required by employees. The training will include the following:

- Train each authorized employee in the recognition of hazardous energy sources, the type and magnitude of the energy available in the workplace, and methods and means necessary for energy isolation and control.
  - Instruct each affected employee in the purpose and use of the energy control procedure.
  - Instruct all other employees whose work operations are or may be in an area where energy control procedures may be utilized, about the procedure, and about the prohibition relating to attempts to restart or reenergize machines or equipment which are locked out or tagged out.
- 2) The City of Aztec will train employees in the limitations of tags when tags are used in lieu of lockout devices.
  - 3) Retraining will be provided for all authorized and affected employees whenever there is a change in their job assignments, a change in machines, equipment or processes that present a new hazard, or when there is a change in the energy control procedures.
  - 4) Additional retraining shall also be conducted whenever a periodic inspection reveals, or whenever there is reason to believe, that there are deviations from or inadequacies in the employee's knowledge or use of the energy control procedures.
  - 5) The City of Aztec will **certify ensure** that employee training has been accomplished and is being kept up to date. The **certification document** shall contain each employee's name and dates of training.

## SECTION 16. PERSONAL PROTECTIVE EQUIPMENT (PPE)

### 16.2 Training

All personnel required to use protective equipment must be trained and be able to demonstrate understanding of the training and the ability to use the equipment before being exposed to the hazards that requiring the protective equipment.

1. Training must cover at the following:
  - (1) When is PPE necessary?
  - (2) What type of PPE is necessary?
  - (3) How to properly use, adjust, wear and take off the PPE.
  - (4) The limitations of the PPE.
  - (5) How to inspect the PPE.
  - (6) The proper care, maintenance, useful life, and disposal of the PPE.

2. Personnel will be retrained when there is reason to believe that the employee has failed to retain an understanding of the training or the ability to properly use the PPE.
  - (1) Retraining will be done when there are changes in the workplace, the hazards present in the workplace, or the type of PPE that renders previous training obsolete.
  - (2) The City of Aztec will verify that all exposed employees have been trained with written documentation that contains the name of the person trained, the date of that training, what was covered, and the instructor.
  - (3) A copy of the training documentation will be ~~kept forwarded to the safety coordinator.~~

## SECTION 17. PROPER LIFTING TECHNIQUES

### 17.4 Types of Lifts

#### 1. Squat / Diagonal / Tripod Lift



##### 1) Size Up the Load

- Never attempt to lift an object that is heavier than your comfort level.



##### 2) Secure Your Footing

- Align your body with the load.
- Face the load straight on.
- Assure your footing and balance by placing one foot forward of the other.



##### 3) Bend Your Knees

- Bend your knees and squat.
- Keep your head and back straight.
- Spread your knees or lower one knee (tripod lift) to get closer to the object.



##### 4) Lift the Load

- Push up with your legs.
- Tighten your abdominal muscles as you rise.
- Breathe steadily.
- Keep the load close to your body as you rise.



### 5) Carry the Load

- Lift the object to the carrying position.
- Turn your body by changing the position of your feet, do not twist at the waist.



### 6) Lower the Load

- Bend your knees while lowering from a waist high carrying position.
- Keep load close to body.
- Keep head up and back straight.

## 2. Team Lift



Get help with awkward or bulky items. Lifting together is easier and safer than lifting alone.

## 3. Power / Mechanical Assisted Lift



If the load is too heavy or awkward to lift alone and no one is available to assist, use a mechanical device such as a hand truck, manual lift truck or forklift to lift the load.

## SECTION 19. PORTABLE ELECTRIC SPACE HEATER

### 19.3 Policy

Portable electric space heaters shall only be permitted in office areas for temporary use and only after the following conditions are met:

1. Approval. Before use, any portable electric space heater shall be inspected for the following:
  - Portable electric space heaters shall bear a UL listing label.
  - Portable space heater shall be inspected by Safety Personnel to insure that the amperage draw will not overload the electrical circuit intended to power the heater.
  - Portable electric space heaters shall not have worn or damaged electrical cords, and the plugs shall be in good condition.
  - Portable electric space heaters shall have a low center of gravity and shall contain a mechanism whereby the heater shuts off automatically if tipped over.

2. Use.

- (1) Portable electric space heaters shall be plugged directly into an electrical outlet. The use of any extension cord is strictly prohibited.
- (2) Portable electric space heaters shall be turned off when not in use.
- (3) Portable electric space heaters shall be inspected monthly.
- (4) Portable electric space heaters shall be placed a minimum of three (3) feet from any combustible material (e.g. curtains, paper, cloth, etc) and in a well ventilated area.
- (5) Any portable electric space heater found to be in poor operating condition, damaged, or used improperly, shall immediately be turned off, unplugged, and removed from service.

3. Prohibition.

- (1) The use of any portable heater that is fueled by kerosene or that produces open flame is strictly prohibited.
- ~~(2) The use of any portable heater for permanent heating is strictly prohibited.~~
- (3) Portable electric space heater shall not be placed underneath desks, in any means of egress (exit path), or any high traffic area.

**SECTION 20. PERMIT-REQUIRED CONFINED SPACE ENTRY PROGRAM**

**20.2 Hazard Evaluation for Permit Spaces**

To determine if there are permit-required confined spaces in City of Aztec, the Safety Coordinator ~~or designee~~ has conducted a hazard evaluation of our workplace. This evaluation has provided us with the information necessary to identify the existence and location of permit-required confined spaces in our workplace that must be covered by the *Confined Space Entry Permit Form (Appendix B)*. This written hazard evaluation is kept in the ~~Safety Coordinator's Office in the City Hall Complex~~ appropriate department.

**20.4 Safe Permit Space Entry Procedures**

The assigned Department Supervisor is the Entry Supervisor responsible for authorizing entry and issuing entry permits for work in our permit spaces (Appendix B). The file of permits and related documents are kept ~~by the department. in Safety Coordinators Office in the City Hall Complex~~. The procedures we follow for preparing, issuing, and canceling entry permits includes the following elements:

1. Before entry is authorized, the Entry Supervisor shall document the completion of measures required by preparing an entry permit.
2. Before entry begins, the entry supervisor identified on the permit shall sign the entry permit to authorize entry.

3. The completed permit shall be made available at the time of entry to all authorized entrants or their authorized representatives, by posting it at the entry portal or by any other equally effective means; so that the entrants can confirm that pre-entry preparations have been completed.
4. The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit.
5. The entry supervisor shall terminate entry and cancel the entry permit when:
  - (1) The entry operations covered by the entry permit have been completed; or
  - (2) A condition that is not allowed under the entry permit arises in or near the permit space.
6. The ~~Safety Coordinator~~ Department shall retain each canceled entry permit for at least 1 year. Any problems encountered during an entry operation shall be noted on the pertinent permit so that appropriate revisions to the permit space program can be made.

## 20.6 Certification

The City of Aztec verifies that the space is safe for entry and that the pre-entry measures required by OSHA Standard 29 CFR 1910.146(c)(5)(ii) have been taken, through a written certification that contains the date, location of the space, and signature of the person providing the certification. ~~At our company,~~ the Department Supervisor is responsible for verifying these procedures. The certification is made before entry and is available to each employee entering the space.

## 20.11 Training Program

Every employee at City of Aztec who faces the risk of confined space entry is provided with training so that each designated employee acquires the understanding, knowledge and skills necessary for the safe performance of the duties assigned to them. ~~Safety Coordinator or~~ Safety Counseling conducts our permit-required confined space training. All training related materials, documents, and signed certificates are kept ~~by the department. in the Safety Coordinator Office in the City Hall Complex.~~

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** XII. BUSINESS ITEM (C)  
**AGENDA TITLE:** Intent to Adopt Ordinance 2015-448 Amending Chapter 17, Section 17-1 Personnel Policy

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**ACTION REQUESTED BY:** Commission  
**ACTION REQUESTED:** Approve Intent to Adopt Ordinance 2015-448 Amending Chapter 17, Section 17-1 Personnel Policy  
**SUMMARY BY:** City Staff

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## PROJECT DESCRIPTION / FACTS

A workshop was held on September 22, 2015 to discuss direction of disciplinary actions with regards to the drug and alcohol section of the Personnel Policy. The personnel policy was approved for final adoption (Ordinance 2015-445) so that other changes could be implemented. Commission directed staff to change some parts of Section 14 Drug and Alcohol Policy of the Personnel Policy.

Commission has before them amendments to Section 14 of the Personnel Policy (Ordinance 2015-448) to include the following requests by commission:

- First Offense with treatment and 3 day suspension.
- Second offense termination within 7 year time period.

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**SUPPORT DOCUMENTS:**

- Ordinance 2015-448
- Revisions to Personnel Policy

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Intent to Adopt Ordinance 2015-447 Amending Chapter 17, Section 17-1 Personnel Policy

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**City of Aztec  
ORDINANCE 2015-448**

**Amendment of Article I, Section 17.1 of Chapter 17 - Personnel**

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

**SECTION ONE**

**Sec. 17-1. Personnel Policy.**

The document entitled "City of Aztec Personnel Policy, Revised November, 2015" is adopted by reference.

**SECTION TWO**

**Effective Date.**

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

**PASSED, APPROVED AND ADOPTED** This \_\_\_\_Day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Sally Burbridge, Mayor

ATTEST:

\_\_\_\_\_  
Karla Saylor, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry T. Thrower, City Attorney

\_\_\_\_\_  
Advertised Date

\_\_\_\_\_  
Effective Date

## SECTION 14. DRUG AND ALCOHOL POLICY

### 14.1 Purpose

The safety of the employee is a serious concern of The City of Aztec. Drug and alcohol use may pose a serious threat to the employees' safety. While at work, each City of Aztec employee has a responsibility to the public to deliver services in a safe, efficient, and conscientious manner. In order to perform a job in the safest manner possible, City of Aztec employees must be able to work in a drug-free environment and themselves be free from the effects of alcohol and other job impairing substances while on the job. Accordingly, while on the job or in the City of Aztec vehicle, the use, sale, distribution, possession, or being under the influence of an intoxicating liquor, controlled substance, drug not medically authorized, or any other substance which impairs job performance or poses a hazard to the safety and welfare of the employee, the public, or the other employees, is strictly prohibited and will result in disciplinary action up to and including termination.

The use of illegal drugs or alcohol on the job, or being under the influence of these substances, casts serious doubt on the employee's ability to perform his job functions and undermines the public confidence in the integrity of that employee and of the City of Aztec.

### 14.2 Policy

It shall be the policy of the City of Aztec to make reasonable efforts to maintain a drug and alcohol free work place. The City of Aztec shall have periodic training on the policy and on drug and alcohol abuse. This policy shall be given to each employee.

### 14.3 Definitions

#### Abuse of City of Aztec property

Is exemplified by, but not limited to, the following:

1. Negligent or willful damage or destruction of City of Aztec equipment or property;
2. Waste of materials or negligent loss of tools or materials;
3. Improper maintenance of equipment;
4. Damage caused by the use of tools or equipment for purposes other than that for which the tool or equipment was intended.

#### Accident

Any on the job injury which requires medical attention beyond first aid for the employee(s) and/or any other person involved, and/or cause the employee to lose time from work. It is also considered an accident when City of Aztec property has been damaged during the work shift. The damage property value shall be more than \$1,500 as determined by department head. Also see definition of vehicle accident.

#### Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

#### Alcoholic beverage

Alcohol, or any beverage, containing more than one-half of one percent by volume, which is capable of use for beverage purposes, either alone or when diluted.

### Alcohol concentration (or content)

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Test (EBT) or converted from a urine or blood sample.

### Authorized Personnel

Authorized personnel are the Personnel Administrator , City of Aztec Manager, and the specific Department Director. Also, on a case by case need to know, the supervisor shall also be considered authorized personnel. Personnel who are authorized to have access to alcohol or drug test results or medical information pertaining to this policy will maintain complete confidentiality regarding this information.

### Collection Facility

A hospital, clinic, or laboratory, or other valid facilities, approved by The City of Aztec to be used to collect body fluid or breathe samples to be analyzed for specific controlled substances or alcohol. The facility will have all the required Human Resource, materials, equipment, and supervision to provide for the collection, security, temporary storage, and transportation of the samples to the testing facility, or to conduct alcohol testing.

### Confidentiality

The results of any drug or alcohol test shall be strictly confidential and shall not be disclosed without the prior written approval of the employee tested unless otherwise required by law. However, nothing in this paragraph will prohibit the lab, the MRO, or testing facility from releasing information relevant to an employee's test results to the authorized City of Aztec personnel. Additionally, only those persons authorized and those directly involved in the decision making process related to the tested employee will obtain any drug or alcohol testing information retained by The City of Aztec. There may be some instances where overriding public health or safety concerns may require the release of information otherwise considered confidential.

### Constitutional Rights of Employees

The City of Aztec respects the constitutional rights of its employees. All actions taken by City of Aztec officials shall be consistent with the Constitution and laws of the United States and the State of New Mexico.

### Controlled substances

Any drug, substance or immediate precursor listed in Schedules I-V or Penalty Groups 1-4 of the Controlled Substance Act of 1988 as it may be revised from time to time.

### Department Head

The person in charge of a department or designee.

### Departmental policy

A Department's policy will prevail over this policy only where it is more restrictive than this policy and is not in direct conflict to this policy.

### Disciplinary action

When this term is used it means discipline up to and including termination.

### Drug or Illegal drug

Any drug in any detectable amount which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level different than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy. Examples of illegal drugs are cannabis substances such as marijuana and hashish, cocaine, heroin, phencyclidine (PCP), and so-called designer drugs and look-alike drugs.

### Personnel Administrator

The Personnel Administrator or designee.

### Manager

The City of Aztec Manager or designee.

### Medical Review Officer (MRO)

A licensed physician (doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his medical history and any other relevant biomedical information.

### Motor vehicle

As defined by State Statute 66-1-4.11; "Every vehicle that is self-propelled."

### Physician

A physician licensed by the State Board of Medical Examiners.

### Proper medical authorization

A prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the name of the substance, quantity/amount to be taken, the period of authorization, and whether the prescribed medication may impair the employee's job performance. This requirement also applies to refills of prescription drugs. The use of "medical marijuana" by any employee is not allowed under this policy. Marijuana is a prohibited drug in Schedule I of the Controlled Substances Act and it remains a violation of City policy for any employee to use marijuana.

### Reasonable cause (or reasonable suspicion)

That the actions, appearance, and/or conduct of an employee who is on duty are indicative of the use of a controlled substance or alcohol. Reasonable suspicion shall include, but not be limited to, the following:

1. Abuse of City of Aztec property;
2. Employee behavior problems such as fighting, declining work performance, argumentative, uncooperative, or other disruptive behavior;
3. Receipt of written or oral statements by others concerning use of drugs or alcohol by employees or being under the influence;

4. Possession of any drug or alcoholic beverage, or any drug or alcoholic beverage container, or any drug paraphernalia, during working hours, in a City of Aztec vehicle or on City of Aztec property;
5. Indications of being under the influence or intoxication which include but not limited to the following:
  - Abnormally dilated or constricted pupils glassy eyes
  - Aggressiveness
  - Glazed stare or redness of eyes
  - Change of Speech (e.g. faster or slower)
  - Increased appetite for sweets
  - Change of personality (e.g. paranoia)
  - Inattentiveness
  - Constant fatigue or hyperactivity
  - Job impairment (inability to perform)
  - Constant sniffing
  - Difficulty walking
  - Mood swings
  - Disorientation needle marks
  - Drowsiness
  - Odor of alcohol
  - Dulled mental process
  - Excessive unexplained absences
  - Redness under nose
  - Excitement or Confusion
  - Sudden weight loss
  - Euphoria
  - Unsteady gait or balance
  - Flushed face
  - Other erratic behavior
  - Forgetfulness

Refusal to submit to alcohol or drug test

That an employee:

1. Refuses to sign a consent to testing form;
2. Fails to provide adequate breath or urine for testing without a valid medical explanation after he has received notice of the requirement for testing;
3. Engages in conduct that clearly obstructs the testing process.

Any refusal listed above will be treated the same as a positive illegal, controlled substance with a positive test result or a breath alcohol.

Substance abuse

Is exemplified by, but not limited to, the following:

1. Ingestion, inhalation, or injection of a controlled substance without proper written medical authorization;
2. Ingestion of an alcoholic beverage during working hours.
3. Ingestion of an alcoholic beverage in a City of Aztec vehicle, or while operating City of Aztec equipment, or while on call or stand by duty;
4. Ingestion inhalation, or injection of a controlled substance without proper medical authorization, or ingestion of an alcoholic beverage during non-working hours, which causes an employee to be unable to work in a safe and effective manner during working hours;
5. Use of prescription or over-the-counter medication in a manner which it was not intended.

#### Testing facility

A certified laboratory or facility, approved by The City of Aztec to analyze body fluid or breathe samples for specific controlled substances or alcohol. A copy of The City of Aztec Drug and Alcohol Policy shall be provided to the testing facility. The testing facility shall comply with the procedures outlined in this policy when conducting tests. The testing facility shall contact The City of Aztec Personnel Administrator.

#### Under the influence

Is defined as abnormal behavior during working hours or while on call or on standby duty, which results from indulging to any degree in any alcoholic beverage, controlled substance, or drug which may limit an employee's ability to safely and efficiently perform his duties or poses a threat to the safety of the employee or others.

#### Vehicle accident

After a vehicle accident in which an employee is involved during working hours and/or after a vehicle accident in which the employee was at fault (as determined by law enforcement officer, safety coordinator, or supervisor) when driving a City of Aztec vehicle at any time.

#### Working hours (on duty)

From the time the employee arrives at the job site until the time he leaves including all lunch or other types of breaks.

### **14.4 Department Heads and Supervisors**

1. Training. Department Heads and Supervisory employees will be provided with specialized training on alcohol misuse and drug abuse.
2. Supervisor's Responsibilities. When an observation or knowledge of an employee being under the influence of drugs or alcohol or who poses a hazard to the safety and welfare of the employee or others, the supervisor will immediately notify the Department Head or designee in a confidential manner.
3. Department Head. If the Department Head makes a determination that reasonable suspicion exists to conduct a drug or alcohol test, the Department Head or designee

will contact the HR Personnel Administrator to schedule a drug screen and if warranted a breath alcohol screen.

4. The Department Head or designee will transport the employee to the collection facility.
5. This information shall also be maintained in complete confidentiality as stated in this policy. Breach of confidentiality relating to test results or any other related matters will subject the employee to disciplinary action.

## **14.5 Employees**

1. Notification to Supervisor of Authorized Drug Use. Each employee shall report the use of medically authorized drugs which can impair job performance to the immediate supervisor. It is the employee's responsibility to determine from the physician whether or not the drug would impair job performance depending upon the nature of the employee's job. Failure to report the use of such drugs or failure to provide proper evidence of medical authorization will result in disciplinary action. Any information received from an employee under this provision will be kept confidential except to the extent it may be shared with individuals who are in a need to know position.

The City of Aztec reserves the right to have a physician of its own choice determine if the medication produces hazardous effects at the prescribed dosage and may restrict the employee's work activity.

2. Additional Employee Responsibilities. Each employee who observes or has knowledge of another employee in an impaired condition to perform the job duties or who poses a hazard to the safety and welfare of the employee or others shall promptly report this fact to the immediate supervisor. The employee making the observations must file a written report to the suspected employee's supervisor by the end of the shift of observing or learning of the condition. Any employee concealing the use of or condition of being under the influence of drugs, controlled substances, or alcohol by other employees on the job, or failing to make such a report will be subject to disciplinary action.

Any employee who makes a reasonable cause observation or who may be a witness at an accident scene shall also maintain complete confidentiality. Breach of confidentiality in the matter will subject the employee to disciplinary action.

3. Call Back to Duty. Employees called back to work at a time when they are off duty and not on stand-by duty, and they have been consuming intoxicants, those employees shall report this usage to the person calling them for special duty. Employees will not be required to report for call back duty until such a time that they are in compliance with this drug and alcohol policy (or their own departmental policy if it is stricter than this policy).
4. Employee Cooperation. All employees are expected to cooperate in the testing process. Any conduct that clearly obstructs the testing process such as tampering with the specimen or the testing procedure will result in termination.

5. Required Drug and/or Alcohol Testing. Testing shall be conducted:
  - (1) After an offer of employment.
  - (2) After an accident (see definitions).
  - (3) After a vehicle accident (see definitions).
  - (4) When a reasonable suspicion exists (see definitions).
  
6. Testing Methods. The methods by which substance abuse or alcohol use will be tested may include, but are not limited to, the following:
  - (1) Urinalysis
  - (2) Breath analysis
  - (3) Blood screening
  - (4) Hair analysis
  
7. The supervisor of an employee who is seriously injured and cannot provide a breath or urine specimen at the time of the accident will notify the HR Personnel Administrator to notify the hospital and request that the hospital perform the tests necessary to determine the presence of controlled substances or alcohol in the employee's body at the time of the accident.

#### **14.6 Procedures for Administering Tests**

When an employee or applicant is required to submit to a drug and/or alcohol test, the employee or applicant shall complete a consent form prior to testing. The form authorizes the exam/test and the release of medical information regarding the medical condition and any test results. When the employee or applicant reports to the collection facility, he/she will be required to show positive picture identification. Consequently, employees are required to carry a valid driver's license with them while at work.

1. After an Offer of Employment. Refusal to submit to the drug/alcohol test will be regarded the same as a positive drug test result or breath alcohol greater than .02 and the job offer will be withdrawn.
  
2. After an Accident Requiring Medical Attention, Vehicle Accident, or Reasonable Suspicion. An employee shall be required to submit to a drug and/or alcohol test within two (2) hours. Refusal or failure to submit to the drug/alcohol test will be regarded the same as a positive drug test result or breath alcohol greater than .02 and the employee shall be subject to disciplinary action. If this is a subsequent positive, the employee shall be terminated.

When an employee is required to submit to a drug and/or alcohol test, due to an accident requiring medical attention, vehicle accident, or reasonable suspicion, the employee will be driven to the collection site by the Department Head or designee.

3. Medical Examination. If the employee is unable to provide adequate breath or urine to conduct testing, The City of Aztec may require the individual to undergo a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. The cost of the medical exam shall be paid by The City of Aztec and the employee will remain on administrative pay while awaiting the results of the medical exam.

4. Waiting for the Test Result. The applicant will not be permitted to begin work with The City of Aztec until the results of the test are received by the Personnel Administrator.

An employee, who has been sent for a test due to suspicious reasonable cause, shall remain off duty with administrative pay until the results of the controlled substances test are received by the Personnel Administrator. However, when an employee has been sent for a test due to post accident, the Department Head shall determine whether the employee is to remain off duty in a leave of absence status or shall be permitted to continue work as long as the employee does not operate any motorized, gas powered equipment, or any vehicle.

5. Breathe Alcohol Testing. Alcohol testing may be obtained through the blood or urine analysis and the certified lab shall convert the analysis into a breath alcohol reading. However, The City of Aztec may choose to have the employee's breath alcohol content analyzed using an Evidential Breath Testing device (EBT) operated by a Breath Alcohol Technician (BAT). The test shall be conducted in a private setting.

#### **14.7 Post Test Procedures and Exam Results**

If requested, a copy of the results of the test shall be supplied to the employee tested and the original results shall be maintained in a locked cabinet in the Personnel Administrator 's office for a period of at least two years, after which time they may be destroyed. However, the Personnel Administrator may maintain the results and any reports on individuals who have violated this policy for the purpose of recording the number of violations.

1. Negative Results. If the test results are negative, no disciplinary hearing will be held.
2. Positive Results. A Medical Review Officer (MRO): shall review and interpret positive results obtained from the lab. The MRO will examine the possible alternate medical explanations for any positive test results and give the individual testing positive an opportunity to discuss the test results prior to making a final decision. The MRO will then contact the Personnel Administrator with the information. The MRO may verify a positive test result to the Personnel Administrator without having communicated with the employee if the employee expressly declines to discuss the results of the test, or if the employee has not contacted the MRO within 24 hours after notification.
3. Positive Drug Test Result. The employee will be immediately placed on unpaid administrative leave and will not be allowed to perform any work on behalf of The City of Aztec.
4. Second Sample. An employee whose urine sample has tested positive has the option, within 72 hours of being notified by the MRO, of having the other portion of the split sample tested by the same lab or another certified lab. The employee will remain on administrative leave while awaiting the results of the re-test.
  - 1) If the second portion produces a negative result, or for any reason, the second portion is not available, the test is considered negative, no sanctions will be imposed and no disciplinary hearing will be held.

- 2) If the second portion confirms a positive result, the employee will be provided with a notice of a meeting with Personnel Administrator and Department Head.
5. First Time Offense. If this is the employee's first time for a positive result for drugs or alcohol testing .02 or greater the employee may voluntarily agree to be evaluated by a substance abuse professional (SAP) who will determine what assistance if any, the employee needs in resolving the problem. **Failure of the employee to accept assistance will result in immediate termination.** If the employee chooses to follow through with the course of action the SAP chooses, then the employee will not be terminated for drug or alcohol abuse at this time, **however the employee will be subject to disciplinary leave as stated in Section 14.13.**
  - 1) If the employee tests positive for illegal drugs they will not be allowed to return to work until they provide a negative test result. The employee will be on unpaid administrative leave but can use any other leave time (e.g., sick leave, vacation) available. The employee will also be responsible for 100% of the cost for testing and fees. The City will specify the testing facility.
  - 2) Once the employee has returned to work, the employee shall be required to submit to unannounced drug and alcohol testing at least six times while on duty during the 12 months agreement for improvement process. The employee's Department Head and/or the Personnel Administrator will determine when the unannounced tests will be conducted.
  - 3) If the employee chooses not to be evaluated by the professional or the employee does not follow through with the course of action directed by the SAP, then this action by the employee shall be treated as though this were a subsequent positive result.
  - 4) This does not apply to an employee on their initial probation period. An employee on initial probationary period will be terminated.
6. Subsequent Positive Results. For drugs or alcohol testing at .02 or greater will result in termination of the employee's employment with The City of Aztec, **regardless of any break-in-service within a seven (7) year time period starting from the initial time of offense or positive test. An employee terminated as a result of a second offense is not eligible for re-hire.**

#### **14.8 Operation of Vehicles and Equipment**

Any time the alcohol test produces a positive test equal to or greater than 0.02, the Department Head or designee shall ensure that the employee does not drive himself home in either his personal vehicle or in an assigned City of Aztec vehicle.

Under no instances shall an employee operate a motor vehicle or motorized equipment while he is suspected of or is intoxicated, under the influence of drugs, or under the influence of medication which may affect the employee's ability to operate such equipment.

#### **14.9 Searches and Inspections at the Workplace**

An employee as well as City of Aztec property and equipment may be searched when there is reasonable suspicion to believe that the employee is in violation of this policy.

The City of Aztec may conduct general inspection and searches for drugs or alcohol on City of Aztec premises or in City of Aztec vehicles or equipment wherever located. Searches and inspections may be initiated without prior notification and conducted at times and locations deemed appropriate by the City of Aztec.

An employee may have the right to refuse a search, however, an employee's consent to a search is required as a condition of employment and the employee's refusal will result in disciplinary action up to and including termination, even for a first refusal. Employee has the right of a third party of their choice present during the search.

Controlled substances, drugs believed to be illegal; drug paraphernalia found on City of Aztec property will be turned over to the appropriate law enforcement agency and full cooperation given to any subsequent investigation. Substances which may be identified as an illegal drug by a layman's examination will be turned over to law enforcement authorities as well.

#### **14.10 Employee Convictions**

Any employee cited or arrested of a violation of a criminal drug or alcohol statute must notify the City of Aztec of such conviction within five (5) days of the conviction occurring. Convictions are subject to disciplinary action up to and including termination even for the first offense.

#### **14.11 Special Provisions**

Police Detectives and Officers who are required to be in possession of firearms, alcohol, or drugs in the course and scope of their employment, will be exempt from the provisions of this policy pertaining to possession of. Police employees are instructed to refer to the guidelines established by the Department's internal operating procedures.

#### **14.12 Reservation of Rights**

The City of Aztec reserves the rights to interpret, change, rescind, or depart from this policy in whole or in part without notice. Nothing contained in this policy shall be construed as creating or constituting a contract with any employee, whether expressed or implied.

#### **14.13 Disciplinary Leave**

An employee who receives disciplinary leave specific to this policy shall get three (3) scheduled work days without pay.

# Staff Summary Report

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**MEETING DATE:** October 13, 2015  
**AGENDA ITEM:** XII. BUSINESS ITEM (D)  
**AGENDA TITLE:** Discussion of New BLM Regulations

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**ACTION REQUESTED BY:** Mayor Burbridge  
**ACTION REQUESTED:** Commission Discussion  
**SUMMARY BY:** Edward Kotyk

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## PROJECT DESCRIPTION / FACTS

A wave of new Bureau of Land Management (BLM) regulations is coming that will reduce New Mexico's oil and natural gas production and lead to a loss of billions of dollars to New Mexico and the federal government over the next two decades.

## PROCUREMENT / PURCHASING (if applicable)

N/a

## FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

N/a

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**SUPPORT DOCUMENTS:** Proposed Letter to Albuquerque Journal Drafted by Mayor Scott Eckstein

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**DEPARTMENT'S RECOMMENDED MOTION:** Discussion Only

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## **New BLM Regulations Could Cost New Mexico Billions Bloomfield Mayor Scott Eckstein, Mayor XXX, Mayor XXX and Mayor XXX**

A wave of new Bureau of Land Management (BLM) regulations is coming that will reduce New Mexico's oil and natural gas production and lead to a loss of billions of dollars to New Mexico and the federal government over the next two decades. As the mayors of Bloomfield (OTHER CITY NAMES) in northwest New Mexico we are also extremely concerned about a loss of jobs and tax revenue to our struggling communities.

We believe that BLM must—and can—carefully balance environmental protection and royalty issues with revenue and job concerns. For the sake of our state budget and jobs across New Mexico, we ask that our congressional delegation work to help ensure that BLM gets these new regulations right.

One new BLM regulation expected in 2015 is the venting and flaring rule, which aims to reduce the amount of methane (natural gas) released into the environment. Part of this rule is expected to require the twice yearly inspection of all gas-producing wells with special, costly cameras. Companies that provide this service state that each inspection will take a half day and cost \$600. In northwest New Mexico alone, where there are over 20,000 active wells, the annual cost would be over \$24 million a year not including administrative costs, the cost of company representatives at inspections, and having the already resource-strapped BLM monitor the work of inspectors.

Because many natural gas wells in northwest New Mexico are older, steady, slow producers these new costs would make them uneconomical. We therefore anticipate the premature closure of 3-5% of our gas wells, which over the decades will cost the state and federal governments a loss in royalties of approximately \$300 million at today's prices. If gas prices increase, the losses only get bigger.

As residents of northwest New Mexico we of course want to keep our environment healthy for our families and future generations. We understand there have been indications that methane levels over the Four Corners region have been higher than those in surrounding areas, and we await the federal government's investigation into its origins and possible remedies.

However, companies in the region are already taking steps to reduce emissions. One operator with more than 10,000 gas wells in the San Juan Basin has voluntarily reduced methane leakage by 54% since 2013. If the BLM and the Obama administration believe they still need to create new methane regulations they should work with industry leaders to find cost-effective ways to do so.

Another issue is the proposed update of BLM's Onshore Order 3 ("003"), which in part regulates the metering of production on federal leases. The proposed changes to 003 will most likely lead to the need to install new meters on thousands of wells.

While these changes may make small improvements in the accuracy of royalty payments, the increased cost of compliance will lead to the premature closing of wells that can not be economically updated. Significant losses in revenue will be traded for very small changes to the accuracy of royalty accounting. One conservative estimate generated by the State Land Office a few years ago (when this same change was debated and then abandoned by BLM) is that New Mexico would lose \$1,000,000,000 in revenue over a decade.

The U.S. is now the world's largest producer of oil and natural gas in part because of New Mexico production. This is keeping gasoline, diesel, natural gas and electricity prices low for consumers, increasing economic activity, helping bring back manufacturing from abroad, and creating jobs across the nation. For the sake of our community, state and country we hope and trust the BLM will get its new regulations right.

Word count: 627 (not including this line). This leaves room for mayors' and cities' names. The max is 650. If we go over the Journal could make edits we wouldn't agree with.

Mayor Scott Eckstein: xxx-xxx-xxxx (phone number)